

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.685 OF 2015
AND
MISC. CIVIL APPLICATION NO.1007 OF 2018

Mr. Jay Pandurang Borkar,
Major of age, married,
r/o 3rd Floor, Angarika Building,
Opp. Fire Brigade Office,
Ponda Goa.

... Petitioner

Versus

1. Shri Prabhakar Y. Chawan
Tale, Durgabhat, Ponda Goa.

2. Commissioner,
Labour and Employment,
Having office at
Shramshakti Bhavan,
Panaji Goa.

3. Mamlatdar and head of Taluka,
Revenue Office, Ponda Talauka
Ponda Goa.

4. Gomantak Mazdoor Sangh,
G-5, Macedo Apartment,
Ponda -Tisk, Ponda Goa. 403 401

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. P. Lotlikar, Advocate for
the Petitioner.

Mr. Shivraj Gaonkar, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J

DATED: 5th August 2021

ORAL JUDGMENT :

1. Heard Mr. S. D. Lotlikar, learned Senior Advocate who appears along with Mr. P. Lotlikar for the Petitioner, and Mr. S. Gaonkar learned counsel for Respondent No.1.

2. At the request of the learned counsel for the contesting parties, the main petition is taken up for final disposal.

3. The challenge in this petition is to the following:-

(a) Award dated 25.07.2012 made by the Industrial Tribunal and Labour Court, Panaji Goa in Reference No.IT/1/2006, in terms of which, there is a direction for reinstatement of Respondent No.1 herein together with full back wages;

(b) Recovery Certificate dated 13.08.2013 issued by the Commissioner, Labour, and Employment for recovery of an amount of ₹3,36,715/- against the Petitioner herein;

(c) Final recovery notice dated 17.02.2015 issued by the Mamlatdar, Ponda Goa, again for the recovery of the above amount.

4. The rule was issued in this petition on 23.06.2016 and even interim stay was granted on 03.09.2015 subject to deposit of back wages as directed in the impugned award. In compliance with the interim order

dated 03.09.2015, the Petitioner has deposited in this Court on 5th October 2015 the amount of ₹3,36,715/-, which, represents the back wages up to the date of the award.

5. Mr. Lotlikar learned Senior Advocate for the Petitioner submits that the Petitioner's mother Premabai who was styled as an employer- Party No.II in Reference No. IT/1/2006 in which the impugned award has been made expired on 12.09.2007. He, therefore, submits that the impugned award is made against a dead person and therefore, amounts to a nullity.

6. Mr. Lotlikar, without prejudice to the aforesaid, submits that the recovery certificate is also illegal, infirm, and issued without application of mind. He submits that there is no material on record to suggest that the Petitioner has been operating the establishment M/s. Jai Hair Dressing Saloon, Ponda Goa, was owned by his mother Premabai P. Borkar. He submits that there was no inquiry to even ascertain whether the Petitioner has inherited any property from the late Premabai Borkar to require the Petitioner to honor the demands in the impugned award. He, therefore, submits that the recovery certificates are liable to be set aside on these grounds.

7. Mr. Gaonkar learned counsel for Respondent No.1 submits that the reference, in this case, was against the action of the management of M/s. Jai Hair Dressing Saloon, Ponda Goa. He submits that there is no question of abatement of such reference and

the impugned award is legal and valid. He points out that the employer appeared before the Tribunal but later on abandoned the proceedings. He refers to Section 18(3)(c) of the Industrial Disputes Act, 1947 (the said Act) to submit that the award is binding and can be enforced not only against the parties to the industrial dispute but also heirs, successors, or assigns in respect of the establishment to which the dispute raised. He, therefore, submits that only contentions raised or rather pressed in this petition lack merit, and this petition, therefore, be dismissed.

8. Mr. Gaonkar points out that Respondent No.1 is presently aged 81 years. On instructions, he submits that there is no question of reinstatement at this stage. Again, on instructions, he submits that Respondent No.1 will be satisfied if the amount of ₹3,36,715/- as reflected in the recovery certificate is paid to Respondent No.1. On instructions, he makes a specific statement that Respondent No.1 will have no further claims in terms of the impugned award dated 25.07.2012.

9. The rival contentions now fall for determination.

10. The record indicates that the services of Respondent No.1, who was a Hair Dresser at M/s. Jai Hair Dressing Saloon, Ponda Goa, was terminated on 28.03.2005. Respondent No.1 raised an industrial dispute and ultimately, the appropriate Government made

a reference on 17.01.2006 referring to the following dispute for adjudication by the Industrial Tribunal.

“(1) Whether the action of the management of M/s. Jai Hair Dressing Saloon, Ponda, Goa, in terminating the services of Shri Prabhakar Y. Chawan, Hair Dresser, with effect from 28/3/05, is legal and justified?”

11. From the aforesaid reference, it is quite apparent that the Tribunal had to determine whether the action of the management of M/s. Jai Hair Dressing Saloon, Ponda Goa, in terminating the services of Respondent No.1, with effect from 28.03.2005 was legal and justified. Since it is the action of the establishment was questioned, there is no point in introducing the concept of abatement of the reference in such proceedings.

12. Besides, the record indicates that the written statement was also filed by the establishment opposing the claim statement before the Tribunal on 18.04.2006. Thereafter, the affidavit of evidence was filed by Respondent No.1 herein and even the copy of the same was furnished to the Advocate appearing on behalf of employer/establishment. Despite receipt of such copy, neither the Advocate nor any representative of the employer chose to remain present before the Tribunal. All this was at the stage when Premabai was very much living. In any case, the Tribunal has quite correctly recorded that no further interest was taken by the employer to contest the proceedings before the Tribunal.

13. Even though no interest was taken by the employer, the Tribunal has considered various objections raised on behalf of the employer including the objection that Respondent No.1 was not a workman within the meaning assigned to this expression of section 2(s) of the said Act. The Tribunal has considered the matter on merits and ultimately concluded that the termination of services of the Respondent No.1 was without compliance with minimum principles of natural justice as also the provisions of the said Act. Based on all this, the Tribunal made the impugned award.

14. The operative portion of the impugned award reads as follows:-

“ORDER

1. It is hereby held that the action of the management of M/s Jai Hair Dressing Saloon, Ponda, Goa, in terminating the services of the workman Shri Prabhakar Y. Chawan, Hair Dresser, with effect from 28/3/05 is illegal and unjustified.

2. The workman Shri Prabhakar Y. Chawan is ordered to be reinstated with full back wages.

3. No order as to costs.

Inform the Government accordingly.”

15. As noted earlier, reference requires the Tribunal to determine whether the action of the management of M/s. Jai Hair Dressing Saloon, Ponda Goa, in terminating the services of Respondent No.1 with effect from 28.03.2005 was legal and justified. The

management, which is referred to as the employer of the cause title to the reference was represented. However, at the later stage the management/employer/establishment took no further interest in the proceedings. Merely because Premabai Borkar may have expired on 12.09.2007, such demise is not sufficient to conclude that reference itself had abated or that the impugned award constitutes a nullity.

16. There is no jurisdictional error or infirmity in the issuance of the recovery certificates, which are based on the impugned award. In this regard, reference is necessary to the provisions of Section 18 of the said Act which reads as follows:-

“18. Persons on whom settlements and awards are binding.-

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

(3) A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3-A) of section 10-A] or an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

17. Section 18(3) of the said Act makes it clear that an award of the Labour Court or Tribunal, which is enforceable shall be binding not only on all parties to the industrial dispute or other parties summoned to appear in the proceedings as parties to the dispute but also, where a party referred to in sub-clause (a) or (b) of Section 18(3) of the said Act is an employer then, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

18. There is no dispute that the Petitioner is the son of Premabai P. Borkar. There is also no dispute that the establishment/employer in dispute was owned by Premabai Borkar. Therefore, the impugned award binds the Petitioner herein and the recovery certificates were quite correctly issued to the Petitioner. In **Rasulbhai v.**

*Jasumatiben Trivedi*¹, it was held that an award binds the legal heirs and reference does not abate.

19. No other grounds were raised on behalf of the Petitioner. In particular, no grounds were raised to question the award on merits. There was no dispute about non-compliance with natural justice or the provisions of the said Act before the summary termination of Respondent No. 1.

20. Therefore, there is neither any jurisdictional error nor any other error like non-application of mind when it comes to the making of the impugned award and the issue of recovery certificates. The award and the recovery certificates promote substantial justice. Based on the above contentions, the Respondent cannot now be deprived of the paltry amount of ₹3,36,715/- for the patently illegal termination suffered by him almost 16 years ago. To secure this amount the Respondent No. 1, who is 81 years old has had to litigate for over 16 years. The inflation has rendered this amount paltry. The equitable jurisdiction cannot be exercised to deprive the workman of even this amount based on some technicalities urged by the employer.

21. The impugned award was made on 25.07.2012. The first recovery certificate was issued on 13.08.2013. but this petition was instituted only on 02.09.2015 i.e. after 2/3 years. The final notice

¹ 1993 II LLJ 841

dated 17.02.2015 did not give any fresh cause of action. There is no proper explanation for the delay.

22. Besides, this Court cannot be oblivious to the circumstance that Respondent No.1 is today 81 years old. Through his counsel, Respondent No.1 has waived most of his rights under the impugned award. Since Respondent No.1 was never granted any reinstatement in terms of the impugned award dated 25.07.2012, Respondent No.1 could have insisted on payment of back wages even beyond 25.07.2012 which Respondent No.1 has waived. Respondent No.1 had taken out an application seeking leave to withdraw at least 50% of the awarded amount pointing out the dire need for finance. Respondent No.1 had also placed on record the medical records to indicate that he was in dire need of money which was deposited by the Petitioner in this Court. At this stage, the learned counsel for the parties submitted that it would be better if this Court decides the main petition finally rather than permitting any withdrawal in part or in full. Accordingly, this petition was taken up for final disposal at the request of the learned counsel for the parties.

23. For all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

24. Registry to permit Respondent No.1 to withdraw the amount deposited by the Petitioner in this Court together with the interest that may have accrued therein till the date of the withdrawal.

25. The statement made by and on behalf of Respondent No.1 that upon receipt of such amount, Respondent No.1 will have no further claim of whatsoever nature against the Petitioner herein or for that matter the establishment M/s. Jai Hair Dressing Saloon, Ponda Goa, are accepted. Misc. Civil Application is also accordingly disposed of.

26. At this stage, Mr. Lotlikar learned Senior Advocate for the Petitioner requests that this order may be stayed for six weeks. The stay is partly granted in the sense that Respondent No.1, is permitted to withdraw only 50% of the deposited amount together with the interest that may have accrued thereon immediately. The balance 50% amount is not to be paid until the expiry of six weeks from today.

27. All concerned to act on the authenticated copy of this order.

M. S. SONAK, J.