

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 14531 OF 2021

Kinetic Engineering Ltd. .. Petitioner

Versus

Gulabrao Bhadu Pawar .. Respondent

Shri Vinayak S. Bedre, Advocate for the Petitioner.

Shri Parag V. Barde, Advocate for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 14TH NOVEMBER, 2022.

FINAL ORDER :

. Petitioner has filed present petition challenging judgment and order dated 10.02.2021 passed by the 02nd Labour Court, Ahmednagar in Application (IDA) No. 02 of 2015. By that order, the Labour Court has allowed the application filed by the respondent under the provisions of Section 33(C) (2) and (3) of the Industrial Disputes Act (for short "I.D. Act") directing the petitioner to pay an amount of Rs. 12,62,702/- to the respondent with future interest at the rate of 8% per annum.

2. Appearing for the petitioner Mr. Bedre, learned counsel has essentially raised two objections to the order of the Labour Court. Firstly, he contends that even though the petitioner has shown willingness for reinstatement of the respondent and calling him upon to resume duties by letter dated 13.12.2012, the

respondent failed to do so. He would therefore submit that the petitioner cannot be saddled with liability to pay wages to the respondent from 13.12.2012 till the date of his actual resumption of duties on 10.07.2014. The second objection that Mr. Bedre raises to the order of the Labour Court is about the correctness of the figures stated in annexure to the application filed by the respondent. He would submit that the figure of Rs. 12,62,702/- was erroneously arrived at by the respondent by comparing his wages with the wages of another employee who was differently situated.

3. Per contra, Mr. Barde, learned counsel appearing for the respondent supports the order passed by the Labour Court. He submits that in contempt proceedings filed by the respondent, two officials of the petitioner company have been punished by the Labour Court by its judgment and order dated 17.12.2015, which itself demonstrates willful violation of the order of the Labour Court. Mr. Barde would further submits that amount of wages specified in annexure A to the complaint filed by the respondent were never disputed before the Labour Court by the petitioner. Mr. Barde would further contend that the letter dated 13.12.2012 was not an offer for reinstatement of the respondent and that even though the respondent was ready and willing to resume his duties, he was prevented from doing so by the petitioner company and it is only on 10.07.2014 that the respondent was permitted to resume the duties. Mr. Barde would contend that respondent has now retired from service in the year 2020 and the

Labour Court has not committed any error in awarding the unpaid wages to the respondent without any past interest.

4. In order to decide the controversy, it would be necessary to appreciate brief chronology of events leading in passing the impugned order dated 10.02.2021 passed by the Labour Court. The respondent was employed with the petitioner company in the year 1986. He was terminated from service on 27.04.1997. He questioned his termination before the Labour Court by filing Complaint No. 56 of 1997, which came to be partly allowed by judgment and order dated 10.08.2007 setting aside the termination order dated 27th April, 1997 with a direction to the petitioner company to reinstate the respondent with continuity of service from the date of termination but without any backwages. The petitioner assailed the order of the Labour Court before the Industrial Court. It appears that the respondent also questioned order of the Labour Court before the Industrial Court to the extent of denial of backwages. Both the revisions came to be dismissed by the Industrial Court. The petitioner carried matter further before this Court by filing writ petition to challenge the orders passed by the Labour Court and the Industrial Court, which again came to be dismissed by this Court on 18th February, 2011. The petitioner further challenged the order passed by the Single Judge of this Court by filing Letters Patent Appeal, which came to be dismissed by the Division Bench of this Court on 15.04.2014. After exhausting all aforesaid remedies, the petitioner finally reinstated the respondent on 10th July, 2014.

5. There is no dispute that upon his reinstatement the respondent has been granted proper pay fixation by implementing the settlement dated 31.01.2011. The only dispute is about payment of wages from the date of the order of the Labour Court i. e. 10.08.2007 till the date of his reinstatement on 10th July, 2014.

6. The first objection raised by the petitioner to the order of the Labour Court is that the respondent failed to join duties despite letter being issued by the petitioner to him on 13.12.2012. The petitioner has however failed to produce copy of letter dated 13.12.2012 on record. It appears after receipt of the letter dated 13.12.2012, the respondent submitted his own letter dated 13.12.2012, copy of which has been produced by Mr. Barde for my perusal. By way of response to the respondent's letter dated 13.12.2012, the petitioner company issued letter dated 24.12.2012, which is also produced for my perusal by Mr. Barde. The letter dated 24.12.2012 makes reference to the earlier letter of the company dated 13.12.2012 and it appears that by that letter dated 13.12.2012, the petitioner had offered to assign some work to the respondent. In absence of copy of letter dated 13.12.2012 (of the petitioner) available on record and from contents of letter dated 24.12.2012, it cannot be said that there was any offer of reinstatement by the petitioner to the respondent by that letter. As against this by letter dated 02.07.2014, copy of which also is produced for my perusal by Mr. Barde, the respondent

was specifically directed to resume duties within a period of seven days. The Labour Court has arrived at a conclusion that the petitioner had no intention to comply with the order passed by the Labour Court in Complaint ULP No. 56 of 1997 after perusal of the petitioner's letter dated 24.12.2012.

7. Considering the entire material produced before me, I am of the view that it cannot be said by way of certainty that the petitioner had granted an opportunity to the respondent to resume his duties on 13.12.2012. Therefore, the first objection of Mr. Bedre deserves to be rejected.

8. Coming to the second objection of Mr. Bedre that the Labour Court has not properly adjudicated exact amount payable by the petitioner to the respondent. I do not find any substance in this argument as well. The respondent in his complaint gave details of computation of amount of Rs. 12,62,702/- in Annexure annexed there. In reply filed by the petitioner following averments were made to deal with contents of the statement in Annexure A :-

"26. That with reference to Annexure "A" to the application, the opponent strictly denies the averments, analogy, contentions of the Applicant. It is denied that the Applicant is entitled for the amounts claimed by him. Furthermore, the said amounts do not fall within the meaning of "Wages" in case of the Applicant. The Applicant is not at all entitled for basic, D.A., Fix DA, HRA, other All, attendance bonus, PH, CL, SL, EL, Medical, and LTA etc. It is denied that the

letters of the Applicant has not replied by the Opponent."

9. Thus, the petitioner did not raise any specific plea that the computation of amount by the respondent was erroneous, nor presented statement of correct amount payable to the respondent. Mr. Bedre has invited my attention to para 36 of the impugned judgment of the Labour Court to contend that the pay fixation statement of the respondent was filed on record by the petitioner at Exhibit C-22/1. However, closure scrutiny of the said findings recorded by the Labour Court would indicate that what was produced by the petitioner was statement of pay fixation done after reinstatement of the respondent. There appears to be no statement produced by the petitioner on record relating to the wages payable to the respondent during the period from 10.08.2007 to 10.07.2014. The petitioner has failed to produce any such statement to indicate as to the exact amount which is payable to the respondent for that period as per the petitioner. Therefore, there is no substance in the second objection raised by Mr. Bedre.

10. Resultently, I do not find any error being committed by the Labour Court in passing the impugned judgment and order. The petition is devoid of merits. Same is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]