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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 4027 OF 2022

Adarsha Building Technologies Pvt. Ltd.PETITIONER

V/S

Sachin Dattavijay YadavRESPONDENT

**WITH
WRIT PETITION NO. 4047 OF 2022**

Adarsha Building Technologies Pvt. Ltd.PETITIONER

V/S

Sachin Dattavijay YadavRESPONDENT

Mr. D. S. Hatte i/b D. P. Jamsandekar for Petitioner in both WPs
Mr. Mayuresh D. Modgi for respondent in both WPs

CORAM : NITIN W. SAMBRE

DATED : 23rd NOVEMBER, 2022

P.C.:

1. Both these petitions are by the employer.
2. In WP/4027/2022 challenge is to the judgment and order delivered on 27/06/2018 by the Labour Court, Thane in Complaint (ULP) No. 57 of 2015 and also the order dated 02/12/2019 passed by Industrial Court, Thane in Revision Application (ULP) No. 119 of 2018. As far as WP/4047/2022 is concerned, challenge is to the judgment and order dated 27/06/2018 passed by Labour Court in Complaint (ULP) No. 57 of 2015 and order dated 02/12/2019

passed by Industrial Tribunal, Thane in Revision Application (ULP) No. 115 of 2018. Since the facts in both the matters are identical, by consent same are finally disposed of with following order.

3. The respondent-employee alleging his appointment on 23/11/2013 on the post of Electrical Draftsman at the salary of Rs.9,000/- per month alleges that when he reported for duty on 02/05/2015, the petitioner-employer kept him idle for about two hours and department head-Mr. Dhuri asked him to go home and not to come back.

4. Alleging aforesaid act of unjustified and unwarranted termination, Complaint (ULP) No. 57 of 2015 seeking declaration of unfair labour practices under item 1(a), (b), (d) of Schedule IV of MRTU & PULP Act, 1971 was preferred. A declaration was sought to cease and desist from engaging in unfair labour practices with further declaration that the termination is illegal and invalid and therefore null and void with a prayer for reinstatement with back wages and litigation expenses of Rs.15,000/-. The complaint was also accompanied with an application under sub-section 2 of section 30 of MRTU & PULP Act wherein interim relief was sought by the respondent-employee.

5. The said claim was resisted by the petitioner-employer by filing written statement at Exhibit C-5. After admitting employer-employee relationship, length of service and payment of wages to him, the claim of the respondent-employee was denied qua the termination.

6. It is claimed that the services of the respondent were terminated from 01/05/2015. Rather it is the case that the respondent failed to report for duty from 02/05/2012 without any intimation. It is claimed that respondent accordingly was marked absent. It is further claimed that the petitioner has outsourced the work of preparing drawing to the extent of work performed by the respondent as Electrical Draftsman.

7. The Labour Court accordingly framed issues at Exhibit O-4 and answered the issue as to the termination of services as illegal and entitlement of the respondent for the reliefs claimed in his favour vide judgment and order dated 27/06/2018.

8. The Revision Application (ULP) No. 119 of 2018 was preferred by the petitioner questioning the judgment and order dated 27/06/2018, which came to be dismissed vide order dated 02/12/2019. As such, WP/4027/2022 came to be preferred.

9. In WP/4047/2022 challenge is to the order of the Revisional

Court i.e. Industrial Court passed in Revision Application (ULP) No. 115 of 2018 delivered on 02/12/2019. The said Revision Application (ULP) No. 115 of 2018 was preferred by the respondent-employee feeling aggrieved by the observations made in the order dated 27/06/2018 in Complaint (ULP) No. 57 of 2015 claiming that there was mistake apparent on the face of record committed by the Labour Court thereby in operative part of the order observations are remained to made in regard to the abandonment of service.

10. While questioning both these orders, learned counsel for the petitioner-employer would urge that the Courts below have failed to appreciate the evidence brought on record by the parties to the complaint. So as to substantiate the said claim, he would urge that the documents viz. the muster roll i.e. attendance register, the cross examination of the complainant is not properly appreciated. It can be inferred from the appointment order and evidence that the respondent has abandoned his services. It is further claimed that the Courts below committed an error in granting back wages particularly when the prayer for interim relief moved under sub-section 2 of section 30 of the MRTU & PULP Act was not pressed.

11. According to learned counsel for petitioner, once the respondent has withdrawn the provident fund, same amounts to giving up the claim and that being so the Industrial Court so also Labour Court committed an error apparent on the face of the record.

12. According to learned counsel for the respondent, once the employer-employee relationship is admitted so also the payment of wages, the controversy was rightly narrowed down as to the adjudication on the issue of either abandonment of services or oral termination. According to him, circumstances viz. stand of the petitioner of outsourcing the work, which was performed by the respondent, the non issuance of memo anytime before or non initiation of inquiry proceedings pursuant to alleged allegations of absenteeism sufficiently establishes that the respondent's services were illegally terminated.

13. It is further claimed that neither notice before termination was served nor show cause notice or memo was issued to the respondent-employee qua his absenteeism. As such, he would urge that learned Labour Court so also Industrial Court was justified in recording findings in favour of the respondent.

14. I have appreciated the rival submissions.

15. The respondent came to be appointed vide appointment letter dated 23/11/2013 in the capacity of Electrical Draftsman. The fact remains that from the date of appointment till 01/05/2015 the respondent appears to have regularly attended the duties. Clause-9 of the appointment order provides for bond period of three years with notice period of three months.

16. The fact remains that as far as termination of the services of the respondent is concerned, admittedly neither show cause notice nor memo for absenteeism was served on respondent.

17. Apart from above, in case if the stand of the petitioner was that of absenteeism is to be appreciated, it was expected of the petitioner to conduct an inquiry against the respondent-employee qua his unauthorized absenteeism, which they have failed to. As far as muster roll is concerned, the absent mark is shown against the name of the respondent from the month of May and June whereas in July and August the said columns were kept blank. In muster roll at Exhibit C-10, it is rightly observed to be not maintained as per the appropriate rules as the same lacks in terms of remarks and signature of the manager or the supervisor. Apart from above, the muster entries appears to be subsequent to the date of termination i.e. 02/05/2015. As such prior to the above

date of termination respondent-employee appears to be regular in his employment. Apart from above, petitioner has admitted that they have outsourced the work of the respondent-employee which sufficiently speaks of intention of the petitioner. Merely because respondent has withdrawn his provident fund can take this Court to infer that respondent has given up or abandoned his claim about the employment. Financial hardship after facing termination might have compelled the respondent to take such step.

18. Once the petitioner has come out with the case of abandonment of services, it was for the petitioner to prove the same.

19. Rather from the pleadings in the complaint and the evidence brought on record, respondent-employee has rightly demonstrated the act of the petitioner as that of indulging in unfair labour practice. Rather the document Exhibit U-18 is a letter dated 04/05/2015 issued by the respondent to the petitioner sufficiently establishes his intention to discharge his duties wherein he has sought reinstatement. The said document was duly proved by placing on record the courier receipt.

20. The witness of the petitioner i.e. Time Officer has admitted that there is no mechanism installed for recording in and out time

from the office of the petitioner by a employee. Hence it is rightly inferred by the Court below that petitioner has failed to establish its stand of absenteeism.

21. The stand of the petitioner that because of absenteeism disciplinary action was not initiated against the respondent/employee as could be noted from the testimony of Vinod, HR Officer who is examined at Exhibit C-7 sufficiently justifies that the petitioner has not initiated any disciplinary proceedings against the respondent/employee for alleged act of absenteeism.

22. In the aforesaid background, particularly upon giving re-look to the evidence brought on record in form of oral and documentary, the rival pleadings of the parties, it is worth to observe that the Labour Court so also the Industrial Court who have passed orders impugned were quite justified to grant relief and declaration as has been prayed by the respondent/employee.

23. In the aforesaid background inference drawn by both the Courts below appears to be quite justified.

24. The Labour Court in the matter of revision preferred by the respondent-employee has rightly noticed as regards the error apparent on the face of record and allowed the revision to the

extent of prayer seeking declaration made by the respondent/employee.

25. In wake of concurrent findings recorded no error of jurisdiction could be noticed.

26. Both the petitions as such fail and stand dismissed.

(NITIN W. SAMBRE, J.)