

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

WRIT PETITION NO. 1599 OF 2012

M/s. Yashmum Engineers Ltd

...Petitioner

Versus

Sudhir Jagannath Kukarni

...Respondent

**WITH
WRIT PETITION NO. 2732 OF 2012**

Sudhir Jagannath Kulkarni

...Petitioner

Versus

M/s. Yashmun Engineers Ltd And Ors.

...Respondents

Mr. Sachin J. Kadam, for Petitioner in WP/1599/2012 and for Respondent in WP/2732/2012.

Mr. P. M. Mokashi, for Petitioner in WP/2732/2012 and for Respondent in WP/1599/2012 .

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 03 OCTOBER 2023.
PRONOUNCED ON : 19 OCTOBER 2023.

JUDGMENT:

These two cross petitions are filed by employer and the workman challenging the Judgment and order dated 25 March 2011 passed by the Presiding Officer, Labour Court, Thane. The impugned

Award arises out of a challenge raised by the employee in Industrial Dispute with regard to his retrenchment with effect from 25 November 1997. The Labour Court by the impugned order, has answered the Reference partly in affirmative directing employer to pay compensation of Rs. 3 lakh to the workman while holding termination to be illegal. The employer is aggrieved by the Award to the extent of holding the termination as illegal and awarding compensation. The workman on the other hand is aggrieved by non grant of relief of reinstatement with full backwages and other consequential benefits.

2. Briefly stated, facts of the case are that M/s. Yashmun Engineers Ltd. is a company registered under the provisions of Companies Act 1956 engaged in the activities of manufacturing and services of electrical, electronics and mechanical produce. It is sister concern of Tata Electrical Company Ltd. and operates three Factories at Dharavi, Thane and Pune. The workman was appointed with the employer initially at their Dharavi Unit and later he was transferred at Wagale Industrial Estate Thane as Senior Draughtsman on 01 June 1979. While so working, the workman faced some financial problems and tendered resignation with the employer. This is how his services came to an end on 07 June 1995. It is the workman's case that his resignation was obtained by misguiding him and by taking advantage of his financial problems and under a promise to reemploy him. Accordingly, the workman was granted reemployment by the employer with effect from

01 October 1995. However, his services were terminated with effect from 25 November 1997 vide termination letter dated 17 November 1997.

3. The workman raised dispute with regard to his termination and accordingly a Reference was made before the Deputy Commissioner of Labour (Conciliation) Thane as to whether the workman was entitled to reinstatement with full backwages and benefits with effect from 25 November 1997. The workman filed statement of claim. The employer resisted the Reference by filing its Written Statement. Evidence was led before the Labour Court by respective parties. By Judgment and order dated 25 March 2011, the Labour Court held that the workman was illegally terminated from services with effect from 25 November 1997 and that the same amounted to retrenchment as contemplated under section 2 (oo) of the Industrial Dispute Act 1947. However instead of granting relief of reinstatement or backwages, the Labour Court felt it appropriate to grant compensation of Rs.3 lakh to the workman. The workman has filed Writ Petition No.2732 of 2012 challenging the Award, to the extent of denial of relief of reinstatement with full backwages and other consequential benefits.

4. Mr. Kadam, the learned counsel appearing for employer would contend that Reference made at the behest of the workman was grossly time barred. That the workman was terminated from services with effect from 25 November 1997 but raised Industrial Dispute only in September 2002. That therefore Reference sought for by the workman

was clearly time barred. He would further submit that the services of the workman were required to be terminated on account of want of sufficient work for Draughtsman due to closure of Drives and ACP sections as well as curtailing of Development Section. Thus, his services were rendered surplus warranting his termination. That the workman was paid one month's salary in lieu of one month's notice, retrenchment compensation, leave salary, earned salary, etc. and that his termination was effected by following due process of law. He would submit that the finding of functional integrality recorded by the Labour Court is perverse as only one Senior Draughtsman was employed at the relevant time. That therefore no question of maintaining any seniority list. Mr. Kadam would further submit that mere filing of returns under same account number cannot demonstrate functional integrality between different units of employer. He would further submit that the factory of the employer had only 40 workers and that therefore provisions of chapter VB of the Industrial Dispute Act had no application. That this aspect is undisputed as the workman did not conduct any cross-examination on this aspect. He would submit that having been employed on 01 October 1995, the workman did not have any right to continue especially after reduction of manufacturing activities at the factory of the employer. He would submit that termination has been effected after payment of all dues to the workman and therefore the Labour Court has erred in awarding compensation to him. He would pray for setting aside the Award.

5. In support of his contention Mr. Kadam would rely upon following Judgments :-

- i) **Maruti Udyog Ltd. Vs. State of Haryana and anr., 2008 II CLR 609.**
- ii) **Maharashtra General Kamgar Union Vs. Indian Gum Industrial Ltd., 2000(4) Bom. C.R. 818.**
- iii) **Management of Indian Cable Co. Ltd. Calcutta Vs. Its Workmen, 1962-SCR-Supp 3-589.**
- iv) **Isha Steel Treatment Bombay Vs. Association of Eng. Workers AIR 1987 SC 1478.**
- v) **Yeshwant G. Chikhalkar Vs. Killick Nixon Limited, 1999 LAWS (Bom) -789.**
- vi) **Bank of Baroda, Kota Vs. Presiding Officer, CGIT-cum-Labour Court, Kota & Anr., 2011 I.C.L.R. 199.**
- vii) **Kuldeep Singh Vs. G. M. Instrument Design, Development and Facilities 2011 I.C.L.R.5.**

6. *Per Contra* Mr. Mokashi, the learned counsel appearing for workman would support the Award of the Labour Court to the extent of finding about illegality in the termination. He would submit that the workman has been illegally terminated in violation of section 25-F of the Industrial Disputes Act. That no cogent evidence was produced by the employer about services of the workman being rendered surplus.

7. Mr. Mokashi would further challenge the Award to the

limited extent of denial of relief of reinstatement with full backwages and other consequential benefits. He would submit that the Labour Court has recorded a factually incorrect finding that relationship between employer and employee was not cordial. That the alleged stray relationship is only factor considered by the Labour Court for denying the relief of reinstatement and backwages. He would submit that relationship between the employer and employee was cordial, which is demonstrated by the fact that the workman was re-employed immediately after accepting his resignation in respect of his past services. That the reason for termination of workman's services is not on account of any misconduct committed by him, but alleged reduction of workload. That therefore there was no material available on record to indicate that relationship between employer and the workman was not cordial.

8. Mr. Mokashi would further submit that even if the relations could be assumed to have been stained, the same could not have been a reason for denial of relief of reinstatement and backwages. That reinstatement with backwages is normal rule unless exceptional circumstances exist. That in present case Labour Court has not recorded finding of any exceptional circumstances for denial of relief of reinstatement. That the workman has substantial service left and the Labour Court ought to have been taken into consideration that factor while computing the amount of compensation. That Labour Court has not used any specific formula for deciding the amount of compensation.

That the amount of compensation awarded is too meager and according to him the compensation ought to have been at least Rs.6 lakh considering the formula to be applied. He would submit that there is functional integrality between the three factories as the employer has been filing various returns (Form 6A) in respect of the 03 factories under the same account number. In support of his contention Mr. Mokashi would rely upon following Judgments :-

- i) **S. G. Chemicals and Dyes Trading Employees Union Vs. S. G. Chemicals and Dyes Trading Limited and anr., (1986) 2 SCC 624.**
- ii) **Raj Kumar Vs. Director of Education and ors., (2016) 6 SCC 541.**
- iii) **M/s. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Ors., (1979) 2 SCC 80.**
- iv) **Surendra Kumar Varma and Ors. Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and anr., (1980) 4 SCC 443.**
- v) **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others, (2013) 10 SCC 324.**
- vi) **O. P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and ors., (1986) 4 SCC 337.**
- vii) **Sapan Kumar Pandit Vs. U. P. State Electricity Board and Ors., (2001) 6 SCC 222.**

9. Rival contentions parities now fall for my consideration.

10. The Labour Court has held termination of the workman to

be illegal and amounting to retrenchment within the meaning of section 2 (oo) of the Industrial Dispute Act. There are two spells of services of the workman. The first spell of services is during 01 June 1979 to 07 June 1995. The second spell of services is from 02 October 1995 till the date of termination on 25 November 1997. So far as the first spell of services is concerned, though the workman attempted to raise grievance about manner in which he was made to resign, the Labour Court has held that correctness of Respondent's resignation was not the subject matter of challenge in the proceedings before it. Therefore this Court need not go into the aspect as to the reasons why the workman tendered resignation in respect of first spell of services.

11. The short issue before the Labour Court was correctness of the termination order dated 17 November 1997 terminating services of the workman from 25 November 1997. The termination later reads thus :-

ASHMUN ENGINEERS LIMITED

YEL/ADMN/2753/97

November 17, 1997

Ex 8/19

Mr. S. J. Kulkarni
YEL- Thane

We regret to inform you that for want of sufficient work for draughtsman due to closure of Drives and ACP sections and curtailment of development sections, your services now became

surplus.

We are therefore constrained to terminate your service with effect from 25th November, 1997(at the close of your working hours).

All your legal dues including one month's salary in lieu of one month's notice, retrenchment compensation, leave salary; earned salary etc. shall be offered to you on your last working day.

Please collect all your dues as stated above, from accounts on 25th November, 1997 and also leave your permanent address with the undersigned so that in case of any need, you may be contacted.

For YASHMUN ENGINEERS LIMITED

(KP BATTIWALA)
DIRECTOR IN CHARGE

12. Thus services of the workman have been terminated on account of want of sufficient work. The Labour Court invoked principal of functional integrality of three factories of the employer at Dharavi, Thane and Pune for the purpose of arriving at a finding that termination amounted to retrenchment under section 2(oo) of the Industrial Dispute Act.

13. The appointment order of the workman during second spell of service issued on 11 October 1995 reads thus :-

(IN DUPLICATE)

YEL/ADM/EMP/2995/95
11/10/95

Mr. Sudhir J. Kulkarni
"Shramasaflya"
Gavdevi Housing Society.

Plot no 49, First Floor,
Ghansham Gupte Road,
Dombivli(West),
Dist: Thane.

Dear Sir,

With reference to your application dated 28/8/95 and subsequent interview you had with us, we are pleased to offer you a confirmed appointment as 'Senior Draughtsman' with effect from 1 October, 1995 on a consolidated salary of Rs. 3,110/- (all inclusive) in the grade 1650-110-1980-120-2460-130-3370 (Supervisory 'A' Cadre).

You are entitled for the following benefits as per company's prevailing rules.

H.R.A.	---Rs.175/ p.m.
Educational Allowance	--- Rs.100/- p.m.
Canteen Allowance	--- Rs.50/- p.m.
Conveyance Allowance	--- Rs.700/- p.m.
L.T.A.	--- Rs.3500/- p.m.
Medical Allowance	--- Rs.1400/- p.a.

You shall be bound by the rules and regulations of the Company which are in existence and those would be laid down from time to time.

Your services are terminable with a month's notice or salary in lieu thereof on either side.

You will be posted in our Electro-Mechanical Division at Thane. However, you are liable to be transferred to our other offices, worksites etc. without any additional remuneration or other benefits.

The terms and conditions of service particularly in regards to working hours, leave etc. have already been explained to you.

If the above terms and conditions are acceptable to you, please sign and return the duplicate copy of this letter.

Yours Faithfully,

For YASHMUN ENGINEERS LIMITED
(K.P.BATTIWALA)
DIRECTOR-IN CHARGE

14. Thus though the workman was posted vide appointment letter dated in 11 October 1995 at Thane factory, it was clearly stated in the appointment order that he was liable to be transferred to other offices, work sites etc. Also of relevance is to the fact that during his first spell of services, the workman was initially employed at the Dharavi factory and thereafter transferred at Thane factory. It is on the basis of these factors that the Labour Court has arrived at a finding that the workman could be transferred by the employer to various factories during his service tenure. I do not find any perversity in the said finding. It is therefore not necessary to go into the issue of filing of returns through same account number by the employer for the purpose of proving functional integrality. In that sense, reliance of Mr. Mokashi on the Judgment in **S. G. Chemicals And Dyes Trading Employees Union** (supra) and Mr. Kadam on Judgment in **Isha Steel Treatment Bombay** (supra) is not relevant

15. The Labour Court has arrived at a finding that employer could not produce sufficient evidence of reduction of workload for

closure of Thane Unit. The Labour Court has also relied upon annual returns filed by the employer showing that there were more than 100 employees employed by it. The Labour Court has accordingly rejected the defence of the employer that only 40 employees were employed by it. The employer did not produce any seniority list of workmen to demonstrate that the workman was the last person employed who could be retrenched on the alleged ground of reduction of work.

16. Considering the overall findings recorded by the Labour Court on the aspect of illegality in the termination order, it is difficult to hold that it suffers from vice of perversity.

17. The employer has also sought to challenge the Award on account of delay in raising the Industrial Dispute and has placed reliance on the Judgment of the Apex Court in **Maruti Udyog Ltd.** (supra). However perusal of the Written Statement does not indicate that the ground of delay was agitated seriously before the Labour Court. The issue of delay in raising the Industrial Dispute may be relevant for the purpose of determining amount of compensation, which has been discussed separately, however it is difficult to hold that the Award should be set aside only on the ground of delay on the part of workman in raising Industrial Dispute.

18. I therefore hold that the Order passed by the Labour Court holding the termination to be illegal need not be disturbed.

19. Coming to the second aspect of award of compensation of Rs.3 lakh, it is seen that the first spell of service of workman is not relevant for the purpose of determining issue of compensation. He rendered very short service of about 02 years from 01 October 1995 to 25 November 1997. He has already been paid retrenchment compensation in respect of that service. The workman himself was not really interested in working with the employer which is ascertained from the fact that he had tendered resignation after long service of about 20 years and thereafter opted for reemployment in the same company. He was also late in raising Industrial Dispute relating to his termination. Considering these aspects, it is difficult to hold that the amount of compensation awarded in favour of workman is inadequate.

20. Towards implementation of order passed by this Court on 27 March 2012 the employer has deposited amount of Rs.3 lakh on 28 June 2012 which amount must have earned interest on account of investment by the Registry in Fixed Deposits. The Award of the Labour Court was passed on 25 March 2011 and the amount has been deposited on 28 June 2012. Therefore, while granting liberty to the workman to withdraw the amount deposited along with interest generated thereon, the directions need to be issued to the employer to pay to the workman interest @ 8% per annum during the period from 25 March 2011 to 27 June 2012.

21. Accordingly both of the Writ Petitions are disposed of by upholding the Award passed by the Labour Court. The workman is

permitted to withdraw the amount of Rs. 3 lakh deposited by the employer along with interest generated thereon. Additionally, employer shall pay to the workman interest @ 8% per annum on the amount of Rs. 3 lakh during the period from 25 March 2011 to 27 June 2012. Such payment be made to the workman within a period of 08 weeks from today. With the above directions both the Writ Petitions are disposed of.

SANDEEP V. MARNE, J.

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