

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5321 OF 2021

Rajnikant J. Jakhariya @ Rajni Jivraj Jakharia .. Petitioner

Versus

Ramlaut Chabbulal Arya & Ors. .. Respondents

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- Mr. Siddhesh Shetye, Advocate for Petitioner.
- Mr. Shaikh M. Aslam, Advocate for Respondents.
- Mr. P. P. Pujari, AGP for Respondent No. 4 / State.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 09, 2023

JUDGMENT:

- 1.** Heard. Rule. By consent of parties taken up for final hearing.
- 2.** Heard Mr. Shetye, learned Advocate for Petitioner, Mr. Shaikh M. Aslam, learned Advocate for Respondent No. 1 and Mr. Pujari, learned AGP for Respondent No. 4 / State. Respondent Nos. 2 and 3 support the Petitioner.
- 3.** This Writ Petition is filed by the Petitioner - employer to challenge the Award dated 13.12.2019 passed by the First Labour Court, Thane in Reference (IDA) No. 81 of 2014 directing the Petitioner and Respondent Nos. 2 & 3 jointly and severally to reinstate the Respondent No. 1 - workman with full backwages w.e.f. 31.01.2013 with continuity of service.

4. Such of the relevant facts which are necessary for adjudication of the present Writ Petition are outlined herein under:-

4.1. According to Petitioner, Respondent No. 1 - workman was employed as weaver in one of the powerlooms belonging to the Petitioner and Respondent Nos. 2 & 3 at Bhiwandi, District Thane. Petitioner and Respondent Nos. 2 & 3 jointly own 24 powerlooms in Bhiwandi which employ several workmen. According to Petitioner, Respondent No. 1 was employed in the year 2010 and 2011 only. Whereas, according to the Respondent No. 1 he has served the Petitioner as weaver in the powerloom for almost 10 years beginning from 2003 onwards.

5. The impugned Award dated 13.12.2019 is passed in Reference proceedings (IDA) No. 81 of 2014.

6. According to the Respondent No. 1 - workman, he was employed by the Petitioner for 12 hours per day. His drawn salary was Rs. 7,000/- p.m. On 31.01.2013 he was informed orally by the Petitioner that his services were terminated. On 10.11.2013 Respondent No. 1 made an application to the Government Labour Officer. Conciliation proceedings were held between the parties and attempts were made by the Government Labour Officer to reconcile the dispute but it failed. Hence Deputy Commissioner of Labour, Thane by order dated 03.07.2014 in exercise of power conferred under

Section 10 (1) read with Section 12(5) of the Indus Disputes Act, 1947 (for short “the said Act”) made the reference of the dispute for adjudication in the matter of reinstatement of Respondent No. 1 - workman alongwith backwages and continuity of service w.e.f. date of dismissal i.e. 31.01.2013.

7. Mr. Shetye, learned Advocate appearing for the Petitioner – employer would submit that by the impugned Award the Labour Court has allowed the Reference and directed the Petitioner and Respondent Nos. 2 & 3 jointly and severally to reinstate the Respondent No. 1 – workman with full backwages and with continuity of service. He would submit that the said Award is challenged in the present Writ Petition on the ground that there was no employer - employee relationship whatsoever between the Respondent No. 1 and employer at all. He would submit that Respondent No. 1 was never appointed in the employment of the Petitioner / Respondent Nos. 2 & 3 and therefore the direction to reinstate him with full backwages and continuity of service is untenable in the facts and circumstances of the present case. According to Petitioner, Respondent No. 1 had joined service of the Petitioner in the year 2010 only and he had worked for the Petitioner during the years 2010 and 2011 only. Thereafter Respondent No. 1 willfully abandoned the employment of the Petitioner from 31.07.2011 and did not come on duty thereafter.

8. He would submit that Respondent No. 1 - workman did not complete 240 days of service either in the year 2010 or 2011 and therefore, there was no question of conducting any inquiry and or issuing any termination notice to him. He would submit that in view of the above facts, the version of the Respondent No. 1 was completely unbelievable and could not have been accepted by the learned Labour Court. In that view of the matter, he would submit that the impugned Award deserved to be set aside.

9. *PER CONTRA*, Mr. Aslam, learned Advocate appearing for Respondent No. 1 i.e. contesting Respondent would submit that Respondent No. 1 was employed as weaver in the powerloom owned by the Petitioner and Respondent Nos. 2 & 3 from the year 2003 to 2013. He would submit that Petitioner and Respondent Nos. 2 & 3 have maintained the attendance register and the salary register of the entire tenure of employment of Respondent No. 1 as also for all other workers employed by them in their 24 powerlooms. However copy of the attendance register and salary register was never given to the workers by them. He would submit that in each of the calendar year that Respondent No. 1 was employed, he had worked for the Petitioner and Respondent Nos. 2 & 3 for more than 240 days in each and every year. He would submit that this fact has been categorically admitted by the Petitioner in his deposition before the learned Labour Court and recorded in Exhibit C -9 which has been duly considered by the Labour

Court as one of the important ground for allowing the Reference. He would submit that evidence led by the Respondent No. 1 - workman recorded below Exhibit U-9 and Exhibit U-14 by the learned Labour Court has gone unchallenged and therefore the impugned Award has been correctly passed by adhering to the principles of natural justice and statutory provisions of law. He has therefore urged that the impugned Award be upheld and the Writ Petition be dismissed.

10. I have heard Mr. Shetye, learned Advocate appearing for the Petitioner, Mr. Aslam, learned Advocate appearing for Respondent No. 1 and Mr. P. P. Pujari, learned AGP for Respondent No. 4 - State and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

11. Perusal of the record reveals that Petitioner and Respondent Nos. 2 & 3 are owners of 24 powerlooms in Bhiwandi. Before the learned Labour Court Respondent No. 1 has examined himself and his evidence is recorded at Exhibit U-9 and Exhibit U-14. It was Respondent No. 1's case that he was employed by the Petitioner until 31.01.2013 and he served the Petitioner for 10 years as weaver.

12. The learned Labour Court framed the following issues for the determination:-

	ISSUES	FINDINGS
1)	Whether the second party proves that first party has illegally terminated him from the service w.e.f. 31/01/2013 ?	Affirmative.
2)	Whether the first party justified the action before the Court ?	Negative
3)	Whether the second party is entitled to reinstatement with full back wages and continuity of services w.e.f.31/01/2013 ?	Affirmative
4)	What award ?	As per final award

13. Issue Nos. 1 and 2 were tried together as they were interlinked with each other. It is seen that on 31.01.2013 without assigning any reason whatsoever, the services of Respondent No. 1 were terminated by the Petitioner without following the due process of law. On the other hand it is case of the Petitioner that Respondent No. 1 had abandoned his services on and from 31.07.2011 and had left the employment of the Petitioner and therefore the Reference was not maintainable. However it is seen that if the Petitioner had to be believed that Respondent had indeed abandoned his employment in the year 2011 itself, then there was no reason forthcoming from the Petitioner as to why any inquiry was not held by the Petitioner between 2011 and 2013 before termination of services of the Respondent No. 1. While referring to the decision in the case of **Chandrkant Rama Kale V/s. Deputy Engineer, Zilha Parishad** (2007 1 CLR), the Labour Court held that if it was the Petitioner's case that Respondent had abandoned his services in July 2011, then from July

2011 onwards, the Petitioner did not take a single step to conduct the inquiry or take action against the Respondent No. 1 – workman until his oral termination on 31.01.2013. It is seen that Petitioner had raised the defence before the Labour Court that Respondent No. 1 had voluntarily abandoned the service of the Petitioner and therefore if that be so then it was imperative on the part of the Petitioner to have conducted the inquiry against the Respondent No. 1 and take it to its logical end in accordance with law. However despite the Petitioner raising the defence that Respondent No. 1 had abandoned his employment in the year 2011, no steps were taken by the Petitioner upto 31.01.2013 when services of the Respondent No. 1 were terminated by oral termination. No show cause notice was given to the Respondent No. 1, no charge sheet was issued to the Respondent No. 1 and no inquiry was conducted against the Respondent No. 1 recording the defence of abandonment of employment. Record clearly reveals that no single letter was issued by Petitioner to Respondent No. 1 and these facts have been categorically admitted by the Petitioner in his own cross-examination before the learned Labour Court.

14. The next issue decided by the learned Labour Court was dichotomic as it pertained to whether the Respondent No. 1 had completed 240 days of service in the Petitioner's employment and

whether he would be entitled to reinstatement with full backwages and continuity of service. To answer this question, the learned Labour Court was faced with contradictory claims. On the one hand, Petitioner - employer contended that Respondent No. 1 was employed in the years 2010 and 2011 only and he had never completed 240 days of service in both these years before abandoning his employment. Whereas Respondent No. 1's contention was that he had served in the employment of the Petitioner from 2003 to 2013 and had completed 240 days of service in each calendar year.

15. In view of these rival contentions, the learned Labour Court passed order dated 22.01.2016 below Exhibit U-3 and directed the Petitioner employer to produce the salary register and attendance register from 01.01.2009 to 31.01.2013. This was done in order to ascertain whether the Respondent No. 1 was indeed working with the Petitioner as a worker or not and to test the case of the Respondent No. 1. However the Petitioner did not comply with the above order. He did not produce the attendance register at all. In so far as the salary register is concerned, Petitioner furnished the salary register for the period January 2010 to September 2012 only. On perusal of the salary register produced by the Petitioner it could not be established as to whether the Respondent No. 1 was employed with the Petitioner. However in cross-examination when the Petitioner was confronted with the question as to whether Respondent No. 1 had worked for

more than 240 days in the year 2010, it was categorically admitted by the Petitioner in the affirmative. In this context, it will be worthwhile to note that Respondent No. 1 - workman filed the certified copy of the conciliation proceedings held before the Conciliation Officer below Exhibit U-12 in his evidence. In the said conciliation proceedings held on 15.07.2013 it was categorically admitted by the Petitioner that the Respondent No. 1 - workman had worked continuously for 3 years in the employment of the Petitioner and the said conciliation proceedings were signed by both the parties before the Conciliation Officer. This piece of evidence namely Exhibit U-12 completely demolishes and falsifies the case of the Petitioner that Respondent No. 1 did not work for 240 days in the years 2010 and 2011.

16. Considering the above documentary proof and evidence of the Respondent No. 1 having worked for more than 240 days, the admission given by the Petitioner in his cross-examination was therefore considered by the learned Labour Court. In view of the above overwhelming evidence the learned Labour Court considered whether there was existence of employer – employee relationship between the parties.

17. It is an undisputed position that no show cause notice or charge sheet was issued to the Respondent No. 1 nor inquiry was conducted. It is pertinent to note that in the evidence given by the

Petitioner no reason is mentioned as to on which ground the Respondent No. 1 - workman had abandoned the Petitioner employment. In that view of the matter, the learned Labour Court after considering the evidence on record, held that termination of the Respondent No. 1 was illegal and bad in law and was one without following the due process of law. Since the Petitioner - employer did not produce the salary register as directed by order dated 22.01.2016 in order to ascertain as to which all employees were employed during the said period and consider the Respondent No. 1's claim, an adverse presumption was drawn by the learned Labour Court for non-production of the attendance register and muster roll for the year 1991 onwards. This is so because this was the best evidence to show as to whether the Respondent No. 1 was indeed employed by the Petitioner or otherwise.

18. Record further reveals that specific application dated 07.10.2016 was made by the Respondent No. 1 before the learned Labour Court seeking a direction to the Petitioner to produce the salary register and the attendance register. Perusal of the evidence i.e. cross-examination of the Petitioner - employer clearly militates against the Petitioner's own case. Learned Advocate for the Petitioner has referred to and relied upon the decision of the Supreme Court in the case of *Novartis India Limited Vs. State of West Bengal and Others*¹ in support

¹ (2009) 3 SCC 124

of the decision of the learned Labour Court to award full backwages. He would submit that the burden of proof that the Respondent No. 1 had remained unemployed during the said period would lie on the Respondent workman. In the present case the Respondent No. 1 – workman had led positive evidence to that effect that he was remained unemployed since both his sons were taking care of his whole family during the interregnum. It has come in his cross-examination that both his sons were working in a company and drawing salary of Rs. 12,000/-p.m. and 10,000/- p.m. each and were taking care of the whole family and therefore he was not employed and was not earning any money during that period.

19. Considering the above reasons the learned Labour Court has directed reinstatement of the Respondent No. 1 workman in service with continuity of service and payment of full backwages to him w.e.f. 31.01.2013. The reasons are cogent and do not require any interference by this Court. They are based upon the evidence produced before the Labour Court.

20. For the reasons mentioned above, the impugned Award dated 31.12.2019 passed in the Reference (IDA) No. 81 of 2014 by the learned Labour Court, Thane is therefore upheld.

21. By order dated 28.09.2022 learned Advocate for Petitioner

on instructions made a statement that without prejudice to the rights and contentions of the Petitioner 50% of the amount awarded towards backwages will be deposited in this Court. The statement was accepted. On 15.11.2022 it was recorded that Petitioner had deposited the amount of Rs. 2,88,516/- as per order dated 28.09.2022. However no calculations were given for arriving at the 50% amount.

22. In view of the decision in the present Writ Petition, Respondent No. 1 – workman shall be entitled to withdraw the above amount deposited in this Court alongwith all accrued interest thereon on the production of an authenticated copy of this order. Needless to state that Respondent No. 1 – workman shall be entitled to the balance amount of backwages as per the above order of the reference Court. It is clarified that this Court has not opined or accepted the amount of Rs. 2,88,516/- as 50% of the backwages as stated / recorded by the Petitioner. Parties are free to compute the same in accordance with law as per the last drawn pay.

23. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

G. R. Shimpi

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