



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10526 OF 2018**

M/s. Bishan Dyeing, Printing and Weaving Mills,
Plot No.C-11 MIDC Phase – 1,
Dombivali, Dist. Thane

... Petitioner

versus

Chandrakant R. Patil,
Post Khadakli, Kolitep, Ghodvinde
Chawl, Tal. Kalyan, Dist. Thane

... Respondent

Dr. D.S.Hatle i/by Mr. Deepak P. Jamsandekar, for Petitioner.
Mr. Balasaheb R. Deshmukh, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 4 JULY 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. The challenge in this Petition is to an Award dated 28 December 2017 passed by the Labour Court at Thane in Reference (IDA) No.150 of 2008, whereby the Reference came to be answered in the affirmative and it was declared that the Respondent – second party was entitled to be reinstated in service with full backwages and continuity of service with effect from 15 November 2007. In effect, this is the second round of proceedings before this Court.

3. The Petitioner is registered as a Small Scale Industry and engaged in the business of dyeing, printing and weaving of various types of cloths. The Respondent

claimed that he was working with the Petitioner as a Wireman. He was drawing a salary of Rs.6,000/- p.m. No appointment order was issued. The Respondent had rendered more than 12 years of service and put in more than 240 days of service every year. The Respondent alleged, he was orally terminated on 15 November 2007. The Respondent addressed a notice on 30 November 2007 seeking reinstatement in service with full backwages and continuity of service.

4. Eventually, the Respondent raised an industrial dispute. Conciliation proceedings failed. Thereupon, the Appropriate Government in exercise of the power conferred under sub-Section (1) of Section 10 read with sub-Section (5) of Section 12 of the Industrial Disputes Act, 1947 (the Act of 1947), referred the industrial dispute for adjudication to the Labour Court at Thane. The Respondent filed a statement of claim.

5. In the written statement filed on behalf of the Petitioner contesting the claim of the Respondent, the Petitioner, inter alia, denied the employer – employee relationship and also took a stand since the Petitioner – first party was governed by the provisions of the Maharashtra Industrial Relations Act, 1946, the Labour Court had no jurisdiction to entertain and adjudicate the industrial dispute under the Act of 1947.

6. After appraisal of the evidence led by the parties, the learned Presiding Officer, Labour Court at Thane, by an Award dated 18 November 2013 was persuaded to return a finding that the Industrial Reference was tenable before the Court and the

Respondent had been illegally terminated by the Petitioner and the Respondent was thus entitled to be reinstated with continuity of service and backwages. Holding thus, the Labour Court directed the Petitioner to reinstate the Respondent on his original post with continuity of service and full backwages with effect from 15 November 2007.

7. Being aggrieved, the Petitioner had preferred Writ Petition No.2003 of 2015 before this Court. In the Petition, a contention was raised that the issue of maintainability of the Reference before the Labour Court was decided against the Petitioner without providing an effective opportunity of hearing. It was, inter alia, contended that the Petitioner could not place on record the relevant documents, including the certificate issued by the State of Maharashtra dated 27 January 1984 that the Petitioner was engaged in manufacturing and processing of cotton cloths. Nor a copy of the Notification could be placed on record on account of inadvertence or human error.

8. In the wake of the aforesaid submission, this Court was persuaded to remand the matter back to the Labour Court at Thane to decide Issue No.2 i.e. the tenability of the Reference as expeditiously as possible, and not later than 31 December 2017 after providing an effective opportunity of hearing to the parties. It was, inter alia, noted that the Labour Court had recorded a positive finding on appreciation of material and directed the Petitioner to pay full backwages with effect from 15 November 2007.

9. Post remand, by the impugned judgment and order dated 28 December 2017, the learned Presiding Officer, Labour Court at Thane, returned a finding that the Petitioner – first party failed to prove that the provisions of the Maharashtra Industrial Relations Act, 1946 were applicable to the Petitioner’s establishment, and, resultantly, the industrial reference was held to be maintainable before the Labour Court. The learned Presiding Officer was of the view that there was no pleading or evidence adduced by the Petitioner to show that it was engaged in cotton, spinning and weaving and the mere fact that the Petitioner was engaged in the activities of dying, bleaching and printing was not sufficient to make the provisions of the Maharashtra Industrial Relations Act, 1946 applicable to the Petitioner.

10. Being aggrieved, the Petitioner again invoked the writ jurisdiction of this Court.

11. On 5 July 2021 when the Petition was listed before the Court, a submission was sought to be canvassed on behalf of the Petitioner that all issues were open for consideration in this Petition, as the order dated 26 September 2017 remanding the matter to the Labour Court was qua the issue of maintainability alone, and, it cannot be said that this Court, by the said order, had affirmed rest of the findings of the Labour Court, especially on the aspect of employer-employee relationship and the award of full backwages.

12. The said submission was countered on behalf of the Respondent with

reference to the observations in the order dated 26 September 2017. Thereupon, the Petitioner sought liberty to move the learned Single Judge who had passed the aforesaid order dated 26 September 2017 in Writ Petition No.2003 of 2015 and seek clarification about the import of the said order. Upon such clarification being sought, the learned Single Judge (Prasanna B. Varale, J.) by an order dated 17 August 2021 clarified that by the aforesaid order dated 26 September 2017, the matter was remanded back to the Labour Court, Thane for deciding issue No.2 only i.e. the tenability of Reference.

12. In the aforesaid backdrop, I have heard Dr. Hatle, learned Counsel for the Petitioner and Mr. Deshmukh, learned Counsel for the Respondent at some length. With the assistance of the learned Counsel for the parties, I have also perused the material which was on the record of the Labour Court, the evidence adduced by the parties, the first Award passed by the Labour Court on 18 November 2013 and the impugned Award, post remand.

13. Dr. Hatle, learned Counsel for the Petitioner, made an earnest endeavour to persuade the Court to delve into the merits of the matter on all issues apart from issue of tenability of the Reference before the Labour Court. Dr. Hatle was at pains to demonstrate that in the Written Statement, the Petitioner had taken a specific ground that there was no employer – employee relationship and the said issue was not adequately dealt with by the Labour Court while passing the Award dated 18

November 2013. In the order passed by this Court in Writ Petition No.2003 of 2015 dated 26 September 2017, according to Dr. Hatle, this Court had confined itself to the aspect of determination of issue No.2 only i.e. the tenability of the Reference before the Labour Court in view of the contention regarding applicability of the provisions of the Maharashtra Industrial Relations Act, 1946 to the Petitioner and had not delved into the legality, propriety and correctness of rest of the findings.

14. An earnest endeavour was made by Dr. Hatle that despite the order dated 17 August 2021 passed in Writ Petition No.2003 of 2015 (when the Petitioner had sought a clarification of earlier order dated 26 September 2017), the said questions are required to be inquired into, lest the Petitioner would suffer serious prejudice. It was submitted with tenacity that the foundational fact of existence of employer – employee relationship must be established to cloth the validity to the impugned award and since that aspect had not been examined by this Court in the order dated 26 September 2017 in Writ Petition No.2003 of 2015, the Petitioner cannot be precluded from agitating the legality and correctness of the said finding.

15. Mr. Deshmukh, learned Counsel for the Respondent, on the other hand, stoutly submitted that it is simply impermissible for the Petitioner to again agitate the issues other than the issue of tenability of the Reference before the Labour Court as those issues stand concluded not only by order passed in Writ Petition No.2003 of 2015 on 26 September 2017 but also by the clarificatory order dated 17 August 2021.

Only the aspect of the maintainability of the Reference under the Industrial Disputes Act, 1947 before the Labour Court is open for consideration. Endeavour of the Petitioner to reopen rest of the issues, which stand concluded by the order passed by this Court dated 26 September 2017, cannot be countenanced as the Court can neither sit in appeal over the said order nor review the same, in view of the clarificatory order dated 17 August 2021.

16. Whether rest of the issues namely the existence of employer – employee relationship, illegal termination and the entitlement to the reliefs were kept open for consideration, while remitting the matter to the Labour Court for deciding the issue of maintainability, is the moot question that arises for consideration. If the Court holds that by the order dated 26 September 2017, this Court had affirmed the findings on rest of the issues, the legality, propriety and correctness of those findings cannot be again assailed. In contrast, if the Court comes to the conclusion that the remand was for the limited purpose of determining the maintainability of the Reference while keeping the other issues open, the Award dated 18 November 2013 would be open for examination.

17. For an answer, it is necessary to note the observations of this Court in paragraph No.7 of the order dated 26 September 2017, by which the Reference came to be remanded. They read as under :

“7. Considering the rival contentions of learned Counsel appearing

for the parties, in my opinion, an issue about maintainability was specifically raised by the Petitioner in the written statement. The Petitioner who was represented through Counsel and thus was in belief that Counsel may accordingly ask it for presentation of the required documents. There is considerable merit in the submission of learned Counsel for the Petitioner that for some communication gap and for some human error, the Petitioner could not have deprived of a decision on an issue maintainability, as the Petitioner was possessing the required registration certificate to support its submission. It is also not in dispute that on other issues, Ld. Labour Court recorded positive findings on appreciation of the material and the Petitioner was directed to pay full back wages to Respondent with effect from 15 November 2007. Considering these aspects of the matter, I am of the opinion that the interest of justice can be served by remitting the matter back to Ld. Labour Court for its decision afresh on Issue No.2. In view of the observation of this Court on the aspect of certificate of registration issued by the State of Maharashtra and placed on record, at the same time, this Court is of the opinion that the interest of the Respondent is also to be taken care of, the Petitioner is directed to deposit an amount of Rs.3,50,000/ in the VI Labour Court, Thane, within four weeks from today. Ld. Labour Court, Thane to decide Issue No.2 i.e. tenability of the reference as expeditiously as possible and not later than 31 December 2017. Needless to state that by giving an equal opportunity of hearing to the parties. The Petitioner is directed to pay the costs of Rs.20,000/ to the Respondent within two weeks from today. The costs can be paid to Respondent or be deposited with learned Counsel representing the Respondent and the receipt thereof be placed on record.”

18. On a plain reading, one gets an impression that this Court was persuaded to remand the matter to the Labour Court for afresh decision on the tenability of the Reference in the light of the claim that the Petitioner’s establishment was governed by

the provisions of the Maharashtra Industrial Relations Act, 1946 and did not find any reason to interfere with the findings on the rest of the issues. If there was any doubt, the same stood cleared by a further order dated 17 August 2021. The observations of this Court in paragraphs 3 to 5 of the order dated 17 August 2021 deserve to be extracted. They read as under :

“3. Heard learned counsel appearing for the respective parties. In the order dated 26th September 2017, reference was made to the factual aspects giving rise to the petition before this Court. The issues framed for consideration by the learned presiding officer of the 4th Labour Court, Thane were also referred to. On a particular ground submitted before this Court that due to some communication gap between the party and his counsel, a necessary document, namely the notification could not be placed before the Court below. On considering this particular ground, the matter was remanded back to the Court below for deciding issue no.2 within a stipulated period.

4. It may not be out of place to state that it was observed by this Court in paragraph 4 of the said order that on all these issues, the learned Labour Court duly recorded positive findings and then reference was made to Issue No.2. Then, it was observed by this Court that there is considerable merit in the submission of learned counsel for the petitioner that for some communication gap and for some human error, the petitioner could not have been deprived of the issue of maintainability as the petitioner was possessing required certificate to support its submission. Then, this Court specifically observed that it was not in dispute that on other issues the learned Labour Court recorded positive findings on appreciation of material and the petitioner was directed to pay full back-wages to the respondent with effect from 15th November 2007 and then it was again reiterated in words “that the matter

is remanded back to the learned Labour Court for its decision afresh on issue no.2.” In concluding part of the order, again it was reiterated with the words that “learned Labour Court, Thane to decide issue no.2, i.e., tenability of reference, as expeditiously as possible and not later than 31st December 2017, needless to state that by giving equal opportunity to the parties.”

5. Thus, this Court made it clear in the order dated 26th September 2017 that the matter was remitted back to the learned Labour Court, Thane for deciding Issue No.2 only, i.e., tenability of reference.”

19. In the face of the aforesaid clear and unambiguous observations, I am afraid, it is open for the Petitioner to urge that, while remitting the matter to the Labour Court, this Court had kept open rest of the contentious issues. Had there been no clarification, the Petitioner could have arguably raised the issues now sought to be canvassed. In the face of the aforesaid clarificatory order, which in terms records that the matter was remitted back to the Labour Court, Thane, for deciding the issue of tenability of Reference only while affirming the findings of the Labour Court on rest of the issues, the Petitioner cannot be permitted to reagitate the said aspect. I am, therefore, not inclined to accept the invitation of Dr. Hatle to delve into the issues of existence of employer – employee relationship and the illegal termination. It would be suffice to note that the clarificatory order dated 17 August 2021 seals the question as to whether the rest of the issues were open for consideration.

20. Dr. Hatle fairly submitted that the impugned order to the extent it holds

that the provisions of the Maharashtra Industrial Relations Act, 1946 do not govern the Petitioner's establishment and, thus, the industrial reference was maintainable before the Labour Court, is not susceptible for interference. Resultantly, no interference is warranted in the impugned award to the extent it answers the issue of maintainability in the affirmative.

21. The only aspect which warrants consideration is the relief granted by the Labour Court by the Award dated 18 November 2013. The Respondent was illegally terminated on 15 November 2007. The Labour Court passed the original award on 18 November 2013. Almost 10 years time has elapsed since then. The Respondent has not been in the employment for more than 16 years. It seems that having regard to his age, the Respondent may be a couple of years away from superannuation.

22. In the totality of circumstances, especially the fact that the Respondent had not rendered the services for more than 16 years, albeit no fault could be laid at the door of the Respondent, and the age of the Respondent and the period for which the Respondent would render services, in the event of reinstatement, a direction for reinstatement, at this stage, may not be justifiable. A reasonable compensation, in my view, would meet the dictate of justice. It was the claim of the Respondent that he was drawing wages of Rs.6,000/- per month. By the impugned Award, the Petitioner had been directed to reinstate the Respondent with continuity of service and full backwages. Having regard to the entire gamut of the circumstances, I am of the

considered view that a direction to pay compensation to the tune of Rs.10 Lakhs by the Petitioner to the Respondent would be just and reasonable.

23. For the foregoing reasons, I am impelled to partly allow the Petition by modifying the impugned Award to the extent of the final relief.

24. Hence, the following order :

ORDER

- (i) The Writ Petition stands partly allowed.
- (ii) The Award dated 18 November 2013 stands modified as under :
 - (a) The direction to reinstate the Respondent with continuity of service with full backwages from 15 November 2007 stands quashed and set aside.
 - (b) The Petitioner do pay a sum of Rs.10,00,000/- to the Respondent within a period of two months from today towards compensation.
 - (c) If any amount is deposited by the Petitioner in terms of the order dated 26 September 2017, the Petitioner be given credit for the principal amount deposited by the Petitioner, and the balance amount be paid by the Petitioner within the aforesaid period.
 - (d) The amount, if deposited, along with interest accrued thereon, be paid to the Respondent by the Labour Court.
 - (d) In the event of default, the amount shall carry interest @ 9% p.a. till payment and/or realization.

- (iii) In the circumstances of the case, there shall be no order as to costs.
- (iv) Rule made absolute to the aforesaid extent.

(N.J.JAMADAR, J.)