

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

WRIT PETITION NO. 5661 OF 2022

Reliance Integrated Services Pvt. Ltd.
H Block, 1st Floor, Dhirubhai Ambani Knowledge City,
Navi Mumbai 400 710Petitioner

Versus

Mr. Satyananda Mohanty
B-505, Shreekrushna Co-op Hsg. Soc. Ltd.
Sector 31, Plot No.6, Khandeshwar,
Kamothe 410 209, And 104, 1st Floor, Prachitgad, A-06,
Ashtavinayak Gruhsankul, Phase - 1,
Adaigaon, New Panvel 410 206.Respondent

**WITH
INTERIM APPLICATION NO.19958 OF 2022
IN
WRIT PETITION NO. 5661 OF 2022**

Mr. Satyananda Mohanty
Age 44,
B-505, Shreekrushna Co-op Hsg. Soc. Ltd.
Sector 31, Plot No.6, Khandeshwar,
Kamothe 410 209, And 104, 1st Floor, Prachitgad, A-06,
Ashtavinayak Gruhsankul, Phase - 1,
Adaigaon, New Panvel 410 206.Applicant

IN THE MATTER BETWEEN :-

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Adaigaon, New Panvel 410 206.

....Respondent

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Mr. Tushad Kakalia i/by Hafeezur Rehman, for Petitioner.
Mr. Armaan Grewal i/by Mr. K.C. Prusty for Respondent/Applicant in Interim
Application.

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : AUGUST 28, 2023.
PRONOUNCED ON : SEPTEMBER 1, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of parties, the Petition is taken up for final hearing.
2. By this Petition, Petitioner challenges Judgment and order dated 15 November 2019 passed by the Member, Industrial Court in Revision Application (ULP) No. 25 of 2018 as well as Judgment and order dated 3 January 2018 passed by Labour Court, Thane in Complaint (ULP) No.107 of 2014. The Labour Court, by its Judgment and order dated 3 January 2018, has directed reinstatement of Respondent with full back wages and continuity of service with effect from 7 July 2014. The Industrial Court has proceeded to

reject the Revision Application filed by Petitioner challenging the order of Labour Court.

3. Briefly stated, the facts of the case are that the Petitioner is a Company, subsidiary of Reliance Communication Limited and is engaged *inter alia* in providing telecommunication related service to its' customers. Respondent joined services of Petitioner-Company with effect from 1 March 2006. It is Petitioner's case that the Respondent voluntarily resigned from services of Petitioner-Company on 4 July 2014 by way of submitting Separation Request through E-portal. That he did not report for duties from 5 July 2014. Accordingly, he was paid all his legal dues including monthly wages for the month of July 2014, amount of Rs.44,979/- on 6 September 2014 towards full and final settlement and gratuity amount of Rs.67,366/- on 9 September 2014.

4. Respondent approached Labour Court, Thane by filing complaint (ULP) No.107 of 2014 under the provisions of Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (herein after referred to as for short "MRTU & PULP Act") seeking his reinstatement in service with full back wages and continuity. It was Respondent's case before the Labour Court that he was on sanctioned leave

from 3 July 2014 to 5 July 2014 and that he received a telephonic call on 5 July 2014 from a Manager of the Company asking him not to report for duties from 7 July 2014 onwards. That, the management had decided to terminate his service from 7 July 2014 and when the Respondent attempted to report for duties on 7 July 2014, his access to the office was disabled. Respondent accordingly termed secession of his service as termination and sought relief of reinstatement in the Labour Court.

5. The Petitioner-Company appeared in the complaint filed by Respondent and opposed the same on various grounds including maintainability and jurisdiction. By order dated 27 July 2015, the Labour Court held that it had jurisdiction to decide the complaint. Petitioner-Company challenged the order of the Labour Court dated 27 July 2015 before the Industrial Court, Thane by filing Revision Application No.72 of 2015 which came to be rejected by the Industrial Court by order dated 30 November 2015. The challenge to the jurisdiction was not taken further by Petitioner. The Petitioner filed written statement opposing the complaint filed by Respondent.

6. Respondent filed application for grant of interim relief in Complaint (ULP) No.107 of 2014 which came to be rejected by the Labour

Court by its order dated 29 January 2016. The decision of the Labour Court was upheld by the Industrial Tribunal by dismissing the Revision Application No.29 of 2016 filed by the Respondent.

7. The parties thereafter led evidence in Complaint (ULP) No.107 of 2014, the Respondent examined himself. On behalf of the Petitioner, evidence of Mr. Bhagwan B. Umbargonde, Manager-H.R. and Mr. Shankar Rajesh Adep, incharge of I.T. department was adduced.

8. The Labour Court by its Judgment dated 3 January 2018 allowed Respondent's complaint by holding that Petitioner had indulged in unfair labour practice in Item Nos.1(b)(d) & (f) of Schedule IV of the MRTU and PULP Act. The Labour Court directed reinstatement of Respondent with full back wages and continuity of service with effect from 7 July 2014. Petitioner filed Revision Application (ULP) No.25 of 2018 before the Industrial Court challenging the decision of the Labour Court. The Industrial Court however dismissed Petitioner's Revision Application (ULP) No.25 of 2018. Aggrieved by the decisions of the Labour Court and the Industrial Court, Petitioner has filed the present Petition.

9. On 6 May 2022, this Court directed Petitioner to deposit the entire amount resulting out of impugned orders in this Court. Accordingly,

the Petitioner on 7 June 2022 has deposited an amount of Rs.34,57,790/- in this Court.

10. Respondent has filed Interim Application No.19958 of 2022 for withdrawal of the deposited amount. However, instead of deciding the Respondent's prayer for withdrawal of the deposited amount, the Petition itself is taken up for hearing with the consent of learned Counsels appearing for both the parties.

11. Mr. Kakalia appearing on behalf of the Petitioner would submit that Petitioner-Company operates paperless office and has created E-Portal for dealing with various service related aspects of its employees. That the Respondent had access to the E-Portal and he submitted a request for voluntary resignation in the form of 'separation request' on 4 July 2014. He would invite my attention to the print out of the E-Portal indicating that Respondent requested for his relief from services on 31 July 2014. That, after submission of separation request, respondent failed to report for duties from 5 July 2014. That failure of Respondent to report for duties is indicative of his desire to leave services. That secession of Respondent's service is as per his own request and therefore no question arises about termination of his services. That the Labour Court has erred in treating voluntary resignation of

Respondent as termination from services. That pursuant to voluntary resignation from services by the Respondent, Petitioner has paid to Respondent all his dues including payment of gratuity. That in such circumstances, the Labour Court could not have directed Respondent's reinstatement. That before filing his complaint, Respondent did not send even a single communication to Petitioner expressing his desire to join the services.

12. Mr. Kakalia would take me through the evidence on record. He would submit that only Petitioner and I.T. Department had access to the E-Portal and the Petitioner proved before the Labour Court that the 'separation request' was indeed submitted by Respondent himself. He would assail the finding recorded by the Labour Court about 'separation request' being treated distinct from resignation. He would submit that separation request itself is voluntary resignation on the part of Respondent. In support of his contention, he would rely on Judgment of the Apex Court in **National Gandhi Museum Vs. Sudhir Sharma**¹.

13. *Per contra* Mr. Grewal, the learned Counsel appearing for Respondent would oppose the Petition and support the orders passed by the Labour Court and Industrial Court. He would invite my attention to

1 2021 SCC OnLine SC 800

‘employee handbook’ to demonstrate the procedure for acceptance of E-separation. He would submit that the said procedure was not followed in the present case and that therefore the Labour Court and Industrial Court cannot be faulted for arriving at the conclusion that there is no voluntary resignation in the present case. He would also invite my attention to the appointment order dated 28 February 2006 which contemplates giving three months prior notice in the event of resignation from service of Petitioner-Company. That admittedly such prior notice of three months was not given by Respondent which would indicate that there was no voluntary resignation. He would then take me through the evidence on record, particularly of Mr. Bhagwan B. Umbargonde, Manager-H.R. He would submit that the said witness has admitted in his evidence that E-Portal can be operated by an employee only when he is on duty. That, the witness further admitted that there is no proof of acceptance of resignation. That this is a case where Respondent’s service has been terminated.

14. Mr. Grewal would further submit that ‘separation request’ was submitted merely for separating from I.T. Portal and does not mean tendering of resignation. That by submitting the separation request, at the highest, Respondent desired separation from I.T. Portal. He would submit that the

Labour Court and Industrial Court have considered the evidence on record and have recorded findings of fact which need not be interfered by this Court in exercise of writ jurisdiction.

15. Rival contentions of the parties now fall for my consideration.

16. The dispute which arose before the Labour Court and Industrial Court and which again arises for my consideration is whether Respondent voluntarily resigned from service or whether he has been terminated. While Petitioner contends that the Respondent has resigned from service, it is the contention of Respondent that he has been illegally terminated.

17. In support of its case about voluntary resignation by Respondent, Petitioner has placed reliance on print out of its E-Portal. It is Petitioner's case that a 'separation request' was sent by Respondent through E-Portal desiring resignation with effect from 31 July 2014. Evidence has been led by Petitioner that E-portal is exclusively used by employees for seeking leave, leave encashment/reimbursement, resignation etc. Thus, it Petitioner's case that various requests of employees are submitted and processed through E-Portal rather than submitting physical applications or E-mails. It is Petitioner's case that even resignation was tendered by Respondent through E-Portal by submitting what is known as 'separation request'.

18. I have gone through the printout of the E-Portal on which reliance is placed by Petitioner. The said print out would indicate that the E-portal shows status of separation request submitted by Respondent. The reason for separation is indicated as resignation. Reliving date is indicated as 31 July 2014. The actual notice period is indicated as 30 days, whereas given notice period is indicated as 28 days. On the left side of the portal are 'separation details' with reasons. On the right side of the portal are 'approved details'. On the lower part of the portal, list of persons processing approval is indicated. Mr. Munish Kanetra (Respondent's Reporting Manager) has firstly processed Respondent's separation request, the status of which is shown as 'In Process'. Thereafter Mr. Vikarm Kumar HR person is shown to have been processed the request and the status is indicated as 'yet to start'. Against names of both persons, 'incoming status' is shown as 'determined'. The portal indicates physical leaving date as well as reliving date as 31 July 2014. The action type is shown as 'Pre Separation'.

19. Respondent adduced evidence before the Labour Court stating that he was on sanctioned leave from 3 July 2014 to 5 July 2014. It is Respondent's case that he did not submit the separation request as he was not

in office on 4 July 2014. It is therefore Respondent's case that since he was on leave, it was not possible for him to raise 'separation request' through E-portal on 4 July 2014. It is also Respondent's case that it is the I.T. Personnel of Petitioner, who has created separation request in respect of Respondent by manipulating the E-portal.

20. Evidence of Respondent would indicate that impossibility of accessing E-portal outside the office is not a part of Respondent's evidence. Except stating that he was on sanctioned leave from 3 July 2014 to 5 July 2014, there is no positive assertion on the part of Respondent in his evidence that he could not and did not access E-portal on 4 July 2014. On the contrary, it is Petitioner's specific case both in pleading as well as in its evidence that Respondent generated separation request on E-portal on 4 July 2014. Also, Respondent has blown hot and cold before the Labour Court about generation of separation request. While denying that he generated it, he has also contended that purpose of separation request was to separate from E-portal. Mr. Grewal has strenuously pressed the latter submission, which clearly falsifies the contention that Respondent never submitted separation request. Even Labour Court has proceeded on a presumption that Respondent submitted the separation request. Considering the evidence on record, inconsistency in stand

of Respondent and findings of Labour Court, I have no hesitation in holding that it is Respondent, who generated the separation request on 4 July 2014.

21. Having arrived at definitive conclusion that the separation request was indeed created by Respondent on E-portal, I now proceed to examine the effect of such a separation request on Respondent's service. The labour Court has recorded following findings with regard to nature of separation request :

"11. I order to prove the said resignation, the respondents have placed on record the print out of e-portal at Exh.C-21. After going through the said document, it appears that it is a separation request on the ground of resignation and relieving date is mentioned therein as 31-7-2014, I am of considered opinion that the said document cannot be treated as resignation letter since the said document itself is styled as separation request i.e. purpose of the said request is limited only to the extent being separated from the said e-portal and reason for separation as shown in the said request is resignation, therefore, resignation ought to have been separately made by the employee to the employer by writing letter. However, no such document is placed on record by the respondents."

22. Thus, the labour Court has held that the purpose of separation request is limited only to the extent of being separated from E-portal and that the same does not amount to resignation. I am unable to agree. The Labour Court did not have any material before it to arrive at a conclusion that the purpose of separation request was to separate from E-portal. In fact, this case was neither pleaded by Respondent nor evidence to that effect was adduced by him. Print out of the E-Portal clearly uses the words resignation, date of

relieving, notice period etc. Therefore it is difficult to believe that purpose of separation request was other than resignation. Even otherwise, it is impossible to believe that the Petitioner-Company would leave an option for any employee to opt out of E-portal for various service related issues. I have therefore no hesitation in holding that separation request was generated solely for the purpose of tendering resignation.

23. It is therefore established that the separation request was not only generated by Respondent himself, but the purpose of generating the same was for tendering voluntary resignation. The desire to resign from services of Petitioner can also be gathered from Respondent's conduct. There is nothing on record to indicate that the Respondent made any attempt to communicate with Petitioner after 4 July 2014. There is not even single communication (in any form) from Respondent's side to make any enquiry about status of his service. It is Respondent's case that he was prevented from entering office on 7 July 2014 by disabling his access. If there was any element of truth in this allegation, Respondent ought to have addressed at least one letter/E-mail to Petitioner immediately after 7 July 2014. After being allegedly denied entry in the office, Respondent's straight away approached Labour Court by filing complaint (ULP) No.107 of 2014 on 24 September 2014. Respondent's

silence from 4 July 2014 to 24 September 2014 speaks volume and does indicate his desire to voluntarily resign from services of Petitioner.

24. Thus, I have before me a specific separation request generated by Respondent expressing his desire to resign, in addition to his conduct in not raising any issue about banning his entry in office for a period of about 3 long months. This material in my view was sufficient to draw an inference that Respondent did desire to resign from service. In his complaint, Respondent pleaded in Paragraph 3(g) that *'the complainant states that after termination of his service he has tried to secure any other employment, however, he did not get it....'* Though this averment is aimed at seeking backwages, it also needs to be considered in the light of Respondent's conduct in maintaining silence after 4 July 2014. Why was Respondent seeking alternate employment immediately after 4 July 2014 begs an answer. Only a person resigning from services would ordinarily seek an alternate employment immediately after his secession from service. A terminated employee would air atleast some grievance about his termination. This is yet another factor which leads credence to the fact that Respondent did desire to leave services of Petitioner voluntarily.

25. Having arrived at a conclusion that the Respondent tendered resignation in the form of separation request on 4 July 2014, the next question

for determination is whether his resignation was accepted. Learned counsel for Respondent has placed reliance on ‘Employee Handbook’ of Petitioner, relevant portion which reads thus:

“ E- SEPARATION :

- E Separation Portal is an online system for automating the Employee separation process, which will help an employee to complete the clearance formalities and expedite his Full and Final Separation from the Organization online.
- In all the cases of separation, once the decision is taken, Separation process shall be initiated through E-Separation Portal, in the following manner :
- Employee shall submit his resignation to his Reporting Manager & the Head of the Department in E-Separation portal, containing expected Relieving date and Reason for Resignation.
- The Head of the Department shall decide a date for releasing the employee in E-Separation portal keeping in view various factors mentioned below
 - Notice period served
 - Role Criticality
 - Replacement Availability
 - HR Representative shall fill the employee details on E-Separation portal and shall execute the “Hold Salary Flag”, run the pre- separation action in SAP and would forward the Exit Interview Report (EIR) to the employee.
- The employee shall fill the EIR and submit the same to the HR Representative.
- Post submission of the EIR, Business/Entity/Circle/Corporate Head HR shall fill in their comments in the inputs in the employees’ EIR and provide the Go Ahead to all Departments to provide “No Dues Clearance” to the employee.
- Once all clearances are obtained by the employee, Head HR shall acknowledge the final clearance and send an email to the resigned employee on the last working day.

- Employee shall click on the link and get the Resignation Acceptance Letter as soon as Head HR acknowledges the final clearance. A reference number shall be generated at the time of issuing the Resignation Acceptance Letter.
- Further details on the complete F & F Process; please contact your respective HR.”

26. Thus, the ‘Employee Handbook’ indicates that the head of the department is required to take the decision relating to acceptance of resignation and date of reliving. In the present case, there is nothing to indicate that any official in the H.R. Department took a decision accepting resignation of the Respondent. After taking decision regarding acceptance of resignation it is required to be communicated to the employee concerned, which also is not done in the present case. Even if it is to be assumed that the acceptance of resignation could be communicated through E-Portal, the printout of E-portal relied upon by Petitioner is again silent with regard to acceptance of separation request. Reflection of words “Pre Separation’, ‘In Process’ ‘Yet to Start’, shows that the decision on the separation request was not taken. I therefore hold that though Respondent tendered resignation, same was not accepted nor such acceptance was communicated to Respondent.

27. Mr. Kakalia has urged before me that since Respondent failed to attend office after 4 July 2014, no separate communication was given to him

regarding acceptance of his resignation nor the portal was updated with regards to acceptance of resignation. He would submit that the Respondent never made out a case about non-acceptance of resignation and therefore no evidence to that effect was led. In my view it was incumbent of the Petitioner to lead evidence about acceptance of resignation, which is lacking in the present case. Therefore though I do not agree with the finding recorded by the Industrial Court and Labour Court that Respondent was terminated from services, I hold that the Respondent tendered resignation, which was not validly accepted by Petitioner. It is well settled law that the employee is entitled to withdraw resignation before its acceptance. There is nothing on record to indicate that the Respondent made any attempt to withdraw his resignation. On the contrary, he remained absent from duties after 4 July 2014 and did not address even a single communication to the Petitioner. In such circumstances even though the resignation of Respondent is found to be not validly accepted by Petitioner, relief of reinstatement cannot be given in favour of the Respondent. In these peculiar facts and circumstances of the case, I am of the view that the relief in favour of the Respondent is required to be molded in the light of fact that though his secession from service is not strictly valid, relief of reinstatement in the present case is not warranted. Award of

compensation in lieu of reinstatement would be appropriate in the present case.

28. Mr. Kakalia's submission that the Respondent could not have been awarded back wages as the burden proving non employment was on Respondent which he failed to discharge. Reliance is placed on Judgment of Apex Court in **National Gandhi Museum Vs. Sudhir Sharma** (supra) in which it is held in Paragraph - 9 as under :-

"9. In the case of Talwara Cooperative Credit and Service Society Ltd. (Supra), this Court has held that fact whether an employee after dismissal was gainfully employed is within his special knowledge and therefore, considering the principles laid down in Section 106 of the Indian Evidence Act, 1872, the burden is on the employee to come out with a case that he was not gainfully employed during the relevant period. We must note that whether such burden is discharged or not is an issue to be decided in the facts of each case. The issue has to be decided by taking into consideration the entire material on record."

However since reinstatement is not being directed, there is no question of awarding backwages and therefore the issue of backwages has become academic.

29. Having held that the Respondent deserves to be granted compensation in lieu of reinstatement, the question that arises is about

quantum of compensation. Respondent rendered services with Petitioner-Company since the year 2006 and put in roughly eight years of service. His secession from services is found to be erroneous only on account of failure on the part of Petitioner in not specifically accepting his resignation and not communicating such acceptance to Respondent. Otherwise, it is Respondent who tendered his resignation by generating a separation request on 4 July 2014. In such circumstances in my view, ends of justice would meet if Respondent is held to be entitled to compensation of Rs. 5,00,000/- considering long legal battle that he has been fighting during the last 9 years.

30. I accordingly proceed to pass the following order :

ORDER

- i) The Judgment dated 3 January 2018 passed by the Labour Court in Complaint (ULP) No. 107 of 2014 and Judgment dated 15 November 2019 passed by the Industrial Court in Revision Application (ULP) No. 25 of 2018 are set aside.
- ii) Respondent is held entitled to payment of compensation of Rs.5,00,000/- towards erroneous secession of service on account of failure to accept his resignation.

iii) Respondent shall be entitled to withdraw an amount of Rs. 5,00,000/- from the amount deposited by the Petitioner.

The balance amount with interest on the entire amount of Rs.34,57,790/- shall be refunded to the Petitioner.

iv) With the above directions, Writ Petition is disposed of.

v) In view of disposal of Writ Petition, Interim Application No.19958 of 2022 does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)