

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

WRIT PETITION NO.14317 OF 2022

Ganesh Balu Chaudhari	... Petitioner
Versus	
M/s. Torrent Power Limited	... Respondent

...

Mr. Avinash D. Kango, for Petitioner.
Mr. S. K. Talsania a/w. Milind Joglekar for Respondent.

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CORAM : SANDEEP V. MARNE, J.
DATE : 01 DECEMBER 2023.

P. C.:

By this petition Petitioner challenges Award dated 02 May 2022 passed by the 3rd Labour Court, Thane in Reference (IDA) No.173 of 2018. The Labour Court has answered the Reference in negative directing the employer to pay compensation of Rs.5 Lakh to the Petitioner.

2. Petitioner was in employment of Respondent as Skilled Technician since 2007. While so working, Petitioner came to be arrested on 29 November 2011 and was charged for having committed offences punishable under Sections 302, 374, 341 and 342 r/w. 34 of the Indian Penal Code. Petitioner remained in custody for 5 long years until he came to be acquitted vide Judgment and Order dated 25 July 2016 passed by

the Additional Sessions Judge. During custody of the Petitioner the employer terminated services of Petitioner with effect from 02 January 2012. Termination of Petitioner effected by Respondent-Employer became subject matter of Reference before the Labour Court, Thane where Petitioner demanded reinstatement in services with full backwages and continuity with effect from 02 January 2012. By Award dated 02 May 2022 Labour Court has upheld the Order of termination. However, the Respondent-employer had offered to pay compensation of Rs. 5 Lakh to the Petitioner during course of hearing of Reference. Taking into consideration willingness on the part of Respondent-Employer to pay compensation, Labour Court has directed Respondent-Employer to pay compensation of Rs.5 Lakh to the Petitioner despite upholding his termination. Aggrieved by the Award dated 02 May 2022, Petitioner has filed present Petition.

3. I have heard Mr. Kango, the learned counsel appearing for Petitioner and Mr. Talsania, the learned senior advocate appearing for Respondent-employer.

4. After having considered the submissions canvassed by the learned counsel appearing for parties it is seen that the Petitioner remained in custody since the date of his arrest on 29 November 2011 till the date of his acquittal on 25 July 2016. Respondent has terminated services of Petitioner by treating act of continuous absence as an act of voluntary abandonment of employment. Petitioner kept himself embroiled in criminal prosecution with which his employer had no

connection. He was charged with serious offences of being responsible for murder. Though the Petitioner is ultimately acquitted in the criminal trial vide Judgment and Order dated 25 July 2016, he remained absent from duty for over 05 long years when he continued to remain in custody. The employer is not supposed to wait endlessly for Petitioner to join services. The Labour Court has therefore arrived at a correct conclusion that the action of the employer in ending services of Petitioner treating the same as abandonment of services is not unjustified. I do not find any reason to interfere with the findings recorded by the Labour Court with regard to termination of Petitioner's services.

5. As a matter of fact, after upholding the Order of termination of Petitioner, the Labour Court could not have been awarded any compensation to Petitioner. This is essentially because the compensation is to be awarded in lieu of relief of reinstatement. Since Petitioner's termination is upheld, there was no question of awarding any compensation. The Labour Court has still proceeded to award compensation of Rs. 5 Lakh possibly on account of willingness shown by the Respondent-employer to pay compensation of Rs.5 Lakh to put an end to the entire controversy. It appears that the offer was not accepted by the Petitioner, who continued litigation before the Labour Court, in which he is unsuccessful. Though award of compensation of Rs.5 Lakh despite upholding the Order of termination appears to be erroneous, I am not inclined to interfere in the Award since the Respondent -employer has not challenged Order of the Labour Court. Even if the Petitioner was

to be granted any relief in the Reference, the same could not be better than what is ultimately granted by the Labour Court in the form of compensation of Rs.5 Lakh. Petitioner who remained absent for over 05 long years for having been implicated in serious crime, cannot be otherwise be retained in services after lapse of substantial period of time. Therefore even though the Petitioner was to be successful in getting Order of termination set aside, the Labour Court could have been, at the highest, awarded some compensation in lieu of reinstatement and that would not have been more than the compensation of Rs.5 Lakh which is already directed to be paid by the Respondent-employer. The Respondent has not challenged said direction and apparently willing to pay amount of compensation so awarded by the Labour Court.

6. I do not find any reason to interfere in the Order passed by the Labour Court. The Petition, being devoid of merits, is dismissed without any Order as to costs.

SANDEEP V. MARNE, J.

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