

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 3362 OF 2019**

Uchit Dant Kala

... Petitioner

*Versus*

Dilip Vinayak Velkar

...Respondent

Mr. Mahesh Shukla a/w. Mr. Niraj Prajapati for the petitioner.

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**CORAM: G. S. KULKARNI, J.**

**DATED: 2 January 2023**

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**P.C.**

**1.** This petition under Article 226 of the Constitution assails concurrent findings against the petitioner, firstly of the Labour Court, Mumbai, in his order dated 11 April, 2017 in Complaint (ULP) No, 282 of 2015, which has been confirmed by the learned Member of the Industrial Court, Mumbai in Revision Application (ULP) No. 55 of 2017. By such order dated 11 April, 2017 passed by the learned Judge of the Labour Court,, the petitioner was directed to reinstate the respondent/original complainant in service within one month from the date of the said order. The said order has been confirmed by the learned Member of the Industrial Court.

**2.** It is the case of the petitioner that the respondent/original complainant was employed as a Dental Karagir (Semi-skilled), who proceeded on leave to his native place from 12 September, 2015 without

intimation or prior sanction of leave from the petitioner. The petitioner contended that the respondent resumed duty on 30 September, 2015 and when he was asked to perform pending work, he refused to do the work. On 1 October, 2015 the respondent/complainant was issued a termination letter/order.

**3.** It is the case of the respondent that due procedure in law was not followed by the petitioner as there was no show cause notice, charge sheet or any enquiry undertaken to terminate the services of the respondent-complainant and ex-facie without following the procedure in law, such termination came to be effected. On such backdrop, the respondent approached the Labour Court at Mumbai in Complaint (ULP) No. 282 of 2015 alleging that the petitioner had engaged in unfair labour practices under Item 1(a), (b), (d), (e), (f) and (g) of Schedule IV of MRTU & PULP Act, 1971. The respondent/complainant contended that he had been taken into employment of the petitioner on the salary of Rs.1200/- per month and his last drawn salary was Rs.9,100/- when he was designated as Dental Karagir. The respondent also contended that his past record of service was clean and spotless. Earlier the respondent had filed a complaint against the petitioner being (ULP) No. 200 of 2006 claiming revision in salary and for improved service conditions, i.e., leave, increment etc. The said complaint was withdrawn by him in view of the settlement as arrived between the parties. The respondent contended that as he had initiated such proceedings, the relation between the respondent as a workmen and the petitioner as a employer were strained. The respondent also contended he should not have been denied work and/or

terminated in such manner by the petitioner and accordingly prayed for interim relief that he be continued in service and/or he be reinstated, as such termination could not have been withstood in law. Learned Labour Judge heard the parties on the interim proceedings, framed following issues and recorded its findings:

| <b>Sr. No.</b> | <b>ISSUES</b>                                                                                         | <b>FINDINGS</b>    |
|----------------|-------------------------------------------------------------------------------------------------------|--------------------|
| 1)             | Whether the complainant has prima facie case                                                          | Yes                |
| 2)             | Whether the balance of convenience lies in favour of the complainant                                  | Yes                |
| 3)             | Whether the irreparable loss will be caused to the complainant if the interim reliefs are not granted | Yes                |
| 4)             | What order what reliefs?                                                                              | As per Final order |

**4.** The learned Labour Judge in answering the above issues in paragraph 7 of the order had recorded that the termination of the respondent/complainant was not denied by the petitioner. It is also observed that there was no show-cause notice or charge-sheet issued by the petitioner before terminating the services of the respondent and the termination was without following the due process of law. It, however, appears that taking advantage of the pendency of the proceedings, the petitioner, although did not dispute that the termination order dated 1 October, 2015 being issued without following due process of law, contended that in the intervening period, the petitioner had issued a show-cause notice and also had initiated an enquiry by issuing charge sheet dated 19 January, 2016. It was contended that accordingly an enquiry was conducted as also the Enquiry officer had rendered his findings. The learned Labour Judge however observed that the petitioner

did not place on record any documentary evidence which would show that the charge-sheet was issued and/or was received by the respondent/complainant. Moreover, the learned Labour Judge observed that it appears that such case has been pleaded only an after thought. It was observed that the enquiry being conducted by the petitioner was a farce to show that proper proceeding was initiated by the petitioner. Accordingly, the learned Labour Judge answered issue no. 1 in the affirmative that the respondent had made out a prima facie case.

**5.** The learned Labour Judge in answering issue no. 2 observed that the respondent/complainant was working as a Dental Karagir with the petitioner since 1994 and that he was faithfully and diligently working for the petitioner. It was observed that in the event the petitioner is correct that the respondent had committed certain misconduct, then the petitioner should have issued show cause notice to the respondent, however, without issuing any show cause notice to the respondent and/or charge-sheet, the services of the respondent came to be terminated and merely issued a handwritten termination letter on 1 October, 2015. It was also observed that the record shows that no opportunity was given by the petitioner to the respondent even to explain the alleged charge. It was thus observed that the services of the respondent were terminated without following due process of law.

**6.** The learned Labour Judge in answering issue no. 3 has observed that the petitioner had admitted that the respondent was in employment of the petitioner. It was also observed that there is nothing in the written

statement of the petitioner regarding any enquiry conducted by the petitioner as alleged and that too after issuance of termination order dated 1 October, 2015. It was thus observed that it was crystal clear that at the time of issuing termination letter dated 1 October, 2015, due process of law was not followed by the petitioner and the respondent was terminated. Learned Labour Judge considering the clear position on record that a strong prima facie case being made out by the respondent and that a serious prejudice would be caused to the respondent if an interim protection of the nature as pleaded for was not granted, passed the order in question, directing the petitioner to reinstate the respondent in service within one month from the date of this order.

**7.** The petitioner being aggrieved by the order passed by the learned Labour Judge approached the Industrial Court in Revision Application (ULP) No. 55 of 2017. Learned Member of the Industrial Court in dismissing the Revision Application observed that there was no error apparent on the face of record and also the said order was passed on the basis of material on record and only after the Labour Court was satisfied that serious illegality which was meted out to the respondent. Aggrieved by the said order, this petition is filed.

**8.** At the outset, it is required to be stated that this petition was filed on 2 May, 2019. It is pending for more than 3½ years. In invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner ought to have disclosed and placed on record all the relevant documents. It is seen from the paper-book that except for

annexing two impugned orders, no other documents are placed on record. The attempt on the part of the petitioner not to place on record the documents appears to be not innocuous. The petition in fact would warrant dismissal only on such count being bereft of necessary materials and more particularly when discretionary orders under Article 226 are being prayed for.

**9.** Be that as it may, the contention as urged on behalf of the petitioner is quite peculiar. It has not been disputed that the respondent was issued an order dated 1 October, 2015 by which the services of the respondent were terminated. However, what is sought to be contended is that during the pendency of the proceedings of Complaint (ULP) No. 282 of 2015 before the Labour Court, the petitioner had allegedly resorted to follow due process of law, whereby a show-cause notice as also charge sheet was issued and an Enquiry Officer was appointed and after examining such material, the alleged termination order dated 16 August, 2016 came to be issued against the respondent. It is contended that such documents were placed on record before the Industrial Court. Although as stated above, they are not part of the record in the present proceedings. In short, the contention as urged on behalf of the petitioner is that the termination dated 1 October, 2015 although would be illegal and issued without following due process of law, however, the Labour Court ought to have taken into consideration that subsequently there was a procedure followed whereby the enquiry was conducted against the respondent. It may be observed that such contention is required to be referred only to be rejected as also it has been rightly rejected by the learned Labour Court. It

appears from the record that in dealing with the respondent as an employee, the conduct of the petitioner itself was too casual and unbecoming of a model employer. The petitioner firstly issued termination letter dated 1 October, 2015 and secondly, without placing any document on record on any subsequent enquiry, as categorically observed by the learned Labour Judge sought to raise a contention that an enquiry was conducted during the pendency of the complaint before the learned Labour Judge, and an order of termination dated 16 August 2016 came to be issued. The respondent in the proceedings before the Labour Judge as also before the Industrial Court had denied any such procedure being followed by the petitioner of any lawful enquiry being conducted. The approach of the petitioner was ex-facie arbitrary and illegal, in taking contradictory pleas. It is also for the reason that if a plea of a fresh enquiry being conducted against the respondent was to be taken, then simplicitor answer would be to concede to the proceedings on the complaint and as a fresh order of termination was issued to request the Labour Court, to record that the termination order dated 1 October 2015 itself was not properly issued and therefore it ought not to be given effect and that the termination of the respondent be effected from 16 August, 2016. Such was not the approach of the petitioner. The petitioner had caused serious prejudice to the respondent by such tactics.

**10.** From the arguments as canvassed before this Court, the position appears to be different. When an assertion is made on the ground of fresh enquiry proceedings, it was never part of the record before the forums below when the orders as impugned came to be passed.

**11.** Another contention as urged on behalf of the petitioner, which appears to be in absolute desperation, as urged before this Court is to contend that the interim order as passed by the Tribunal is as good as a final relief which ought not to have been granted. In support of such contention, an order dated 3 December, 2021 passed by the Supreme Court in *National Textile Corporation Ltd. (WR) vs. Priyanka Pradeep Chavan*<sup>1</sup> has been relied upon. In such case, the appellant National Textile Corporation Ltd. had approached the Supreme Court being aggrieved by the interim order dated 10 June, 2021 passed by this Court, which had restrained the appellant from retiring the respondent till 63 years of age, if she continues to be efficient or till final disposal of the Writ Petition, whichever is earlier. In such context, the Court observed that relief which was granted by the High Court at the interim stage is a final relief which could be granted in the main writ petition. It was observed that the original petitioner(respondent) if was to succeed in the writ petition, she was required to be retired at 63 years of age, in that case, she could be compensated by way of back-wages. It was observed that if such an interim relief was continued and the original writ petition was to be dismissed, then there would be multiplicity of proceedings and complications and the question with respect to recovery may arise. It is in such context, the Supreme Court observed that the High Court ought not to have passed such a relief which was a final relief which can be granted as the main relief and, accordingly, allowed the petition. Certainly the circumstances in the present case are not akin to what was before the Supreme Court in the said proceedings.

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**1** Civil Appeal No. 7393 of 2021 (Arising out of SLP© No. 18009 of 2021)

**12.** In my opinion, learned Labour Judge has rightly considered the aspect and the settled position in law that a brazen illegality can be cured even at the interim stage and moreso if it comes to very employment/livelihood of the workmen. Thus, I find no perversity whatsoever in the findings as recorded by the learned Labour Judge which has also been confirmed by the Industrial Court. The petition is totally misconceived. It is accordingly dismissed with cost to be quantified at Rs.50,000/- to be paid by the petitioner to the respondent within two weeks from the day a copy of this order is available on the website of the High Court, failing which, the payment of cost would be recovered as arrears of land revenue. Ordered accordingly.

**G. S. KULKARNI, J**