

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 217 OF 2020

M/s L.C.Gurubaxani, through its
partner Mr. Ashok Lalchand
Gurubaxani, Address: Plot No.33,
Kadbi Chowk, Nagpur

...Petitioner

// VERSUS //

Shri Bhimrao S/o Vakilaji Hivrle,
Aged about 56 years, Occ. Nil
R/o Plot No.36, Chaitanya Nagar, Nari
Road, Nagpur

... Respondent

Shri H.R.Gadhia, Advocate h/f Shri R.I.Thanvi, Advocate for the petitioner.
Shri R.B.Khan, Advocate for the respondent

CORAM : ANIL S. KILOR, J.

DATED : 29th MARCH, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. In the present writ petition, the award dated 13th August, 2019 passed by the Presiding Officer, 2nd Labour Court, Nagpur in reference (IDA) No. 01/2016, thereby answering the award partly in affirmative and directing the petitioner to pay the compensation of Rs.2,92,275/- to the respondent in lieu of reinstatement, is under challenge.

3. The respondent was working with the petitioner as driver and because of health reason he could not attend the duties from 28th February, 2013 and thereupon, he was orally terminated.

4. Thereafter, Additional Commissioner of Labour, Nagpur has referred Industrial Dispute for adjudication, on failure of conciliation vide reference (IDA) No. 01/2016. While answering the said reference the Labour Court has answered the reference partly in affirmative holding that the respondent was illegally terminated with effect from 28th February, 2013 and as he is not medically fit to carry out the work as a driver, in lieu of reinstatement the compensation was awarded in favour of the respondent vide impugned award dated 13th August, 2019, which is the subject matter of the present writ petition.

5. The learned counsel for the petitioner submits that the alleged termination is dated 28th February, 2013. Whereas, the respondent has filed the claims on 27th January, 2016, therefore, the learned Labour Court has committed error in calculating the compensation from the date of termination. It is submitted that, it ought to have been calculated from 27th January, 2016 i.e. from the date of filing of the claim.

6. He further submits that the respondent was never terminated but on his own he left the services on medical ground and he did not even inform about his ailment or his absence. He, therefore, submits that the learned Labour Court has not taken into consideration these aspects and

therefore, directing the petitioner to pay compensation, is not sustainable in the eyes of law.

7. He further submits that the respondent has not made any claim for assignment of alternative work as per the provisions of Rights of Persons with Disabilities Act, 2016 as it is the case of the petitioner since beginning that the petitioner was ready to allow the respondent to work. He, accordingly, submits that the respondent is not entitled for any compensation in lieu of reinstatement.

8. On the other hand, Shri Khan, learned counsel for the respondent/employee points out that, the learned Labour Court has rightly directed the petitioner to pay the compensation in lieu of reinstatement. It is pointed out that the learned Labour Court has held in favour of the respondent after examining and considering the oral as well as documentary evidence available on record.

9. On a specific query made to the learned counsel for the respondent he has fairly stated that the approach notice was given on 4th April, 2015 and thereafter the legal notice was issued on 21st January, 2016 and he further points out immediately thereafter on 27th January, 2016 the claim was filed.

10. In light of rival submissions of the parties, I have perused the record and the impugned award.

11. After going through the record, it is evident that the respondent was continuous in service of the petitioner since 1988 and he was paid monthly salary. The nature of the work was of permanent nature.

12. The record further shows that the respondent was worked for 240 days in each year. Admittedly, the petitioner has not issued any notice nor paid one month salary in lieu of such notice, thus there is no compliance of Section 25-F of the Industrial Dispute Act.

13. In the circumstances, considering the fact that the respondent is not medically fit and the termination of the respondent w.e.f 28th February, 2013 is illegal, the learned Labour Court granted compensation in lieu of reinstatement.

14. The learned Labour Court while calculating the amount of compensation has calculated it with effect from 28th February, 2013 i.e. from the date of termination. However, the record shows that the respondent has not taken immediate steps after the termination, to file claim or to issue approach notice. Thus, after going through the findings recorded by the learned Labour Court, I am of the opinion that no interference is warranted. As far as the issue no.1 in relation to illegal termination is answered by the learned Labour Court in affirmative.

15. However, I am of the opinion that, as the respondent did not take immediate steps after the termination and issued approach notice on 4th April, 2015, the amount of compensation shall be calculated from 1st

April, 2015 and accordingly to that extent modification of the award is necessary. Accordingly, I pass the following order.

- i. The petitioner is partly allowed;
- ii. The amount of compensation is modified to Rs. 2,02,644/- and the same shall be paid along with simple interest as directed by the learned Labour Court vide award dated 13th August, 2019.
- iii. The amount deposited by the petitioner in the Labour Court is permitted to be withdrawn by the respondent along with interest, if any, accrued thereon.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

Digitally signed
by
SACHINDANAND
K NAIR
Date: 2023.04.06
12:13:53 +0530