

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

WRIT PETITION NO. 4471 OF 2001

Shri. Mohan Krishna Hubale

}*Petitioner*

: *Versus* :

Presiding Officer, Labour Court,

District-Sangli

}*Respondent*

Mr. Aumkar Joshi, *for the Petitioner.*

Ms. Chaitali Deshmukh, *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 22 August 2024.

Judgment Pron. On : 29 August 2024.

JUDGMENT :

1) Petitioner has filed this petition challenging the Award dated 5 August 2000 passed by the Presiding Officer, Labour Court, Sangli in Reference (IDA) Nos. 3 of 1993 by which the Reference has been answered partly in the affirmative holding that Petitioner was wrongfully terminated on 24 October 1986. The Labour Court has however held that Petitioner is neither entitled to the relief of reinstatement nor backwages. Petitioner is held entitled for retrenchment compensation under Section 25-F of the Industrial Disputes Act by presuming the date of joining as 21 June 1976 and date of

termination as 24 October 1986 and monthly salary at Rs.302.40/-. Respondent No.2 is directed to pay retrenchment compensation alongwith interest at the rate of 15% p.a. from 24 October 1986 till the date of payment. Petitioner has filed the present petition to the extent of denial of backwages as well as non-grant of relief of reinstatement by the Labour Court.

2) The Petitioner was apparently engaged with Respondent No.2 on daily wage basis and after considering the evidence on record, the Labour Court has fixed '*21 June 1976*' as the date of his initial engagement. It appears that services of Petitioner were discontinued on 24 October 1986. The Labour Court has treated the discontinuation of the services of the Petitioner as retrenchment under the provisions of Section 2(oo) of the Industrial Disputes Act, 1947 (**ID Act**) and has held that Respondent No.2 ought to have followed the procedure under Section 25-F of the I D Act. This is how the termination of the Petitioner is held to be unlawful. However, the Labour Court has refused to grant the relief of reinstatement to Petitioner after noting the defence of Respondent No.2 that the project, on which he was engaged, was complete and that there was no work for his continuation. Though the Workman attempted to dispute the said position, the Labour Court, after appreciating the evidence on record, has arrived at a finding that no work was available for continuation of Petitioner's services. This is how the relief of reinstatement is denied to the Petitioner. So far as the backwages are concerned, the Labour Court found

that Petitioner was gainfully employed and therefore the relief of backwages is also denied to him.

3) Mr. Joshi, the learned counsel appearing for the Petitioner would submit that the Labour Court erred in denying the relief of reinstatement and backwages to Petitioner. That once the termination was found to be unlawful, the relief of reinstatement and backwages automatically follows. He would further submit that the Petitioner ought to have been granted Converted Regular Temporary Establishment status (**CRTE**) as per Kalelkar Award since he had completed more than 9 years of service. That the issue of grant of benefit of Kalelkar Award is altogether ignored by the Labour Court. He would therefore submit that the impugned Award suffers from *ex-facie* error and therefore the Petitioner is required to be treated as having achieved CRTE status w.e.f. from the date of completion of five years of service and is required to be paid all benefits of pay and pension arising therefrom.

4) The petition is opposed by Ms. Deshmukh, the learned counsel appearing for Respondent No.2 who would submit that the Petitioner had no right either to be reinstated in service or paid any backwages. He was engaged as and when required for execution of work of project and did not have any vested right of being continued in service even after completion of the project. She would pray for dismissal of the petition.

5) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that though the termination of Petitioner is found to be unlawful, the Labour Court has denied the relief of reinstatement and backwages and has instead awarded retrenchment compensation to Petitioner by counting his service from 21 June 1976 to 24 October 1986, with salary at Rs.302.40/. It appears that during conciliation proceedings, Petitioner was offered retrenchment compensation of Rs. 1908/- by Respondent No.2 which he refused to accept.

6) After appreciating the evidence on record, the Labour Court has arrived at the conclusion that the project on which Petitioner was engaged was complete and no work was available with the second Respondent for being offered to Petitioner at the time of rendering Award dated 5 August 2000. The Labour Court has noted the fact that Petitioner was unable to produce any evidence to prove that work was available in the project. In my view, therefore no vested right was created in Petitioner's favour to claim employment even in absence of availability of work. The Labour Court has therefore rightly rejected the relief of reinstatement.

7) So far as the relief of backwages is concerned, the Industrial Court has arrived at a finding that the Petitioner was gainfully employed. After finding of gainful employment of the Petitioner, a finding of fact is also recorded that no work was available at the time of Petitioner's termination. Since

there is no relief of reinstatement, there is no question of grant of backwages. It is only when an employee is held entitled for reinstatement that Court/Tribunal can consider the issue of award of backwages. In the facts of the present case, when Respondent has no right to be reinstated in service, even if his discontinuation is found to be unlawful for technical reason of nonfulfillment of requirements Section 25-F of the I.D. Act, he cannot be awarded backwages. If Respondent No.2 was to follow proper procedure before termination of services, Petitioner would have been entitled, at the highest, to retrenchment compensation. The relief of retrenchment compensation is already awarded to the Petitioner by the Labour Court.

8) So far as the issue of non-grant of benefit of Kalelkar Award now sought to be raised by Mr. Joshi is concerned, perusal of the impugned Award of the Labour Court would indicate that the said issue was not raised before the Labour Court in any manner. Even the memo of the present petition does not indicate that the issue of non-grant of CRTE status as per Kalelkar Award is subject matter of controversy in the present case. Therefore, Petitioner cannot be permitted to argue something which was never raised before the Labour Court nor even pleaded in the memo of the petition. For claiming benefit of Kalelkar Award, it was necessary for the Petitioner to raise a specific issue in that regard and lead evidence of rendering of continuous service of five years. Since no issue was framed on account of absence of pleadings, none of the parties made any efforts for leading evidence about rendering of continuous

service for a period of five years. Since termination was challenged as unlawful, the limited remit of inquiry before the Labour Court was about completion of 240 days' of service. As against this, the requirement for grant of CRTE status is completion of continuous service for 5 years. In absence of pleadings and evidence to prove completion of 5 years of service, issue of non-grant of CRTE status as per Kalelkar Award cannot be sought to be directly raised before this Court by way of a sidewind. I am therefore not inclined to entertain the oral submissions sought to be canvassed by Mr. Joshi with regard to non-grant of CRTE status in absence of the said issue being raised before the Labour Court.

9) After considering the overall conspectus of the case, I do not find any patent error in the Award passed by the Labour Court. At this stage, Mr. Joshi would complain that even the amount of retrenchment compensation as directed by the Labour Court has not been paid to the Petitioner. If that is the case, Respondent No.2 shall forthwith compute the amount of retrenchment compensation by considering the services of the Petitioner from 21 June 1976 to 24 October 1986 with monthly salary of Rs.302.40/-. The amount of retrenchment compensation so computed shall be paid alongwith 15% simple interest w.e.f. 24 October 1986 as awarded by the Labour Court, within a period of 8 weeks from today.

10) Since no patent error is traced in the impugned Award of the Labour Court, the Writ Petition is **dismissed**. Rule is discharged.

[SANDEEP V. MARNE, J.]

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