

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1234 OF 2021**

Happy Arts, Through
Shri. Vedmoorti Gangadas Machha .. Petitioner

Versus

Sham Mahadev Adhav .. Respondent

WITH

WRIT PETITION NO. 2592 OF 2021

Happy Arts, Through
Shri. Vedmoorti Gangadas Machha .. Petitioner

Versus

Balkisan Gangaram Katakam .. Respondent

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Mr. Chandraprakash K. Tripathi a/w Tripathi Induprakash a/w Bhagyashri
Gawas for Petitioner.

Mr. A. S. Rao, for Respondent.

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CORAM	: SANDEEP V. MARNE J.
RESERVED ON	: 12 MARCH 2024.
PRONOUNCED ON	: 20 MARCH 2024.

JUDGMENT :-

1) ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, Petition is taken for hearing.

2) By these Petitions, Petitioner challenges Awards dated 8 May 2019 passed by the Presiding Officer of the Labour Court-3, Pune in Reference (IDA) Nos.123 of 2015 and 124 of 2015. By the impugned Awards, the Labour Court directed reinstatement of the Respondents-workmen from the date of termination with continuity and full backwages.

3) Petitioner 'Happy Arts' is a proprietary concern engaged in the activities of making different types of artwork, sculptors, designs on tiles, diamonds etc. It is the case of the Petitioner that it is a family business in which Respondents helped the proprietary concern in making statues, screen printing etc. on an honorary basis without there being any employer and employee relationship. That the activities carried on by Petitioner do not come within the purview of an industry.

4) On the other hand, it is the claim of the Respondents that Shri. Sham Mahadev Adhav was engaged as salesman/printer with the Petitioner since 7 September 1992 and put in 22 years of service. He was drawing salary of Rs.15,000/- at the time of his termination. Shri. Balkisan Gangaram Katkam claims that he was employed as salesman/helper with Petitioner since 11 July 1997 and put in 17 years of service. That he was drawing Rs.3,000/- per month at the time of his termination. Respondents claim that their services were terminated on 17 November 2012 without any reason and without following due process of law. At the instance of the Respondents, References were made to Labour Court, Pune which were registered as Reference (IDA) No.123 of 2015 and Reference (IDA) No.124 of 2015. By Awards dated 8 May 2019, the Labour Court has answered the References in the affirmative and has directed Petitioner to reinstate Respondents in services with continuity and 100% backwages.

5) Mr. Tripathi, the learned counsel for Petitioner would submit that Respondents were never engaged by the Petitioner. That they used to merely sell the art articles manufactured by the Petitioner on commission basis. That Petitioner is not an industry as proprietor of Petitioner is merely an artist creating Art work out of his own personal skill. That since Respondents were never appointed, there is no question of their termination. That Respondents could not produce even a single document to prove their employment with Petitioner. He would therefore pray for setting aside the Impugned Awards.

6) *Per contra*, Mr. Rao the learned counsel appearing for the Respondents in both the Petitions would oppose the Petitions. He would submit that the issue of employer - employee relationship was proved by Order dated 14 June 2018 passed on applications at Exh. U-10 and that the said Order has attained finally as Petitioner did not challenge the said Order dated 14 June 2018. That therefore Petitioner cannot now raise the dispute with regard to employment of the Respondents. That since employer - employee relationship is already established, the only issue that remained to be decided by the Labour Court was about validity of terminations effected by Petitioner. That admittedly no Order was passed, no notice was issued and procedure prescribed under Section 25-F of the Industrial Disputes Act 1947 was not followed. That therefore terminations are unlawful, and the Labour Court has rightly directed reinstatement with continuity and full backwages. Mr. Rao would submit that there is no perversity in the findings recorded by the Labour Court. He would pray for dismissal of the Petitions.

7) I have considered the submissions canvassed by Mr. Tripathi and Mr. Rao. During the course of hearing of the Petition, this Court inquired with the learned counsel about the current ages of both the Respondents. It

has transpired that the date of birth of Respondents are as under:

Sham Mahadev Adhav (WP No.1234 of 2021) 15 November 1965

Balkisan Gangaram Katkam (WP No.2592 of 2021) 18 July 1950

8) The current ages of Respondents are 59 years (Shri. Adhav) and 74 years (Shri. Katkam). This would mean that the ages of both the Respondents on the date of passing of the Impugned Award i.e. on 8 May 2019 were 54 years and 69 years respectively. Since Respondent-Balkisan Gangaram Katkam had already crossed the age of retirement of 58 years as on the date of the Award, there is no question of his reinstatement. Shri. Balkisan Gangaram Katkam complains that his services were terminated on 17 November 2012, on which date his age was 62 years. Thus, on the date of termination also Shri. Balkisan Katkam had crossed the age of retirement. The Labour Court did not institute an enquiry into this aspect and has blindly directed reinstatement of Shri. Balkisan Gangaram Katkam with further direction to pay backwages with effect from 17 November 2012. Since Respondent in Writ Petition No.2592 of 2021 had already crossed the age of retirement as on the date of his alleged termination, he is neither entitled to reinstatement nor backwages from 17 November 2012. Therefore, without going into the merits of the Award dated 8 May 2019 passed in Referent (IDA) No.124 of 2015, the said Award is required to be set aside as Labour Court ought not to have adjudicated the issue of validity of termination Order of Shri. Balkisan Katkam since he had already crossed the age of retirement as on 17 November 2012, when his services were allegedly terminated.

9) Coming to the case of Shri. Sham Mahadev Adhav, who is Respondent in Writ Petition No.1234 of 2021, since his date of birth is 15 November 1965, he attained the age of superannuation, i.e. 58 years on

15 November 2023. Thus, as of today Shri. Sham Mahadev Adhav has also crossed age of retirement and therefore there is no question his reinstatement. The only issue in respect of Shri. Sham Mahadev Adhav is about backwages for the period from 17 November 2012 to 15 November 2023.

10) Petitioner has sought to deny employer-employee relationship which is the main thrust of the Petitioner in the present Petition. However the issue of employer-employee relationship was already concluded by the Labour Court by Order dated 14 June 2018 passed on application at Exh. U-10 and the said Order attained finality in absence of any challenge thereto by the Petitioner. Even in the present Petition, Order dated 14 June 2018 is not challenged. Therefore, it is not necessary to go into the issue of existence of employer-employee relationship, which is already established by Order dated 14 June 2018.

11) Coming to the aspect of validity of termination of Shri. Sham Mahadev Adhav, admittedly process of law was not followed while terminating his services. Petitioner did not issue any show cause notice or chargesheet nor gave notice of termination, salary in lieu of notice period or retrenchment compensation. Therefore, no serious flaw can be traced in the Award passed by the Labour Court holding Shri. Adhav's termination to be unlawful.

12) The only issue that remains to be decided is the entitlement of Respondent in Writ Petition No.1234 of 2021 towards backwages, who has already attained the age of retirement on 15 November 2023. It appears that while issuing notice by Order dated 8 July 2021, this Court recorded statement on behalf of the Petitioner that Petitioner was willing to reinstate

Shri. Sham Adhav in service. This Court accordingly issued the notice and stayed the Order of the Labour Court. It appears that Respondent appeared through Advocate on 17 September 2021. However, it appears that Shri. Sham Adhav did not present himself for reinstatement. Be that as it may. The Respondent-Sham Adhav has attained the age of retirement on 15 November 2023. Considering the peculiar facts and circumstances of the case, in my view grant of lumpsum compensation to Shri. Sham Mahadev Adhav would provide adequate solace to him. He claims that he was drawing monthly salary of Rs.15,000/- at the time of his termination on 17 November 2012. The Labour Court has awarded full backwages while directing his reinstatement. Considering the nature of work performed by Shri. Sham Adhav, coupled with the nature of activity undertaken in the establishment of Petitioner, who appears to be an Artist, in my view award of lumpsum compensation of Rs.4,00,000/- to Shri. Sham Mahadev Adhav would meet the ends of justice.

13) I accordingly proceed to pass the following Order:

ORDER

- i) Writ Petition No.2592 of 2021 is allowed and Award dated 8 May 2019 passed by Labour Court, Pune in Reference (IDA) No.124 of 2015 is set aside.
- ii) Writ Petition No. 1234 of 2021 is partly allowed and Award dated 8 May 2019 passed by Labour Court, Pune in Reference (IDA) No.123 of 2015 is modified to the extent that Respondent-Sham Mahadev Adhav shall be entitled to lumpsum compensation of Rs.4,00,000/- in lieu of reinstatement and

backwages, which shall be paid by the Petitioner to him within a period of 8 weeks.

- iii) Beyond the lumpsum compensation so awarded Respondent shall not be entitled to any further monetary benefits.

14) With the above directions, the Writ Petitions are disposed of. Rule is made absolute in Writ No.2592 of 2021 and Rule is made partly absolute in Writ Petition No.1234 of 2021.

[SANDEEP V. MARNE J.]