

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3790 OF 2009**

M/s. IFB Industries Ltd.

C/o. Shri. Sarjerao Sankpal

Opposite Hotel Vijayraj,

Tarabai Park, Kolhapur.

... Petitioner

Versus

1. Flory Albert Fernandez,

39, E Ward, Tarabai Park,

Near Hotel Vrishali, Kolhapur.

2. Shri. G. B. Patil

Presiding Officer,

IInd Labour Court, Kolhapur.

.. Respondents

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Mr. Ravindra Vishnu Sankpal i/b R. V. Sankpal and Associates for the Petitioner.

Mr. Sameer S. Tambekar, for Respondent No.1.

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CORAM : SANDEEP V. MARNE J.

RESERVED ON : 12 FEBRUARY 2024.

PRONOUNCED ON : 20 FEBRUARY 2024.

JUDGMENT :-

1) Petitioner-employer has filed this Petition challenging the Award dated 30 September 2008 passed by II Labour Court, Kolhapur in Reference (IDA) No.24 of 2003. By the Impugned Award, the Labour

Court has directed reinstatement of Respondent with continuity of service and full backwages.

2) Petitioner is a manufacturer of home appliances and was operating an outlet at Kolhapur for the sale and service of washing machines. According to Petitioner, Respondent No.1 was appointed as a 'Trainee' on part-time basis on monthly fixed remuneration of Rs.2,000/- per month. It is Petitioner's case that it surrendered the premises where the outlet was being operated to the owner on 1 January 2002 and that it signed a franchisee agreement with one Shri. Amar Limkar, for providing services to the customers on a call basis. That the franchise owner started his work from 1 May 2002. That the Petitioner had continued its three staff members Shri. Rajendra Mali, Shri. Vaibhav and Respondent No.1 for introducing the customers to the franchise owner. That Shri. Rajendra Mali and Shri. Vaibhav were offered employment by the Petitioner at Pune, but they refused to join. The franchise owner offered employment to the duo who refused to join. So far as Respondent No. 1 is concerned, she stopped attending duties on her own from 2 May 2002, after noticing that Petitioner stopped the business activities at Kolhapur.

3) Respondent No.1 raised an industrial dispute which was referred to the Labour Court at Kolhapur and registered as Reference (IDA) No.24 of 2003. Respondent No. 1 filed her Statement of Claim stating that she was terminated by Petitioner on 2 May 2003. The claim was resisted by Petitioner by filing Written Statement. Both the parties led evidence in support of their respective claims. The Labour Court delivered Award dated 30 September 2008 answering the Reference in the affirmative and directing Petitioner to reinstate Respondent No.1 with continuity of service and full backwages. Petitioner is aggrieved by the

Award dated 30 September 2008 and has filed the present Petition. When the Petition came up before on 12 July 2010, this Court admitted the same and stayed the Award dated 30 September 2008 subject to the condition of deposit of backwages awarded by the Labour Court. This Court granted liberty to the Respondent No.1 to withdraw 50% of the deposited amount without furnishing any security and the rest of the 50% amount was permitted to be withdrawn after furnishing security to the satisfaction of the Registrar General of this Court. In the event of non-withdrawal of the amount, the same was directed to be invested in the fixed deposit in Nationalized Bank.

4) It appears that in pursuance of the Order dated 12 July 2010, Petitioner deposited an amount of Rs.1,96,000/- in this Court on 16 November 2010. Respondent No.1 withdrew the amount of Rs.98,000/- on 2 March 2011. The balance amount of Rs.98,000/- has been deposited by the Registry in fixed deposits and the value of the same as on 9 February 2024 was Rs.2,16,972/-.

5) I have heard Mr. Sankpal, the learned counsel appearing for Petitioner. He would submit that the Order of reinstatement granted by the Labour Court is *ex-facie* illegal and is issued in ignorance of the fact that the very establishment, where Respondent No.1 was allegedly working is dysfunctional from May 2002. That Petitioner never terminated the services of Respondent No.1, who voluntarily stopped attending duties from 2 May 2002. That she was given the option to continue with the franchise owner Shri. Amar Limkar, but she refused to accept the offer. She was never interested in working. That the evidence on record clearly suggests that it was inconvenient for her to work with Petitioner or with the franchise owner after her marriage on

14 May 2001. That she was finding it inconvenient to attend office after her marriage. That reinstatement of Respondent No.1 at Kolhapur is in any case is impossible as Petitioner does not have any establishment at Kolhapur and the sales and service of products are handled by Petitioner from its office at Pune. He would therefore pray for setting aside the Award passed by the Labour Court.

6) *Per contra*, Mr. Tambekar the learned counsel appearing for Respondent No.1 would oppose the Petition and support the Order passed by the Labour Court. He would submit that the employment of Respondent No. 1 with Petitioner is proved and that she rendered service for a considerable period of time from 15 October 1998 till her termination on 2 May 2002. That due procedure was not followed before effecting termination of Respondent No.1. That therefore the Labour Court has correctly appreciated the evidence on record and has rightly rejected the false theory set up by Petitioner about closure of establishment and operation of business through the franchisee. He would therefore submit that the Order of reinstatement with full backwages is required to be upheld by dismissing the Petition.

7) Rival contentions of the parties now fall for my consideration.

8) First Respondent's employment with Petitioner is not under dispute. She was appointed on 15 October 1998. There is however dispute amongst the parties about the nature of the appointment and the post held by her. According to the Petitioner, she was appointed as a 'Trainee' that to on a part-time basis on a fixed remuneration of Rs.2,000/- per month. On the other hand, it is the case of the Respondent

No.1 that she was appointed as 'Telephone Operator-cum-Clerk'. The date of cessation of service is also not under dispute, which is 2 May 2002. While Petitioner contends that Respondent No.1 voluntarily stopped attending duties from 2 May 2002, she contends that she was orally terminated on that date.

9) The Labour Court, after appreciating the evidence, held that there was oral termination of service of the Respondent No.1 by Petitioner, and it has rejected Petitioner's defence about voluntary giving up of job by Respondent No.1. The Labour Court has placed reliance on a letter dated 8 May 2002 produced by Respondent No.1 for recording a finding of oral termination.

10) The factum of Petitioner closing down its establishment at Kolhapur, handing over possession of rented premises to the landlord, and entering into a franchisee agreement with Mr. Amar Limkar are not under dispute. Petitioner attempted to prove before the Labour Court that Respondent No.1 voluntarily stopped attending duties from 2 May 2002. The Respondent No.1 was cross-examined on that line by Petitioner by giving her suggestions about the inconvenience faced by her to attend office after her marriage on 14 May 2001. She however denied the suggestions. Petitioner's witness, Rajendra Mali, who again deposed in his evidence that Respondent No.1 stopped attending office after her marriage and residence with her husband. In my view, the Labour Court has rightly refused to accept the theory of Respondent No.1 voluntarily giving up the job on 2 May 2002. It cannot be a matter of coincidence that Respondent No.1 who got married on 14 May 2001 would feel inconvenience at the same time when Petitioner closed its operation at Kolhapur. She attended duties for about one year after marriage from

14 May 2001 to 1 May 2002 and it is difficult to believe that she stopped attending duties at the same time when Petitioner shut its operations at Kolhapur.

11) The defence of Petitioner about Respondent No.1 working as a 'Trainee' on a part-time basis can also not be accepted. If she indeed was working as a 'Trainee', there is no satisfactory answer as to why she was continued after surrender of tenanted premises on 1 January 2002 for the purpose of introducing customers to the franchise owner and why wages were paid to her by Petitioner till April 2002. The defence of engagement as a Trainee on a part-time basis, therefore, cannot be accepted. Petitioner was entitled to shut its operations at Kolhapur and also to retrench the services of Respondent No.1 by giving her notice under Section 25-F of the Industrial Disputes Act and after paying her the retrenchment compensation. Alternatively she could have been offered job at Pune, as was done in case of other two employees. Since the procedure was not followed before the discontinuation of services of Respondent No.1, no serious error has been traced in the view taken by the Labour Court that her termination was illegal.

12) Having held that the termination of Respondent No.1 was illegal, the next issue is about the nature of relief that could be granted by the Labour Court to her and by this Court in the present Petition considering the passage of a substantial period of time. As observed above, Respondent could have been offered job at Pune after closure of establishment at Kolhapur. It is not known if Respondent would have accepted the offer to work at Pune. She was terminated on 2 May 2002 and by now a period of about 24 years has elapsed. Labour Court has granted reinstatement with full backwages. This Court has stayed the

Award subject to Petitioner depositing the entire amount of backwages in this Court. The last-drawn wages of Respondent No. 1 were Rs.2,000/- per month and Respondent No.1 has withdrawn an amount of Rs.98,000/- from the total deposited amount of Rs.1,96,000/- and the balance amount of Rs.98,000/- is invested in fixed deposits.

13) It has come in evidence that though Respondent No.1 got married on 14 May 2001 she unfortunately lost her husband on 25 August 2003, when her son was only 9 months old. It thus appears that Respondent No.1 has passed through difficult times after her termination. Petitioner failed to prove that she was gainfully employed. Considering the peculiar facts and circumstances of the case, in my view, award of lump-sum compensation in lieu of reinstatement and backwages would be warranted. As observed above, Respondent No. 1 has already withdrawn Rs.98000 from this Court. The maturity value of the deposited amount is approximately Rs.2,16,972/-. In my view, in addition to withdrawal of the deposited amount with accrued interest, further sum of Rs.2,00,000/- can be awarded to her so that the total amount of compensation would be little over Rs.5,00,000/-

14) I accordingly proceed to pass the following Order:

ORDER

i) The Award dated 30 September 2008 passed by IInd Labour Court, Kolhapur in Reference (IDA) No.24 of 2003 is modified to the extent that Petitioner shall pay to Respondent No. 1 lump-sum compensation in lieu of reinstatement and backwages.

ii) In addition to the amount of Rs.98,000/- already withdrawn, Respondent No. 1 is permitted to withdraw the entire deposited

amount in this Court along with accrued interest. Additionally, Petitioner shall pay to her further amount of Rs.2,00,000/- towards full and final settlement of all claims within 6 weeks.

iii) Beyond the lump-sum compensation so awarded, Respondent No.1 shall not be entitled to any further amount from the Petitioner.

15) With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no Order as to costs.

[SANDEEP V. MARNE J.]