

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6638 OF 2019

Shri. Praveen Singh Kanyal

.... Petitioner

Versus

State of Maharashtra & Ors.

.... Respondent

...

Mr. Dayadhar Teekaram Sharma, for Petitioner.

Mr. Shailesh S. Pathak a/w. T. R. Yadav & Mr. Jay Vora for Respondent No.3.

Mr. R. S. Pawar, AGP for State.

...

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 16 JANUARY 2024.
PRONOUNCED ON : 30 JANUARY 2024.

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of learned counsel appearing parties, petition is taken up for final hearing and disposal.

2. By this petition, Petitioner challenges the Award dated 03 September 2018 passed by the 1st Labour Court, Mumbai in Reference (IDA-D) No.1 of 2015. By the impugned Award, Labour Court has

answered the Reference relating to termination of services of Petitioner in negative and has directed the Respondent-Employer to pay legal dues to the Petitioner in accordance with provisions of the Industrial Disputes Act, 1947 (**ID Act**).

3. Petitioner is ex-serviceman having retired from Indian Army after rendering services of 15 years. He came to be appointed in M/s. Edmacut (Bombay) Pvt. Ltd.-Respondent No.3 on 01 April 1998 on the post of 'Accountant-Cum-Clerk'. It is Petitioner's case that he was not paid increment due to him in the year 2012. He lodged complaint with Respondent No. 3. It is Petitioner's case that Respondent No. 3 deputed one Mr. Pradeep for threatening and pressurizing the Petitioner to resign for having raised the issue of non-payment of increment. Respondent No.3 began shifting its machinery from Andheri factory to another location. Respondent No.3 thereafter terminated services of the Petitioner by Order dated 24 November 2012. It is Petitioner's case that no reasons were assigned nor any retrenchment compensation was paid to Petitioner while illegally terminating his services on 24 November 2012. He protested against the termination by submitting letter dated 08 August 2013. He approached Deputy Commissioner of Labour, Mumbai by submitting representation dated 03 September 2013. The case was taken for conciliation. After submission of failure report, the appropriate government made a Reference to the Labour Court, Mumbai for adjudication of dispute relating to Petitioner's termination. Petitioner

filed his Statement of Claim. Respondent No.3 filed Written Statement and offered to reinstate Respondent at its premises at Bhayandar. Respondent No.3 also raised contention of gainful employment of Petitioner. Petitioner filed Affidavit to deal with the contention of gainful employment. About offer of reinstatement, Petitioner stated that such an offer was never made in writing to the Petitioner. Respondent No.3 filed application once again reiterating the offer for resumption of duties by Petitioner at Bhayandar (E.) factory. Both the sides led evidence in respect of their respective cases. The Labour Court delivered Award dated 03 September 2018 holding that services of the Petitioner were not illegally terminated. The Reference was therefore answered in negative. Respondent No.3 is however directed to pay to the Petitioner legal dues offered at the time of shifting of machinery within 01 month of the Award. Petitioner is aggrieved by the Award dated 03 September 2018 and has filed the present petition.

4. Mr. Sharma, the learned counsel appearing for Petitioner would submit that the Labour Court has erred in answering Reference in negative. That Petitioner has illegally been terminated from service on 24 November 2012 without assigning any reason and without paying legal dues. That the entire theory of shifting of machinery and refusal on the part of Petitioner to work at Bhayandar factory is totally baseless. That Petitioner was never given any written intimation about closer of factory at Andheri or to work at Bhayandar factory. That the services of

Petitioner are unceremoniously terminated without any valid reason. That Petitioner rendered services of 15 long years with the Respondent No.3 and since termination is illegal, he is entitled to relief of reinstatement with full backwages and other consequential benefits till the age of superannuation. That the Labour Court has not considered the case of Petitioner in proper perspective. He would pray for setting aside Award of the Labour Court.

5. *Per Contra* Mr. Pathak, the learned counsel appearing for Respondent No.3 would oppose the petition submitting that services of the Petitioner have not been terminated by Respondent No.3. That Petitioner voluntarily abandoned the services by not reporting at the transferred place. That Petitioner's factory at Andheri was shifted to Bhayandar for continuing the work with the sister concern. That Petitioner was opposed to shifting company's activities and refused to work at Bhayandar. He would submit that Respondent No.3 was always ready and willing to offer employment to Petitioner at its Bhayandar factory. That even after raising industrial dispute, Written Statement was filed as early as on 27 June 2016 offering employment to Petitioner at Bhayandar factory. Offer was reiterated by way of application dated 23 January 2017. That despite repeatedly offering job at Bhayandar factory, Petitioner refused to report for duties. That it is settled law that if reinstatement is offered by employer and if the employee refused to report on duties, the relief of reinstatement or back wages cannot be

granted. In support of his contentions, he would rely upon Judgment of this Court in **Sonal Garments**¹. Mr. Pathak would further submit that Respondent No.3 repeatedly offered sum of Rs.1,05,000/- to Petitioner as settlement amount, which he has failed to accept. That he has been in gainfully employment by shifting to Uttarakhand. He would pray for dismissal of the petition.

6. I have considered submissions canvassed by the learned counsel appearing for rival parties and have gone through the findings recorded by the Labour Court while answering Reference in negative and have also perused the records of the case. Though it is the case of Respondent No.3 that services of Petitioner were not terminated and that he refused to report for duties at Bhayandar factory of Respondent No.3, the letter dated 24 November 2012 leaves no matter of doubt that Petitioner's services were indeed terminated. There is no document on record to indicate that services of Petitioner were transferred from Andheri factory to Bhayandar factory or that he was directed to report at Bhayandar factory at any point of time. In fact, there is no document on record to indicate that any notice of change, as required under Section 9-A of ID Act was ever issued to the Petitioner informing him to work at Bhayandar factory. In the light of above position, it is difficult to believe that services of the Petitioner were terminated on account of his refusal to report at Bhayandar factory.

1 Sonal Garments Vs. Trimbak Shankar Karve 2003 (96) FLR 498

7. Termination letter dated 24 November 2012 does not record even a single reason as to why services of Petitioner were terminated. Petitioner is admittedly not paid retrenchment compensation. He was not issued the termination notice of 01 month nor was paid wages of 01 month in lieu of notice before effecting his termination. The termination of services of the Petitioner is thus in violation of provisions of Section 25-F of the ID Act. The Labour Court has failed to appreciate this aspect and has misdirected itself in assuming that the Petitioner was offered employment at sister concern of Respondent No. 3 situated at Bhayandar factory, where machinery was allegedly shifted. The Labour Court has erred in treating offer of employment at sister concern at Bhayandar as an admission on the part of Petitioner to refuse to work at transferred place. I do not see any admission to that effect by the Petitioner. In fact there is no document on record to indicate that Petitioner was directed to report for duties at Bhayandar. Perusal of findings recorded by the Labour Court indicates that the offer for employment at Bhayandar was with alleged sister concern of Respondent No.3, which means at another establishment. Labour Court ought to have appreciated that directions for reporting for duties at a different establishment ought to have been given by a written communication, which is absent in the present case.

8. The Labour Court, in my view, has erred in answering Reference in negative. I therefore hold that the termination of services of Petitioner is in violation of provisions of Section 25-F of the ID Act.

9. Having held that the termination of Petitioner is bad in law, the next issue is about reinstatement and backwages. In the written statement filed on 27 June 2016, Respondent No.3 requested the Labour Court to direct Petitioner to resume duty at Bhayandar factory and if he was not willing do so, Respondent No.3 expressed willingness to pay legal dues as per provisions of law but not the retrenchment compensation. Respondent No.3 filed an Affidavit responding to the written statement. However instead of responding to the offer of reinstatement, he unnecessarily went into the past conduct of Respondent No.3 in not offering him the alternate job. He stated in paragraph No.7 of the Affidavit as under :

7. The Respondent has stated in his submission that he had offered alternative job to the petitioner as he wanted to shift his company to Bhayandar. The petitioner strongly deny it and states that the respondent had never offered the alternative job. If the respondent had offered the alternative job outside the Andheri (East), Mumbai plant, he must had issued a written notice or offered letter to the petitioner as per the prescribed rules laid down in the Industrial Dispute Act, 1947 and obtained the signature of the petitioner on the offer letter or notice.

10. Thus, despite specific offer of reinstatement made in the written statement, Petitioner failed to accept the same. The offer was reiterated by Respondent No.3 by filing application dated 23 January 2017 where the name of the officer, with whom Petitioner was expected to report at Bhayandar, was also indicated. Petitioner once again failed to report for duties in pursuance of offer so made on 23 January 2017. It is

therefore safe to assume that Petitioner was not interested in reinstatement. In this connection reliance of Mr. Pathak on Judgment of this Court in *Sonal Garments* (supra) appears to be apposite. This Court held in paragraph No.3 of the Judgment as under :

3. However, as the offer of petitioner to reinstate the respondent was not accepted, he is not entitled to the relief of reinstatement and any back wages at all. His conduct lends support to the version of the employer that he had abandoned the employment and that he never came back to report for duty and that it was not a case of termination by the petitioner employer. Whenever the employer offers to reinstate the workman at any stage of the dispute or proceeding and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any backwages from the date of such offer, conditional or unconditional. He must first accept the offer and get reinstated in employment and therefore continue to contest for the relief of back wages, if any. In the present case there was an unconditional offer of reinstatement made by the employer in the written statement itself but it was not accepted by the workman. Therefore, as stated by me herein before, he is not entitled to get reinstatement with full back wages at all.

11. In the light of Petitioner's failure to report for duties despite offer of reinstatement, this Court would not be justified in directing reinstatement of Respondent. It appears that Respondent has already attained the age of superannuation. However, since the termination is found to be illegal and the offer for reinstatement was made only on 27 June 2016, the issue remains as to whether Petitioner can be granted

backwages for the period from 24 November 2012 to 27 June 2016. Here again though the offer of reinstatement is repeatedly given on and after 27 June 2016, it appears that Petitioner was not interested in joining back the services of Respondent No.3 at Bhayandar factory. Therefore, even if the offer was to be made at an earlier point of time, it is doubtful whether Petitioner would have availed the same.

12. Petitioner is not paid retrenchment compensation in respect of services rendered by him from 01 April 1998 to 24 November 2012. He would be entitled to some payment on account of illegal termination of services till he was offered reinstatement after 4 years on 27 June 2016. In my view, ends of justice would meet if Petitioner is granted lump-sum compensation in lieu of backwages from 24 November 2012 to 27 June 2016. Mr. Sharma has submitted that Petitioner has not been paid gratuity. Mr. Pathak would submit that the Payment of Gratuity Act is not applicable in the present case as the total number of employees employed by Respondent No.3 was only 09. Mr. Sharma, on the other hand, contends that the total number of employees employed by Respondent No.3 were 13. In my view, this Court need not go into the issue of entitlement of Petitioner to receive gratuity under the provisions of Payment of Gratuity Act. Instead, Petitioner would be free to file appropriate proceeding before the Controlling Authority to claim gratuity. If such proceedings are filed, Respondent No.3 would be at liberty to raise all defences including the defence of employment of less than 10 employees in its establishment. No opinion is expressed with

regard to entitlement of Petitioner to receive gratuity from Respondent No.3.

13. I accordingly proceed to pass following order :

- i) Award dated 03 September 2019 passed by the Labour Court, Mumbai in Reference (IDA-D) No.1 of 2015 is set aside.
- ii) Respondent No.3 is directed to pay to Petitioner lump-sum compensation of Rs.4,00,000/- (Rs. Four Lakh Only) towards full and final claim, except gratuity.
- iii) Petitioner would be at liberty to file appropriate proceedings before the Controlling Authority in respect of his claim for gratuity.
- iv) The compensation of Rs.4,00,000/- shall be paid by Respondent No.3 to Petitioner within a period of 08 weeks from today failing which interest at the rate of 8% per annum would be payable on the amount on expiry of period of 08 weeks.

14. With the above directions, Writ Petition is partly allowed. Rule is made partly absolute.