

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

WRIT PETITION NO.8696 OF 2023

The Director

MRC Transolutions Pvt. Ltd.

MRC House, 81, Transport Nagar,

Nagadi, Pune 411 044

through its Branch Manager

Branch at five-star MIDC,

Kagal-Hatakanangale,

District Kolhapur.

....Petitioner

V/S

Gajanan Sundarkant Joshi

r/o Rajgurunagar, Hupari,

Tal. Hatkanangale,

District Kolhapur.

....Respondent

Mr. Abhishek R. Avachat *for the Petitioner.*

Mr. Nitin B. Patil *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
JUDGMENT RESERVED ON : 6 MARCH 2024.
JUDGMENT PRONOUNCED ON: 12 MARCH 2024.

JUDGMENT:

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

2. Petitioner-employer has filed this Petition challenging the judgment and order dated 19 April 2022 passed by the Member, Industrial Court No.1 dismissing Revision (ULP) No.23 of 2019 and confirming judgment and order dated 27 February 2019 passed by Labour Court, Kolhapur in Complaint (ULP) No.3 of 2017. The Labour Court has directed Respondent's reinstatement by setting aside oral termination dated 14 September 2013 alongwith continuity of service with full back-wages and other consequential benefits.

3. Petitioner is engaged in the business of transportation. Respondent was engaged on the post of Assistant-Operations on probation on 2 September 2011. He was confirmed in service from 2 March 2012. At the time of his cessation of services, he was working on

the position of Operation Supervisor and drew last wages of Rs.9,314/- per month. It is the case of the Respondent that he was orally terminated on 14 September 2013 on account of absence on 12th and 13th September 2013. He approached the Assistant Labour Commissioner, Kolhapur on 16 September 2013 by filing a Complaint. Petitioner issued letter dated 20 September 2013 to the Respondent alleging that he was absconding from duties and called him upon to report on duty within 48 hours. Respondent submitted letter dated 28 September 2013 to the Petitioner responding to the letter dated 20 September 2013 stating he was willing to join the duties if suitable orders were issued to the Branch Head Shri Mishra. It appears that Petitioner insisted on withdrawal of the Complaint made by the Respondent with the Assistant Labour Commissioner. Accordingly, Respondent withdrew the Complaint by letter dated 13 December 2013 expressing that the Petitioner was willing to reinstate him. He submitted one more letter dated 27 December 2013 to the Assistant Labour Commissioner stating that he did not have any grievance against Petitioner and that the Complaint dated 23 September 2013 was submitted by him out of anger and misunderstanding. However, it is the case of the Respondent that he was not reinstated in service nor his dues were cleared. Therefore, he submitted one more complaint dated 27 January 2014 to the Assistant Labour Commissioner. The proceedings were taken in conciliation and failure report was submitted on 2 July 2014.

4. Petitioner thereafter approached Labour Court, Kolhapur by filing Complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU and PULP Act**) challenging his termination order. The Complaint was resisted by the Petitioner by filing Reply. Both parties led evidence. The Labour Court delivered judgment and order dated 27 February 2019 allowing the Complaint filed by the Respondent and held that the oral termination of the Respondent with effect from 14 September 2013 was illegal. Petitioner was directed to reinstate the Respondent on his original post with continuity of service with full back-wages and other consequential benefits. The Revision preferred by Petitioner under provisions of section 44 of the MRTU and PULP Act has been rejected by the Industrial Court by judgment and order dated 19 April 2022. Aggrieved by the decisions of the Labour Court and the Industrial Court, Petitioner has filed the present Petition.

5. Mr. Avachat, the learned counsel appearing for the Petitioner would submit that Petitioner never terminated the services of the Respondent. That he absconded from service and despite grant of repeated opportunities, did not report for duties. That the Labour Court and the Industrial Court have erroneously proceeded on a footing that the services of the Respondent were terminated. That both the

Courts have not considered the evidence on record in proper prospective. That Respondent withdrew the Complaint filed by him before Assistant Labour Commissioner on 27 December 2013, which clearly proves that there was no merit in his Complaint. That the Petitioner is unnecessarily saddled with the liability for reinstatement and back-wages despite the entire fault being that of the Respondent.

6. *Per contra*, Mr. Patil, the learned Counsel appearing for the Respondent would oppose the Petition and support the orders passed by the Labour and Industrial Courts. He would submit that the services of the Respondent have been illegally terminated without holding any enquiry. That the provisions of section 25F of the Industrial Disputes Act, 1947 was not followed. He has not been paid his legal dues. That Respondent did not commit any misconduct and his services could not be terminated on the ground of absence of only two days. That the Labour and the Industrial Court have rightly appreciated the entire evidence on record and since there is no perversity in the concurrent findings recorded by both the Courts, there is no reason for this Court to interfere in well reasoned orders of the Labour and Industrial Court. He would pray for dismissal of the Petition.

7. I have considered the submissions canvassed by the learned Counsel appearing for parties. There is no order by which services of the

Respondent are terminated. It is his case that he had proceeded on leave for two days, which was sanctioned on telephone by Shri Mishra on 11 September 2013. However, when he reported back to duties on 14 September 2013, he was thrown out of office by insulting him in front of the other staff. He accordingly filed complaint before the Assistant Labour Commissioner on 16 September 2013 complaining about his illegal termination. However immediately upon an offer being made by the Petitioner on 20 September 2013, Respondent withdrew his Complaint vide communication dated 13 December 2013 and 27 December 2023. In Petitioner's letter dated 20 September 2013 specific allegations were made about Respondent absconding from service since 12 September 2013. Though in the initial letter dated 13 December 2013, Respondent expressed desire to withdraw the Complaint on account of offer of reinstatement, in the subsequent letter dated 17 December 2013 he expressed that the Complaint was filed out of anger and misunderstanding. It appears that despite withdrawal of the complaints, Respondent was not reinstated, which led to filing of subsequent Complaint dated 27 January 2014 and the dispute finally landed before the Labour Court.

8. As observed above, there is no specific order of termination from service. It is the case of the Petitioner that Respondent was absconding from 12 September 2013. If that was the case, the Petitioner ought to

have issued a charge-sheet and ought to have conducted a domestic enquiry to prove the misconduct. However, except issuing a vague letter dated 20 September 2013 (that too after Respondent filing Complaint dated 16 September 2013) Petitioner did not conduct any enquiry by issuance of charge-sheet to Respondent. Therefore, it is difficult to believe that Respondent committed any misconduct which warranted termination of his services. Even otherwise, absence for two days could not have been a reason enough for terminating his services. I therefore do not find any serious flaw in the view taken by the Labour Court and the Industrial Court.

9. The next issue is about the nature of relief that could be granted in favour of Respondent. The Labour Court has directed his reinstatement with full backwages. In my view, Respondent must share some responsibility about the entire incident. Though Petitioner is at fault in terminating his services, Respondent has undoubtedly issued a letter dated 27 December 2013 stating that the Complaint was made out of anger and misunderstanding. In that view of the matter, reinstatement with full back-wages would not be the appropriate remedy in the present case. Instead, award of lumpsum compensation to the Respondent would be the correct remedy. Considering the unsavory relationship between the parties on account of long litigation that has

ensued between them, it may not be in the best interest of Respondent to work with Petitioners.

10. Petitioner is at advance age of 51 years now. Period of about 11 years have passed from the date of cessation of his services. He was drawing the last wages of Rs.9,314/- per month. It appears that Respondent rendered services of hardly two years with the Petitioner and in such circumstances it would not be appropriate to make the Petitioner bear the burden of backwages for over 11 long years. It also appears that the Petitioner offered job to the Respondent from time to time. This factor also needs to be taken into consideration while deciding the quantum of compensation. Considering the relevant factors, in my view, award of lumpsum compensation of Rs.10,00,000/- to the Respondent, in lieu of reinstatement and backwages, would meet the ends of justice.

11 Accordingly, I proceed to pass the following order:

ORDER

- i) The judgment and order dated 27 February 2019 passed by the Labour Court, Kolhapur in Complaint (ULP) No.3 of 2017

and judgment and order dated 19 April 2022 passed by the Industrial Court, Kolhapur in Revision (ULP) No.23 of 2019 are set aside.

ii) The termination of the Respondent is held bad in law. However instead of reinstatement or back-wages, the Respondent shall be entitled for lumpsum compensation of Rs.10,00,000/- from the Petitioner.

iii) Petitioner shall pay to the Respondent lumpsum compensation of Rs.10,00,000/- within a period of six weeks. Beyond the lumpsum compensation so awarded, Respondent shall not be entitled any further monetary benefits from the Petitioner.

12. With the above directions, Writ Petition is disposed of. Rule is made partly absolute.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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