

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12998 OF 2019

M/s. Bhatia Hospital,	]	
Tukaram Javji Road,	]	
Tardeo, Mumbai – 400 007.	]	... Petitioner

Versus

Mrs. Smita Mohan Chonkar,	]	
3/307, Vrundan Co-Op. Hsg. Society Ltd.	]	
B-2-C, Navin Maharashtra Nagar,	]	
Tardeo, Mumbai – 400 034.	]	... Respondent

Mr. Kiran Bapat, Senior Advocate i/b M/s. Desai & Desai Associates for Petitioner.

Mr. Lahu S. Gaikwad a/w Mr. Chinmay Joshi for Respondent.

CORAM :- SANDEEP V. MARNE, J.
RESERVED ON :- 02 JANUARY, 2024
PRONOUNCED ON :- 08 JANUARY, 2024

JUDGMENT :

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

2. By this Petition, the Petitioner challenges the Judgment and Order dated 23 July 2018 passed by the 7th Labour Court, Mumbai, as well as Judgment and Order dated 5 April 2019 passed by the Industrial Court, Mumbai. The Labour Court has allowed the complaint filed by the Respondent and has set aside the termination order dated 15 October 2015 with further direction to the Petitioner to reinstate the Respondent

with continuity of service and full backwages. The Industrial Court has dismissed the Revision filed by the Petitioner.

3. Briefly stated, facts of the case are that the Petitioner is a hospital run by a trust and provides various types of medical services to the patients. Respondent was appointed as Aaya and Sweeper in the Petitioner – hospital in the year 1982 and she claims that she was made permanent in the year 1985. On 8 October 2003, it is alleged that the Respondent, along with 4 other persons, made an unauthorized entry from the rear gate of the hospital along with a representative of Akhil Bhartiya Kamgar Sena. Upon being stopped by the security guard, they threatened the guard. The Petitioner alleges that the said persons intended to go to the accounts office on the first floor and upon being stopped by the other security guards, they threatened and abused those security guards as well. The Respondent was suspended vide memo dated 9 October 2003 and a charge-sheet was issued to her on 18 January 2004. It appears that the Petitioner – Management commenced inquiry and the same was closed for submission of report of the Inquiry Officer. However before the Inquiry Officer could submit the report, the Petitioner – Management terminated the services of the Respondent on 15 October 2015.

4. Aggrieved by termination, the Respondent filed Complaint (ULP) No.275/2015 before Labour Court, Mumbai. By Judgment and Order dated 23 July 2018, the Labour Court allowed the complaint and set aside termination order dated 15 October 2015 with further direction to the Petitioner – Management to grant reinstatement, continuity of service and full backwages. Aggrieved by the decision of the Labour Court, the Petitioner – Management filed Revision (ULP) No.104/2018

before the Industrial Court at Mumbai. By Judgment and Order dated 5 April 2019, the Industrial Court dismissed Petitioner's Revision Application. Accordingly, the Petitioner has filed the present Petition.

5. Mr. Bapat, learned senior advocate appearing for the Petitioner would submit that the allegations levelled against the Respondent are of grave nature. That, the said allegations are proved by the Petitioner by examining witnesses before the Labour Court. He would take me through the evidence of Chandrakant Haribhau Sawant and Vivek Shivram Shinde in support of his contention that the charge against the Respondent was proved by leading sufficient evidence. Mr. Bapat would submit that the Labour Court has not considered the evidence adduced before it and has proceeded to allow the complaint only on a solitary ground of retention of services of one Nandkumar Mane who was also one of the employees charged with the same Respondent. That, once evidence is led to prove allegation, the treatment meted out to another employee becomes irrelevant.

6. Mr. Bapat would further submit that the Respondent has attained the age of superannuation in February 2023. She remained under suspension from the year 2003 to 2015 and has already drawn subsistence allowance. That, other employees who were involved in similar misconduct, have settled their disputes with the Petitioner – Management by accepting lumpsum compensation. Strictly without prejudice to the challenge to the orders passed by the Labour Court and the Industrial Court, Mr. Bapat would submit that similar lumpsum compensation can be paid to the Respondent as well.

7. *Per contra*, Mr. Gaikwad, learned Counsel appearing for the Respondent, could oppose the Petition and support the orders passed by

the Labour Court and the Industrial Court. He would submit that the Respondent is given discriminatory treatment by subjecting her to harsh penalty of termination from service. That, the evidence led by the Petitioner before the Labour Court clearly proves that Shri Nandkumar Mane was retained in service despite being involved in the same incident.

8. Mr. Gaikwad would further submit that the Petitioner – Management acted in an arbitrary manner in terminating the services of the Respondent without concluding the domestic inquiry. That, the inquiry remained pending for a long time since the year 2004. Though the inquiry was completed, the same was not taken to its logical conclusion and the Inquiry Officer did not submit the inquiry report. Though the Respondent was placed under suspension for unduly long period and even though the inquiry was completed, the Petitioner – Management took arbitrary measures of terminating the services without awaiting the report of the Inquiry Officer. He would submit that the Labour Court and the Industrial Court have correctly appreciated the evidence on record and granted relief in favour of the Respondent. He would pray for dismissal of the Petition.

9. Rival contentions of the parties now fall for my consideration.

10. Respondent was subjected to domestic inquiry by issuance of charge-sheet dated 18 January 2004. Before that, she was placed under suspension vide memo dated 9 October 2003 in connection with an incident which allegedly occurred on 8 October 2003. No doubt, the Respondent was accused of committing a serious misconduct of threatening the security guards and making an unauthorized entry along with outsiders in the hospital premises. If the charge was to be proved by leading evidence in the inquiry, the punishment of termination could well

be justified. However, though the inquiry was commenced and was virtually concluded, for reasons unknown, the Inquiry Officer did not submit his report. The inquiry was kept pending for unduly long period of time and the Respondent was continued under suspension by paying her the subsistence allowance. This course of action adopted by the Petitioner – Management is clearly arbitrary where the Management kept on paying substantial wages to the Respondent by keeping her away from duty from the date of suspension i.e. 9 October 2003 till her termination on 15 October 2015. If the inquiry was concluded and if the Petitioner – Management was of the view that sufficient evidence was available on record to punish the Respondent, they ought to have taken the inquiry to its logical end. However without concluding the inquiry, the Petitioner – Management decided to terminate the services of the Respondent. Mr. Bapat has sought to justify this action of the Petitioner – Management by submitting that it was open for the Petitioner to justify termination by leading evidence before the Labour Court. While there can be no dispute about this preposition where the employer can terminate services of an employee and later justify the same by leading evidence before the Labour Court, the course of action adopted by the Petitioner – Management in the present case appears to be rather strange. It is not that the service of the Respondent was immediately terminated after the incident dated 8 October 2003. The Petitioner – Management waited for 12 long years and conducted the inquiry in the meantime. In such circumstances, the Petitioner – Management ought to have taken timely action in concluding the inquiry and passing the order of termination.

11. Be that as it may. Since the Petitioner – Management decided to justify termination by leading evidence before the Labour Court, it would be necessary to examine whether sufficient evidence was led by the

Petitioner – Management before the Labour Court to prove the allegations. I have gone through the Affidavit of Evidence in lieu of examination-in-chief filed by Mr. Chandrakant Haribhau Sawant, Security Guard and Mr. Vivek Shivram Shinde, Personal Manager. The witness Mr. Chandrakant Haribhau Sawant has given the account of the incident that took place on 8 October 2003. The evidence thus suggests that the Respondent was part of group of employees which made an unauthorized entry in the hospital premises on 8 October 2003. When they were stopped, they abused the security guard. The mob thereafter proceeded to meet the officers of the Management to discuss some issues. When they were again stopped, the mob abused the security guards. The witness has stated that when Mr. Lopez was passing through the passage, one Govind Kadam assaulted and slapped him and another person pushed him. Thus, the evidence of Chandrakant Haribhau Sawant clearly suggests involvement of the Respondent in the incident that occurred on 8 October 2003. Similar is the position with regard to the evidence of Vivek Shivram Shinde.

12. Perusal of order passed by the Labour Court would indicate that the Labour Court has not evaluated the said evidence of the 2 management witnesses. Rather, the Labour Court has considered solitary factor of retention of Nandkumar Mane in service. In my view, this is a clear error on the part of the Labour Court. The Labour Court, in my view, ought to have assessed the evidence on record to examine whether there is some evidence to prove charge against the Respondent – employee. Retention of services of Nandkumar Mane could have been an aspect to consider the issue of proportionality of penalty. In my view, therefore, the charge levelled against the Respondent leading to her termination was clearly proved on the basis of the evidence led before the Labour Court.

13. The next issue is whether the punishment of termination was justified. The evidence of Chandrakant Haribhau Sawant would indicate that one Govind Kadam had indulged in the acts of assaulting and slapping Mr. Lopez. Upon being inquired about status of Govind Kadam, Mr. Bapat would submit that the Petitioner – Management has settled the dispute with Govind Kadam by paying him lumpsum compensation. If Govind Kadam, who was accused of assaulting and slapping Mr. Lopez could be awarded lumpsum compensation, I do not see any justifiable reason why the Respondent could have been terminated from service. Additionally, it has come on record that Nandkumar Mane, who was also involved in the mob indulging in threats and abuses, has also been retained in service. Therefore, no serious flaw can be found in the finding of the Labour Court that the Respondent has been given discriminatory treatment.

14. Considering the overall conspectus of the matter, it is seen that the Petitioner – Management, for justifying the penalty by leading evidence, have committed twin mistakes of resorting to termination before completing inquiry and retaining / settling with other similarly placed employees. Therefore, though the evidence produced before the Labour Court could technically prove misconduct alleged, penalty of termination from service would not be justified. Also of relevance is the fact that no specific role is attributed to Respondent in the incident, whereas the person who is attributed the role of indulgence of assault is paid compensation.

15. The Respondent has already attained the age of superannuation in February 2023 and there is no question of her reinstatement now. In such situation, payment of lumpsum compensation

would be an adequate remedy in the facts and circumstances of the present case. The Respondent has already drawn substantial wages in the form of subsistence allowance during the period of suspension from 9 October 2003 till 15 October 2015. The Labour Court has not awarded any amount to the Respondent in respect of the period of suspension. The direction is to pay full backwages with effect from 15 October 2015 which would be till February 2023. In this view of the matter, payment of lumpsum compensation of Rs.10,00,000/- would provide adequate solace to the Respondent in the facts and circumstances of the present case. I accordingly pass the following order.

ORDER

- (i) The Judgment and Order dated 23 July 2018 passed by the 7th Labour Court, Mumbai, and the Judgment and Order dated 5 April 2019 passed by the Industrial Court, Mumbai, shall stand modified to the extent that the Respondent shall be entitled to lumpsum compensation of Rs.10,00,000/- in lieu of reinstatement and backwages.
- (ii) The Petitioner – Management shall pay to the Respondent the above compensation of Rs.10,00,000/- within a period of eight weeks from today.
- (iii) The compensation so awarded shall be over and above the retirement benefits in the form of Provident Fund and Gratuity. Beyond this, Respondent shall not be entitled to receive any further amount from Petitioner.

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

(SANDEEP V. MARNE, J.)

URS

8 of 8