

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4616 OF 2019

M/s. Premsons Trading (P) Ltd.

.. Petitioner

Versus

Shri. Dinesh Chandeshwar Rai
C/O. Maharashtra Employees Union

.. Respondent

...

Mr. Mayuresh D. Nagle, for Petitioner.

Ms. Seema Chopda a/w Mr. T. R. Yadav, for Respondent.

...

CORAM : **SANDEEP V. MARNE J.**
RESERVED ON : **13 MARCH 2024.**
PRONOUNCED ON : **20 MARCH 2024.**

JUDGMENT :-

1) Petitioner-Employer has filed the present petition challenging the Award dated 23 July 2018 passed by the learned Presiding Officer, Second Labour Court, Mumbai in Reference (IDA) No. 91 of 2014. The Labour Court has answered the Reference in the affirmative and has directed Petitioner to reinstate Respondent on his original post with full backwages and continuity of service with effect from 12 February 2013.

2) Petitioner is a private limited company and is engaged in trading business. In August 1988, Respondent was engaged as Counter-Boy initially at retail store named 'Premsons' at Breach Candy, Mumbai. In November 2001, he was subsequently asked to work in other group Company of Mr. Damaji Premji Gala at M/s. Premsons Trading Pvt. Ltd. as "Dispatch Incharge" in the Crockery Department. In January 2005, he was transferred to the warehouses of Petitioner situated at Sewree and Wadia House, Cotton Green. Respondent claims that he worked from August 1988 till 12 February 2013, when his services were terminated by Director of Petitioner Shri. Bharatbhai Damaji Gala.

3) Respondent claims that he had requested for leave for the period from 10 February 2013 till 15 March 2013 for visiting his native place and the same was sanctioned by Mr. Dheeraj Premji Gala. That however the other Director Bharatbhai Damaji Gala got annoyed and orally informed the Respondent that his services were terminated. This is how Respondent claims that his services were terminated on 12 February 2013 without following process of law.

4) Respondent approached Deputy Labour Commissioner with his justification statement dated 24 April 2013. The dispute was admitted in conciliation, but Petitioner failed to appear before Conciliation Officer which led to filing of failure report. The appropriate government thereafter made a reference to Second Labour Court, Mumbai regarding reinstatement of Respondent in service with backwages and continuity of services with effect from 12 February 2013. Respondent filed his Statement of Claim. Petitioner appeared before Labour Court and filed Written Statement denying that the services of Respondent were terminated. Petitioner claimed that Respondent was engaged in November 2001 as Dispatch Incharge and his last drawn

salary was Rs.6,577/- per month and not Rs.16,500/- as alleged in the Statement of Claim. Petitioner denied that services of Respondent were terminated and it contended that Respondent remained unauthorisedly absent from duty from 12 February 2013 and despite granting the several opportunities, he failed to resume his duties.

5) Respondent examined himself as a witness before Labour Court. On behalf of Petitioner, Shri. Sohil Dhirajlal Gala was examined as witness. After considering the evidence on record, the Labour Court delivered Award dated 23 July 2018 answering the reference in the affirmative and directed Petitioner to reinstate Respondent in service with continuity and full backwages with effect from 12 February 2013. Petitioner is aggrieved by the award passed by the Labour Court and has filed the present Petition.

6) Mr. Nagle, the learned counsel appearing for the Petitioner would submit that the Labour Court has erred in answering the reference in the affirmative. That this is not a case of termination of services but a case of voluntarily abandonment of employment. That on account of inability expressed by Petitioner to sanction long leave, Respondent absented himself from duties. That despite grant of repeated opportunities, he failed to join duties and directly approached the Labour Court.

7) Mr. Nagle would question the correctness of finding recorded by Labour Court that Petitioner never gave notice to the Respondent calling upon him to resume duty. He would submit that this finding is contrary to the admission given by Respondent in his cross-examination. That he was directed to report for work by letter dated 24 April 2013. Mr. Nagle would take me through various letters dated 11 November 2013, 8 October 2014, 10 October 2014, 23 October 2014 and 10 December 2014 to prove that

Respondent was repeatedly granted opportunities to join duties, but he failed and neglected to accept the offer of employment given to him. That therefore Respondent can neither be reinstated in service nor be paid backwages.

8) In support of his contention, Mr. Nagle would rely upon Judgments of this Court in *Suja Agencies Vs. Uday Singh B. Rawat and Anr.*¹, *R. K. Kitchen Equipments (Messrs), Mumbai Vs. Majid Yusuf Hurape & Ors.*², *Raju Shankar Poojary Vs. Chembur Warehouse Co. & Anr.*³, *Sonal Garments Vs. Trimbak Shankar Karve*⁴ and *Shri. Praveen Singh Kanyal Vs. State of Maharashtra & Ors.*⁵

9) *Per contra*, Ms. Chopda the learned counsel appearing for Respondent would oppose the Petition and support the Award passed by Labour Court. She would submit that the defence of voluntary abandonment of employment taken by Petitioner is blatantly false. That it is well settled law that even voluntary abandonment of employment is required to be proved by issuance of a notice calling upon the workmen to resume duties. That in the present case, till Respondent filed complaint before Deputy Commissioner, Petitioner never issued any notice to the Respondent calling him upon him to join duties. That during the period from 12 December 2013 till 15 March 2013, when demand was raised by Respondent before Deputy Labour Commissioner, Petitioner never made any correspondence with the Respondent. She would submit that Respondent pleaded as well as led evidence in support of his contention that when he was called upon to join duties, he always presented himself for duties but was not allowed to join.

¹ 2003 III CLR 1048

² 2003 II CLR 794

³ 2003 III CLR 890

⁴ 2002 III CLR 488

⁵ Writ Petition No. 6638 of 2019

That therefore the correspondence made by Petitioner after receipt of demand notice was nothing but a false show, without any real intention on Petitioner's part to reinstate Respondent. She would submit that Petitioner merely filed a petition in the year 2018 and did not move the same for the last six long years. That the Petition is moved before this Court only after Respondent filed Application under Section 33 (C) (1) of the Industrial Disputes Act 1947 and a Recovery Certificate for amount of Rs.15,01,453/- was issued by the Assistant Commissioner of Labour. That despite Respondent writing to the Petitioner on 11 January 2020 after the passing of the Award, Petitioner failed to give any response to the said letter. Lastly Ms. Chopda would submit that there is no perversity in the finding recorded by the Labour Court and therefore there is no reason for this Court to interfere in the Impugned Award. She would pray for dismissal of the Petition.

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

11) Respondent claims that his services were terminated with effect from 12 February 2013. On the contrary in the written statement, Petitioner claimed that Respondent remained absent from duty from 12 February 2013 onwards. It is Petitioner's case that despite grant of repeated opportunities, Respondent failed to join duties. Here it would be necessary to take into consideration the correspondence that ensued between the parties after the alleged termination dated 12 February 2013. It appears that Respondent served demand letter dated 15 March 2013 on Petitioner. Till service of demand letter, admittedly Petitioner did not serve upon Respondent any notice calling him upon to present himself for duties. The first communication with the Respondent appears to have been made by Petitioner after issuance of demand notice on 24 April 2013. Respondent has admitted in his cross examination by letter dated 24 April 2013 that

Petitioner granted opportunity to him to report for work. However, in the cross examination he further stated that he was not allowed to work in pursuance of letter dated 24 April 2013 when he presented himself for work. Additionally, Respondent led evidence before Labour Court that he reported to resume his duty on 16 September 2014 along with his letter dated 15 September 2014. That he met Mr. Dheeraj Premji Gala, who went through Petitioner's letter and did not allow him to join duties after waiting till 12 noon. Respondent returned on account of refusal on the part of Petitioner to permit him to work.

12) Petitioner has placed on record letter dated 18 November 2013, which is in fact response to the justification statement. It appears that no offer for reinstatement was made in the said letter dated 18 November 2013. However subsequently Petitioner gave an offer to the Petitioner to join duties by letter dated 8 October 2014 offering him to resume the duty. The said letter dated 8 October 2014 clearly appears to be an afterthought.

13) Petitioner's plea of voluntary abandonment of employment cannot be accepted on account of failure on its part to serve a notice on Respondent calling him upon to join duties. It is well settled law that to prove voluntary abandonment, the employer must issue a notice to the workmen directing him to resume duties and in absence of such notice, voluntary abandonment of employment cannot be accepted. In my view therefore no serious fault can be found in Award of the Labour Court rejecting Petitioner's plea of voluntary abandonment of service. In absence of any notice directing resumption of service and also in absence of conduct of enquiry, the plea of abandonment has rightly been rejected by the Labour Court.

14) The next issue strenuously sought to be argued by Mr. Nagle is about repeated offers made to Respondent for resumption of duties. I find that there are factual disputes amongst parties as to whether the said offers were indeed genuine. Respondent has claimed that despite approaching Petitioner on 16 September 2014, he was not permitted to work and that this fact was brought to the notice of Petitioner by registered letter dated 16 September 2014. That he once again reported for duties on 14 October 2014 and 16 October 2014, but the watchman deployed at the work place did not permit Respondent to enter the premises. In this connection following deposition of Respondent would be relevant.

"14. I say that the First Party Employer filed its written statement before this Hon'ble Court. I say that I have got read over the contents of the same, I say that I deny and do not admit the contents averments and allegations as contained in the written statement of the First Party Employer. I say that without prejudice to my rights and contentions and reserving my rights for the claim of reinstatement with continuity of service and full backwages to be decided by the Hon'ble Court on merits I reported to resume on my duty to the First Party on 16.09.2014 at about 10.00 a.m., along with my Hindi typed hand delivery letter dated 15.09.2014, and I requested Mr. Dheeraj Gala who came in the office at about 11.00 a.m., and Mr. Dheeraj Gala having gone through the contents of my letter dated 15.09.2014, neither allowed me to resume on my duties, nor Mr. Dheeraj Gala have accepted my letter dated 15.09.2014, by giving counter signature, though I waited their till 12.00 noon, but, I was not allowed to resume on my duties by Shri. Dheeraj Gala. I say that these facts were brought on record of the First Party vide my letter dated 16.09.2014, which was sent to the First Party through registered post a/d. I say that the First Party in receipt of my letter dated 15.09.2014 & 16.09.2014, sent me letters which were dispatched on 08.10.2014 & 10.10.2014, alleging false, dubious, malafide and afterthought statements that I did not resume on duty. I say that without prejudice to my rights and contentions, I again reported to resume on my duties on 14.10.2014 & 16.10.2014 at about 10.00 a.m., but, the watchman standing on the shutter of the First Party Employer Company restrained me from entering inside the premises, stating that Mr. Dheeraj Gala & Mr. Bharat Gala have instructed him not to allow me to enter inside the premises of the shop. Thus, I was again not allowed to resume on my duties. I say that thereafter I went to Gavdevi Police Station to lodge complaint about not allowing me to resume on my duties, but, the constable told me to lodge complaint in Labour Court. I say that today I am filing the office copies of letters dated 15.09.2014, 16.09.2014 & 16.10.2014, along with postal receipt and acknowledgments. I say that the said letters bears my signatures and the contents therein are true and correct."

15) There is no serious cross examination by Petitioner on this aspect. It thus appears that Respondent indeed attempted to join services of

the Petitioner, but Petitioner was no longer interested in permitting Respondent to work. Though Mr. Nagle has relied upon Judgments of this Court in *Suja Agencies* (supra), *R. K. Kitchen Equipments (Messrs)*, *Mumbai* (supra), *Raju Shankar Poojary* (supra), *Sonal Garments* (supra) and *Shri. Praveen Singh Kanyal* (supra), The same would not have any application to the facts and circumstances of the present case where Petitioner pleaded as well as led evidence that he was not permitted to join duties. In any case, even if it is assumed that there was a serious offer made by Petitioner at any point of time, the same alone cannot be a reason to deny relief to Respondent, considering the facts and circumstances of the case. That factor, at the highest, would be relevant to decide the nature of relief that can be granted to Respondent.

16) Having held that Petitioner did not permit Respondent to resume services and that termination was unlawful, the next issue is about the nature of relief that could be granted in favour of Respondent. The Labour Court has directed Respondent's reinstatement with continuity and full backwages with effect from 12 February 2013. It appears though the Petitioner filed the present Petition challenging Award dated 23 July 2018 in December 2018, the same has not been circulated even once till 13 February 2024. It appears that Respondent was served with copy of the Petition by Petitioner for the first time in February 2024. In the meantime, Respondent was required to initiate proceedings under Section 33 (C) (1) of the Industrial Disputes Act before Assistant Labour Commissioner, who issued certificate dated 26 February 2024 for some of Rs.15,01,453/-. A substantial period of more than 11 years has passed since Respondent was terminated. Going by the age disclosed in the Affidavit of Evidence filed on 17 January 2017 when Petitioner was apparently 45 years old, it appears

that the current age of the Respondent could be approximately 52 years. Considering the unsavory relationship between the parties, as well as advanced age of the Respondent, it may not be in Respondent's interest to work with Petitioner. In that view of the matter award of lumpsum compensation in lieu of reinstatement and backwages would be the appropriate remedy, considering the facts and circumstances of the present case. Considering existence of factual dispute about offers made to Respondent to resume duty, length of service rendered by him, last drawn wages and current age, I am of the view that award of lump sum compensation of Rs. 8,00,000/- would meet the ends of justice.

17) I accordingly proceed to pass the following Order:

ORDER

- i. The Award dated 23 July 2018 passed by the Presiding Officer of the Labour Court, Mumbai in Reference (IDA) No. 91 of 2014 is modified to the extent that Petitioner shall pay to the Respondent, lumpsum compensation of Rs.8,00,000/- within a period of six weeks.
- ii. Beyond the compensation so granted, Respondent shall not be entitled to any further monetary benefits from Petitioner.

18) With the above directions Writ Petition is partly allowed and disposed of. There shall be no Order as to costs.

[SANDEEP V. MARNE J.]