IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8830 OF 2024

1 Naxnova Technologies Private Ltd.
Survey No.188, 192-194 and 210
Sopara Phat village Pelhar,
Near Avdoot Ashram, Nalasopara Road,
Vasai – 401 208, District Thane

2 Naxnova Technologies Private Ltd.
Astarc House, 76/79, Makwana Lane
Marol, Andheri (East) ....Petitioners

V/S

1 Sudhir Chopdekar
Age 35 years, Occ. Service
R/o A/103, Amrutkrupa, CHS,
Near Sai Baba Mandir, Deewanman
Vasai (W), Pin – 401 303.

2 Jitu Thakre
Astarc House, 76/79,
Makwana Lane, Andheri (East)
Mumbai – 400 059. ....Respondents

WITH
WRIT PETITION (STAMP) NO.11197 OF 2024

1 Naxnova Technologies Private Ltd.
Survey No.188, 192-194 and 210
Sopara Phat village Pelhar,
Near Avdoot Ashram, Nalasopara Road,
Vasai – 401 208, District Thane.

2 Naxnova Technologies Private Ltd.
Astarc House, 76/79, Makwana Lane
Marol, Andheri (East) ....Petitioners

V/S

1 Santosh Tatkare
Age 43 years, Occ. Service
R/o Flat Nop.102, 1st Floor, J-57,
Global City, Near Yazoo Park,
Virar (W), Pin – 401 303.

2 Jitu Thakre
Astarc House, 76/79,
Makwana Lane, Andheri (East)
Mumbai – 400 059. ....Respondents

WITH
WRIT PETITION (STAMP) NO.11958 OF 2024

1 Naxnova Technologies Private Ltd.
Survey No.188, 192-194 and 210
Sopara Phat village Pelhar,
Near Avdoot Ashram, Nalasopara Road,
Vasai – 401 208, District Thane
Through its HR & Administrator,
Ratnakar Shetty, Age 50 years.

2 Naxnova Technologies Private Ltd.
Astarc House, 76/79, Makwana Lane
Marol, Andheri (East) ....Petitioners

V/S

1 Shakuntala Bhoir
Age 48 years, Occ. Service
R/o Post Chandip, Vajreshwari Road,
Taluka Vasai, Dist. Thane.

2 Jitu Thakre
Astarc House, 76/79,
Makwana Lane, Andheri (East)
Mumbai – 400 059. ....Respondents

WITH
WRIT PETITION NO.8843 OF 2024

1 Naxnova Technologies Private Ltd.
Survey No.188, 192-194 and 210
Sopara Phat village Pelhar,
Near Avdoot Ashram, Nalasopara Road,
Vasai – 401 208, District Thane
Through its HR & Administrator,
Ratnakar Shetty, Age 50 years.

2 Naxnova Technologies Private Ltd.
Astarc House, 76/79, Makwana Lane
Marol, Andheri (East) ....Petitioners

V/S

1 Nandlal Verma
Age 49 years, Occ. Service
R/o D-5, 412, Gokhivare village,
Vasai Road (East), Palghar Bldg.,
Vasai (W),Dist. Palghar.

2 Jitu Thakre
Astarc House, 76/79,
Makwana Lane, Andheri (East)
Mumbai – 400 059. ....Respondents

WITH
WRIT PETITION (STAMP) NO.11963 OF 2024

1 Naxnova Technologies Private Ltd.
Survey No.188, 192-194 and 210
Sopara Phat village Pelhar,
Near Avdoot Ashram, Nalasopara Road,
Vasai – 401 208, District Thane
Through its HR & Administrator,
Ratnakar Shetty, Age 50 years.

2 Naxnova Technologies Private Ltd.
Astarc House, 76/79, Makwana Lane
Marol, Andheri (East) ....Petitioners

V/S

1 Yogita Vanmali
Age 46 years, Occ. Service
R/o Mahatma Phule Nagar,
Manikpur, Old Petrol Pump,
Near Tapasya Bldg.
Vasai (W), Dist. Palghar.

2 Jitu Thakre
Astarc House, 76/79,
Makwana Lane, Andheri (East)
Mumbai – 400 059. ....Respondents

Ms. Madhavi Tavanandi with Ms. Swati Deshpande *for the Petitioners.*
Mr. Yogendra Pendse with Ms. Priyanka Patkar *for Respondents.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 22 AUGUST 2024.
PRONOUNCED ON : 27 AUGUST 2024.

JUDGMENT

1 Petitioner-employer has filed these Petitions challenging the judgments and orders dated 16 January 2024 passed by Member, Industrial Court, Thane allowing Complaints filed by Respondents-employees and directing payment of various amounts to each of them towards compensation at the rate of three months' CTC for every year of their balance service. Respondents have resigned from services of Petitioner under a hope that they would be paid three months CTC per year the balance years of their service till the age of retirement of 58 years. However what has actually been paid to them is only

three months' CTC by Petitioner on the ground that they are below age of 50 years. To the extent of denial of payment of additional benefit in the form of three months' CTC, Respondents filed Complaints before Industrial Court, which have been allowed by the impugned orders. Petitioner is aggrieved by the Orders and has filed the present Petitions.

2 Petitioner - Naxnova Technologies Private Limited earlier operated by the name Classic Stripes Private Limited. By Certificate of Incorporation pursuant to Change of Name issued by the Registrar of Companies, name of Classic Stripes Private Limited has been changed to Naxnova Technologies Private Limited with effect from 3 April 2024. Petitioning Company is engaged in the business of providing service/surface augmentation solutions to automotive, consumer durables and appliances industry. Respondents were in service of Petitioning Company under its erstwhile name Classic Stripes Private Limited. It is the case of the Petitioner-employer that it introduced "Separation Policy for Associates for Voluntary Retirement" (**Separation Policy**) on 1 October 2019, which remained in force till 31 October 2020. Under that policy, the Associates (Grade A1 to Grade A3) voluntary resigning from service of Company in Pelhar location were offered additional separation benefit as a goodwill gesture for services offered by them. Under the Separation Policy, Associates over age of 50 years were offered three months wages as per 'cost to company' (**CTC**) per year for balance years of service till age of retirement i.e. 58 years. In respect of Associates opting for voluntary retirement, who were below the age of 50 years, Petitioner-Company offered the benefit of only three months' CTC. The sum so payable was in addition to the other retirement benefits like gratuity, leave encashment, bonus etc. and

the same was shown under the heading 'Notice Pay' in the settlement document prepared for each employee opting for voluntary retirement. According to Petitioner-Company, total 35 employees opted for voluntary retirement under the Separation Policy, out of whom eight employees were above the age of 50 years, whereas 27 employees were below the age of 50 years. According to Petitioner, the Company prepared full and final statements offering bonus, leave encashment, gratuity and additional benefit in the form of Notice Pay to all employees opting for voluntary retirement. That the employees tendered their resignations and statements towards full and final settlement were prepared on 4 November 2019 and that the amounts reflected in such settlements were credited to the accounts of the employees, after which each of them signed the statements of full and final settlement.

3 It appears that 11 employees who were below age of 50 years got aggrieved by the action of Petitioner-Company in paying that only three months' CTC towards additional benefit and claimed that the Petitioner-Company had agreed to pay them additional benefit in the form of three months' CTC per year for balance years of service on par with employees above the age of 50 years. Accordingly, those aggrieved employees filed their respective Complaints before Industrial Court, Thane praying for payment of compensation equal to the other employees. The Complaints were resisted by Petitioner-Company by filing Written Statement. It appears that out of those 11 Complainants, 6 employees settled the disputes with Petitioner-Company and withdrew their respective Complaints. Only five employees continued pursuing their Complaints before Industrial Court. By impugned judgment and order dated 16 January 2024, the Industrial Court has proceeded to allow

the Complaints partly directing Petitioner-Company to pay various amounts to Respondents-employees towards additional benefit (towards notice pay) at the rate of three months CTC per year for balance years of service. The amounts which are awarded by the Industrial Court to each of the Respondents are as under:

1	Santosh Tatkare	Rs.18,22,926/-Less 1,30,209 = 16,92,717/-
2	Nandlal Verma	Rs.10,87,860/-Less 36,262 = 10,51,598/-
3	Shakuntala Bhoir	Rs. 8,36,070/-Less 83,602 = 7,52,463/-
4	Yogita Vanmali	Rs. 6,98,643/- Less 63,513 = 6,35,130/-
5	Sudhir Chopadekar	Rs.13,69,956/-Less 97,854 = 12,72,102/-

Thus, the Industrial Court has awarded the above amounts to Respondents-complainants by multiplying the figure of their 3 months' CTC by balance years of service. Petitioner is aggrieved by the Orders passed by the Industrial Court and has filed the present petitions.

4 Ms. Tavanandi, the learned counsel appearing for the Petitioner-employer would submit that the impugned orders passed by the Industrial Court are contrary to the provisions of Separation Policy adopted by Petitioner-employer, under which the employees below the age of 50 years were to be granted only three months' CTC as additional benefit. That the Industrial Court has erred in putting Complainants on same pedestal as that of the employees above the age of 50 years. That Complainants were not entitled to file and maintain the Complaints of unfair labour practice since each one of them had tendered resignations after signing full and final settlements with employer. That the Separation Policy has been admitted in evidence and could

not have been ignored by the Industrial Court. Relying on the judgment of the Full Bench of this Court in ***Hemendra Rasiklal Ghia vs. Subodh Mody,*** Writ Petition No.623 of 2005, decided on 16 October 2008, she would submit that once a document is exhibited, the contents thereof must be read in evidence. That the Industrial Court has completely ignored the Separation Policy and has proceeded to erroneously allow the claim of Respondents/Complainants.

5 She would further submit that though Issue No. 3 relating to entitlement of Complainants/Respondents for relief is answered in the negative, the Industrial Court has erroneously proceeded to grant relief in favour of the Complainants. She would take me through the evidence of one of the Complainants, in which it is specifically admitted that he had signed the papers for full and final settlement after receipt of amount in his account. Ms. Tavanandi would also criticize the findings recorded by the learned Member, in which observations are made unconnected with the facts involved in the present case by entering into the realm of preaching. She would rely upon judgment of Apex Court in ***Re: Right to Privacy of Adolescents***, Suo Motu Writ Petition (C) No.3 of 2023 decided on 20 August 2024.

6 Ms. Tavanandi would further submit that Respondents-Shri Sudhir Chopdekar and Shri Santosh Tatkare were not even 'workmen' and their Complaints have been erroneously entertained by the Industrial Court. She would rely upon judgment of Division Bench of this Court in ***Vandana Joshi vs. Standard Chartered Bank Ltd.*** in Appeal No.67 of 2010, decided on 26 October 2010.

7 Ms. Tavanandi would submit that once resignation is accepted, the employee cannot turn back and seek to escape the consequence of such resignation. In support of her contention she relies on Division Bench judgment of this Court, Bench at Aurangabad in ***Sadiq Shafi Qureshi vs. MD and CEO, Union Bank of India and others*** in Writ Petition No.1770 of 2021, decided on 25 March 2022 and judgments of the Apex Court in ***Shriram Manohar Bande vs. Uktrani Mandal & Ors.*** 2024 LiveLaw (SC) 329, ***M/s. Bharti Airtel Limited vs. A.S. Raghavendra,*** Civil Appeal No.5187 of 2023 decided on 25 April 2024. She would therefore pray for setting aside the Orders passed by the Industrial Court.

8 The Petitions are opposed by Mr. Pendse, the learned counsel appearing for Respondents-original Complainants. He would submit that specific evidence was led before the Industrial Court that Shri Chopdekar and Shri Tatkare did not have any authority to assign and supervise work of any employee. That admission was given by Petitioner's witness that the said two employees were also operated machines. So far as plea of resignations is concerned, Mr. Pendse would submit that resignation letters of the employees were not placed on record and rather suppressed by Petitioner-employer. So far as the contention of full and final settlement is concerned, Mr. Pendse would submit that the said document is shown to have been signed by Petitioner's official on 21 November 2019 and therefore it cannot be contended that the Complainants/Respondents were aware about the amounts reflected in the said document when they tendered resignations on 4 November 2019. That the said document was generated subsequent to resignations. So far as the Separation Policy is concerned, Mr. Pendse would submit that there is

absolutely no pleading in the Written Statement about existence of any such separation policy. There is neither any pleading nor evidence relating to Separation Policy and therefore alleged Separation Policy does not have any effect on rights of the Complainants/Respondents. That this is a clear case of discrimination practiced by the Petitioner-employer amongst similarly situated workmen. That specific assurance was given to all the workmen that each one of them would be paid three months' CTC for balance years of service. That as per the appointment orders, the workers were entitled to three months wages towards retrenchment and that therefore there was no additional benefit for them to opt for voluntarily retirement. Therefore, the alleged Separation Policy subsequently brought in existence by Respondents/Complainants was neither shown to the workmen nor it was logical for them to act on the same. He would pray for dismissal of the Petitions.

9 After having considered the submissions canvassed by the learned counsel appearing for parties, the short issue that arises for consideration is whether Respondents/Complainants can be granted the amount of 'additional benefit' or 'notice pay', (which are the nomenclates used for payment of amount in lieu of tendering voluntary resignations by the workmen) by applying same formula as is applying to the workmen above the age of 50 years. As observed above, Petitioner-Company has paid additional benefit of three months' CTC per year for balance years of service till the age of retirement of 58 years to the workmen who were above age of 50 years. So far as the workmen below age of 50 years are concerned, according to the Petitioner-Company, they were entitled to be paid only three months CTC. The Industrial Court has held such classification created by Petitioner-

employer to be discriminatory and has accordingly applied the formula of "*three months CTC per year for balance years of service till age of retirement of 58 years*" to the case of Complainants/Respondents, who admittedly were below the age of 50 years as on the date of cessation of their services.

10 Perusal of the order passed by the Industrial Court would indicate that the factum of tendering resignations by Complainants/Respondents is not seriously disputed. This is not a case where employees created any dispute with regard to their resignations from service of Petitioner-employer. In fact, the Complaints filed by Petitioner-employer proceeded on specific admissions that they resigned from services. Though such resignations were sought to be branded as non-voluntary, no relief in that regard was sought in the Complaints. On the contrary, the Complainants did not desire reinstatement in service. The Complaint was filed for limited purpose of claiming same additional benefit as is granted to the employees above 50 years of age. Thus, tendering of resignations is not a subject matter of dispute between the parties.

11 Though Mr. Pendse has sought to dispute existence of any voluntary retirement scheme or Separation Policy, perusal of various findings recorded by the Industrial Court indicates that the Court has proceeded by assuming existence of such voluntarily retirement scheme. It would be therefore apposite to reproduce some of the findings recorded by the Industrial Court where reference is made to the voluntary retirement scheme. In paragraph 16 of its judgment, the Industrial Court has observed that -

> "However the Respondents have not prepared any such document, showing the details of monetary benefits, receivable to the Complainant- employee, on his acceptance of **voluntary retirement scheme**"

12 Similarly in paragraph 18 of its judgment, the Industrial Court has recorded a finding that

> "I find that the Complainant was in employment of the Respondent since 04.07.1997 and tendered his resignation, under the **VRS**, floated by Respondent on 31-10-2019."

13 Thus the Industrial Court has accepted the position that a Voluntary Retirement Scheme (**VRS**) was introduced by the Petitioner-employee. Since the date of"31 October 2019"is mentioned in paragraph 18 while making a reference to the VRS, the said reference has to necessarily prove the "Separation Policy for Associates for Voluntary Retirement"dated 31 October 2019." This is because no other document was produced on record by either of the parties suggesting any other Voluntary Retirement Scheme. The only scheme placed on record was in the form of'separation policy'which has admittedly been exhibited. Even the Industrial Court does not appear to have seriously disputed existence of the document being Separation Policy as it has made following observations in paragraph 17 of its judgment:

> 17 The Separation Policy (Exh.- C-21) is in English and there is absolutely No Pleading in the Written Statement at Exh.- C-3 in respect of Publication of such Separation Policy. As such, I am having No Alternative to accept the submissions of the Complainant that the Complainant was assured to Pay Three Months CTC, for Every Year of Balance Service till the date of attaining Age of Superannuation and that the Separation Policy (Exh.- C-20), was Not Published. This is so, because the Respondents have paid Additional Monetary Benefits, at the rate of Three Months CTC, to other Employees, who are Named by the Complainant Employee. As such, Complainant have made out a case of Unfair Labour Practices, under Item 5, of Schedule-IV, of the MRTU & PULP Act, 1971."

14 Thus genuineness of the document being'Separation Policy' (Exhibit C-21) has not been doubted by the Industrial Court. However, what is doubted

by it is the factum of publication of the said document and comprehension thereof by the concerned workers.

15 Whether the document in the form of Separation Policy was published and whether it was understood by the concerned workers will have to be decided from the conduct of parties. Firstly, as many as 35 workers took the benefit of Separation Policy. Out of those 35 workmen, 27 workmen received lesser amounts (three months CTC) on account of their ages being less than 50 years. Out of the said 27 workers, only 11 workers got aggrieved by the Petitioner-employer's decision whereas majority of them (16 workers) did not feel aggrieved by the additional benefit provided to them. This is the first factor which would clearly indicate that the contents of Separation Policy were made known to the workers by the Management. Another important factor is the documents in the form of 'Full and Final Settlement' signed by the concerned workers. Though it is sought to be suggested by Mr. Pendse that resignations of the workers were obtained by hoodwinking them and subsequently they realized the exact amount credited in their account, the said submission is required to be outrightly rejected on account of two factors. Firstly, one of the Complainants Shri Sudhir Chopdekar has signed on full and final settlement document bearing revenue stamp in which the figure of Rs.3,96,541/- was specifically mentioned. Thus, he signed the said document after noticing the figure mentioned in the said document. The said full and final settlement indicated the additional benefit of only three months CTC of Rs.97,854/- and Shri Chopdekar still voluntarily signed thereon. What is more important is the specific deposition of Shri Chopdekar in his cross-examination wherein, he admitted that he signed on papers of full and final

settlement after a period of 3-4 days after receipt of amount in his account. In this regard the relevant part of his cross-examination in paragraph 15 reads thus:

> "15. It is not true to say that, since my Self and my Colleague Employees were less than 50 Years Age, we were paid as per Policy Decision. Witness Says Money was transferred in my Bank Account. I was not agreeable to the Money and for Settlement. It is true to say that, I have signed on the Papers of Full & Final Settlement. It is true to say that, I have signed the papers of Full & Final Settlement, after a period of about 3 - 4 Days, after receipt of Amount in my Accounts. It is not true to say that, I have accordingly Voluntary Tendered my Resignation."

16 Thus the full and final settlement document was signed by the Complainants after receiving the amount of additional benefit in their accounts. It therefore cannot be accepted that the Petitioner-employer obtained their resignations by misrepresenting them. This clearly appears to be a case where the Complainants/Respondents first accepted the amount of additional compensation by signing the document of full and final settlement and then turned around and raising a protest about the quantum of additional benefit.

17 While passing the impugned Orders, the Industrial Court ignored the position that the workmen below the age of 50 years could not have been put on same pedestal as that of workmen above the age of 50 years. Otherwise, a workman who is young and had rendered just 1 year service, with 30 more years remaining balance for retirement would walk away with huge amount of compensation compared to his cohort who had rendered 30 years of service and was left with only 1 year service balance. It is for the employer to devise the terms and conditions of the Scheme. The Scheme was voluntary in nature. The workmen could have refused to resign. Though they made a lame attempt

to contend that their resignations were taken forcefully, no prayer was sought in the complaint for reinstatement by setting aside the resignations. Thus, it can safely be assumed in the facts and circumstances of the present case that the resignations tendered by Complainants were voluntary and that the complaints were filed by them only for the purpose of extracting additional amounts from the petitioner. Once resignations in pursuance of the Separation Policy are proved, it was beyond the jurisdiction of the Industrial Court to determine the validity of terms and conditions on which voluntary retirement in the form of Separation Policy was offered to the workmen. In my view therefore, the impugned orders passed by the Industrial Court suffer from jurisdictional error.

18 While this Court would have been justified in allowing the present Petitions on the basis of findings recorded above, Ms. Tavanandi had fairly made a statement during the course of hearing of the present Petitions that Petitioners-Employers are willing to pay to the Respondents/Complainants following additional amounts to put an end to the entire controversy:

Sr.Nos.	Name of the Employee	1 Year Basic + DA
1	Shri Santosh Tatkare	Rs.5,00,000/-
2	Shri Sudhir Chopdekar	Rs.4,50,000/-
3	Smt. Yogita Vanmali	Rs.3,00,000/-
4	Smt. Shakuntala Boir	Rs.3,00,000/-
5	Shri Nandlal Verma	Rs.4,50,000/-

19 The above amounts now offered by Petitioner-employer are over and above the amounts already paid to Complainants. Mr. Pendse has sought to

highlight discrimination meted out to Complainants by highlighting the case of Smt. Jayshree Naik (above age of 50 years) stating that she has been paid total amount of Rs.11,55,820/-. However what is conveniently ignored by him is the fact that Smt. Naik has been paid the additional benefit of only Rs. 8,56,704/- whereas the balance amounts paid to her are towards bonus, leave encashment and gratuity. When the case of Respondent-Sudhir Chopdekar is compared with Smt. Naik the following position emerges:

Earnings	Shri Sudhir Chopdekar	Smt. Jayshree Naik
Bonus	Rs. 20,077/-	Rs. 22,021/-
Leave Encashment	Rs. 12,909/-	Rs. 15,655/-
Gratuity	Rs.2,65,701/-	Rs.4,09,737/-
Additional benefit	Rs. 97,854/-	Rs.8,56,704/-

20 It appears that Smt. Jayshree Naik was initially appointed on 1 May 1989 and has rendered more services than Shri Chopdekar, who joined on 4 July 1997. Furthermore she also drew higher gross emoluments of Rs. 66,850/- as compared to Shri Chopdekar’s gross emoluments of Rs.62,766/-. I do not find any discrimination in grant of higher benefit to Smt. Naik on account of extra eight years of service put in by her. However, since Ms. Tavanandi has shown willingness to pay extra amount towards additional benefit to the Respondents, Shri Chopdekar is now offered additional amount of Rs. 4,50,000/- who has already been paid additional benefit of Rs.97,854/-. Thus the total amount offered towards additional benefit to Shri Chopdekar would be Rs. 5,47,854/- and considering lesser pay drawn by him coupled with lesser years of service rendered by him, in my

view, the generous offer made by Ms. Tavanandi despite failure to demonstrate any right to receive any additional amount by the Respondents, would put the Complainants/Respondents almost on par with the other employees who had crossed the age of 50 years. Therefore, though the order passed by the Industrial Court does not appeal to this Court, since Petitioner-employer has voluntarily offered to pay additional amounts to Complainants/Respondents, in my view, it would be in the interest of justice to put an end to the entire litigation by directing Petitioner-employer to pay the additional amounts offered by them to Respondents over and above the amounts already paid to them.

21 Considering the nature of order that is proposed to be passed, I do not think it necessary to deal with various other issues such as status of Shri Chopdekar and Shri Tatkare as workmen. Similarly, it is not necessary to deal with various judgments cited by Ms. Tavanandi.

22 Writ Petitions accordingly partly succeed and I proceed to pass the following order:

ORDER

i) Judgments and orders dated 16 January 2024 passed by Member, Industrial Court, Thane, shall stand modified to the extent that Petitioner-employer shall pay to the Respondents/workmen the following additional amounts over and above the amounts already paid to them:

Sr.Nos.	Name of the Employee	Amount
1	Shri Santosh Tatkare	Rs.5,00,000/-
2	Shri Sudhir Chopdekar	Rs.4,50,000/-
3	Smt. Yogita Vanmali	Rs.3,00,000/-
4	Smt. Shakuntala Boir	Rs.3,00,000/-
5	Shri Nandlal Verma	Rs.4,50,000/-

ii) The Petitioner-employer shall pay the above amounts to Respondents within a period of four weeks from today.

iii) Upon payment of the above amounts, Respondents shall not be entitled any further amount towards service or retiral benefits.

23 With the above directions, the Writ Petitions are partly allowed and **disposed of**. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

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Date: 2024.08.27 15:11:44 +0530