

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 964 OF 2024**

Arya Ship Breaking Corporation & Anr.

.. Petitioners

Versus

Sumer Ramnarayan Yadav & Anr.

.. Respondents

...

Ms. Simantini Mohite a/w Mr. Nirav Shroff, for Petitioners.

Ms. Tanvi Tapkire for Respondent No. 1.

Ms. Sheetal Malvankar AGP a/w Ms. Nazia Shaikh, AGP for State,
Respondent No.2.

...

CORAM	: SANDEEP V. MARNE J.
RESERVED ON	: 27 MARCH 2024.
PRONOUNCED ON	: 1 APRIL 2024.

JUDGMENT

1) By this Petition, Petitioner challenges Award dated 3 August 2022 passed by Tenth Labour Court, Mumbai in Reference (IDA) No. 144 of 2016. By the Impugned Award, the Labour Court has answered the Reference partly in affirmative and has held that the Respondent workmen is entitled to 50% back wages for the period from 8 December 2012 to 31 March 2018 and accordingly has issued direction to the Petitioner for payment of back wages.

2) Petitioner is a partnership firm engaged in the business of ship breaking. Respondent No.1 was employed with Petitioner No.1 as driver and claims to have rendered service of 11 years. It is the case of Respondent No.1 that he was not permitted to resume his duties after 8 February 2012, when he raised a demand for increment in salary, bonus, provident fund etc. He sent notice through Advocate on 1 April 2012 followed by another notice on 24 April 2012. After both the notices remained non-responsive, he approached Deputy Commissioner of Labour (Conciliation) by letter dated 20 June 2012 and raised a demand for reinstatement on original post with back wages with effect from 8 February 2012. The conciliation proceedings resulted in failure and a Reference was made by the Appropriate Government to Labour Court on 7 June 2016. Respondent No. 1 filed Statement of Claim on 29 October 2018. Petitioner filed Written Statement resisting the claim. Respondent No.1 examined himself as witness. He admitted in his cross examination that, he was employed since 1 April 2018 on salary of Rs.19,500/- per month and that he was not seeking the relief of reinstatement. He further admitted that between 2012 and 2014, he worked as Badli worker. After considering the evidence on record, Labour Court delivered Award dated 3 August 2022, holding that the services of Respondent No. 1 were illegally terminated on 8 February 2012. However instead of directing reinstatement, the Labour Court awarded 50% back wages to Respondent No.1 for the period from 8 December 2012 to 31 March 2018. Aggrieved by the award of the Labour Court, Petitioners have filed the present Petition.

3) Ms. Mohite, the learned counsel appearing for Petitioners would submit that the Labour Court has erred in awarding back wages to first Respondent despite clear admissions given by him. That he was employed as Badli worker during 2012 to 2018. She would submit that Respondent No.1

approached Labour Court with a false case that he was unemployed and later admitted in the cross examination that he had secured regular job from 1 April 2018 and that between 2012 to 2018 also, he worked as Badli employee. That the Labour Court ought to have rejected the Reference on account of conduct of Respondent No.1 in raising a false plea. In any case, according to Ms. Mohite, there is no question of award of any back wages in the light of specific admission that Respondent No.1 was gainfully employed. Ms. Mohite would further submit that though the services of Respondent No.1 were allegedly terminated on 8 December 2012, he filed statement of claim belatedly on 29 October 2018 and that in such circumstances, the employee cannot be saddled with liability to pay any backwages to him. She would pray for setting aside the Award of the Labour Court

4) *Pet contra*, Ms. Tapkire the learned counsel appearing for Respondent No.1 would oppose the Petition and support the Award passed by the Labour Court. She would submit that once the termination is found to be unlawful, and order for back wages is a natural consequence. That Respondent No. 1 had rendered 11 long years of service with Petitioners and he was unceremoniously thrown out of service without following the due procedure of law. That Respondent No.1 was not gainful employed during 2012 to 2018. That mere part time engagement as Badli worker does not mean continuous gainful employment. That therefore, the Labour Court has rightly awarded 50% back wages. She would pray for dismissal of the Petition.

5) I have considered the submissions canvassed by the learned counsel appearing for rival parties. In her usual fairness, Ms. Mohite has not questioned correctness of findings recorded by the Labour Court about termination of Respondent No.1 being unlawful. Her main thrust is on the

direction of the Labour Court for payment of 50% back wages during the period from 8 December 2012 to 31 March 2018. Direction for payment of 50% back wages during that period is challenged on account of admissions given by Respondent No.1. During the course of his cross examination, he has admitted that he worked during 2012 to 2018 as Badli worker. In this connection the cross examination of Respondent No.1 is as under:

Cross-examination by adv. A.S. Singh for first party.

14. *At present I am working at Pensol Industry at Worli since 01/04/2018. At present my salary is Rs. 19,500/per month. Prior to joining pensol industry I was working as Badli employee. When I was working as badli employee I was getting wages around Rs. 11,000/ to 12,000/ per month. After two years of my alleged termination I started work as badli employee. During my service period with first party I was getting salary from M.P. Recycling company and Goyal Traders. It is true to say that I have not issued any demand letter to M.P. Recycling company and Goyal Traders. It is true to say that I have not filed any litigation against M.P. Recycling company and Goyal Traders.*

(On oral request of advocate for first party further cross examination deferred till next date).

Further Cross-examination by Adv. A.S.Singh for First Party :

15. *Since February 2012 till 2014 I had worked as a Badli Kamgar. During that period I worked with Venus Society and Urvashi Society, Nepean Sea Road..(W.V that the said work as a Badli Employee was for around 2 to 3 months) During the above referred period I tried for alternate employment at some places but I could not state their names. I do not have any written application in respect of my attempts for alternate employment. During above referred period I bore my expenses by obtaining hand loan and I have not filed any document - regarding obtaining of amount as hand loan. In the above referred period my family expenses were monthly Rs.7000/-. It is true to say that I do not require reinstatement with first party company as at present I am working with another establishment. It is not true to say that I have filed false affidavit and today deposing false.*

Cross examination complete.

No re-examination."

6) Thus in the cross examination Respondent No.1 admitted that, he was regularly employed since 1 April 2018 on salary of Rs.19,500/-, which was higher than the wages earned by him with Petitioners. He admitted that he was not seeking reinstatement on account of alternate job secured by him. However, he firstly admitted that after two years of his termination, he started working as Badli employee. Later, he gave further admission that even during 2012 to 2014, he worked as Badli Kamgar with a

Venus Society and Urvashi Society. He however clarified that his Badli employment was for 2 to 3 months. Thus there are clear admissions given by the first Respondent about his temporary engagements during 2012 to 2018.

7) The only issue is whether the directions issued by the Labour Court for payment of 50% back wages during the time when he was employed as Badli worker can be upheld in the light of above admissions of some form of gainful employment. Since there are specific admissions by the first Respondent about his *Badli* engagement, in ordinary circumstances, the Labour Court ought to have denied backwages to him. However, at the same time the retrenchment of first Respondent is found to be illegal. He had rendered 11 years of service. He was neither paid retrenchment compensation nor notice pay. Gratuity also denied to him. It therefore cannot be stated that the first Respondent is not entitled to any payment from Petitioners.

8) Considering the peculiar facts and circumstances of the present case, in my view award of lump sum compensation instead of paying any fixed percentage of backwages would meet the end of justice. Ms. Tapkire has submitted that the amount of 50% back wages during 8 December 2012 to 31 March 2018 is to the tune of Rs.4,38,000/-. Considering the fact that, Respondent No.1 did work intermittently during the relevant period, coupled with the fact that he was not paid any retrenchment compensation, in my view, payment of the lump sum compensation of Rs.2,00,000/- would provide adequate solace to the first Respondent. Respondent No. 1 is no longer interested in working with Petitioners and he has secured a better job since 2018. In these circumstances, it would be appropriate that he is awarded a lumpsum compensation instead of paying 50% backwages.

9) I accordingly proceed the following Order:

ORDER

- i) The Award dated 3 August 2022 passed by the Tenth Labour Court, Mumbai in Reference (IDA) No.144 of 2016 shall stand modified to the extent that Petitioners shall pay to the Respondent No. 1, lumpsum compensation of Rs.2,00,000/- within a period of six weeks.
 - ii) Beyond the compensation so awarded, Respondent No.1 shall not be entitled to any further amounts from the Petitioners.
- 10) With the above directions Writ Petition is partly allowed and disposed of.

[SANDEEP V. MARNE J.]