

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 533 OF 2018  
WITH  
CHAMBER ORDER (CHOL) NO. 883 OF 2019  
WITH  
CHAMBER SUMMONS (CHSW) NO. 226 OF 2018  
IN  
WRIT PETITION NO. 533 OF 2018**

B. R. Films, being a partnership firm  
incorporated under the provisions of  
the Partnership Act, 1932 and having  
its office address at "ANAND VILLA"  
Plot No. G-38, 15th Road, Santacruz (W)  
Mumbai 400 054.

.. Petitioner

**Versus**

Rukmini K. Iyer, Indian Inhabitant,  
residing at Devki Apartment No.2  
Ground Floor Manpada Road  
Dombivali (East) 421 201

.. Respondent

**WITH  
WRIT PETITION (L) NO. 16697 OF 2021**

Rukmini K. Iyer  
Aged 60 Years, Ocu. : Nil  
R/o. Devki Apartment No.2, Ground Floor,  
Manpada Road, Dombivali (East) - 421 201

.. Petitioner

**Versus**

B. R. Films,  
a partnership firm having its office address at  
"ANAND VILLA", Plot No. G-38, 15th Road,  
Santacruz (W) Mumbai 400 054.

.. Respondent

...

**Mr. Rajesh Bhosle**, for the Petitioner in WP/533/2018 & for Respondent in WPL/16697/2021.

**Mr. Niranjan P. Shimpi** for the Petitioner in WPL/16697/2021 & for the Respondent in WP/533/2018.

...

|                      |                              |
|----------------------|------------------------------|
| <b>CORAM</b>         | <b>: SANDEEP V. MARNE J.</b> |
| <b>RESERVED ON</b>   | <b>: 29 FEBRUARY 2024.</b>   |
| <b>PRONOUNCED ON</b> | <b>: 13 MARCH 2024.</b>      |

**JUDGMENT:-**

1) These are cross Petitions filed by the employer and the employee challenging Award dated 28 February 2017 passed by the Labour Court, Mumbai in Reference (IDA) No. 284 of 2007. The employer is aggrieved by the directions of the Labour Court to reinstate the employee with continuity in service and 50% backwages. The employee, on the other hand, is aggrieved by the Award to the limited extent of denial of 50% backwages. Since these are cross Petitions, for ease of reference, the employer 'B. R. Films' is referred to as 'the Petitioner' and the employee 'Rukmini K. Iyer' is referred to as 'the Respondent'.

2) Briefly stated, facts of the case are that Petitioner 'B.R. Films' is a leading film production house and a partnership firm registered under the provisions of the Indian Partnership Act, 1932. It is engaged in the business *interalia* of production of cinematic films and telefilms etc. Respondent joined service of Petitioner's company in the year 1991 on the post of Computer Data Entry Operator in the Computer section of the accounts department. It is Petitioner's case that the Respondent was in the habit of reporting late for work and was leaving office early. On few occasions, she was not turning up for work at all. That in May 2002 Petitioner deducted salary for 11 days due to she reporting late for work as well as for remaining absent. She responded by letter dated 26 June 2002 attempting to justify her lapses and requested for sympathetic view. That during January 2004 to November 2004, she remained absent for cumulative 133 days and in the month of November 2004, her absence was for 23 days. Respondent was therefore called upon to show cause as to why disciplinary action should not be initiated against her vide letter dated 8 December 2004. She submitted reply dated 6 January 2005. The Petitioner addressed letter dated 11 January 2005 giving a last chance to Respondent by taking a sympathetic view of the matter. That however Respondent failed to improve and therefore another show cause notice was issued to her on 11 February 2005 for reporting late for duties. She replied the show cause notice on 23 February 2005 leveling various allegations. However, she gave assurance to improve her attendance and punctuality. Petitioner once again took a lenient view and issued mere warning to the Respondent. However, her poor attendance continued during months of March 2005 and April 2005 when she remained absent continuously for 12 days in April 2005. That she addressed letter dated 25 April 2005 giving random excuses for her absence. The Petitioner finally terminated the services of Respondent by letter dated 17 May 2005. According to the Petitioner, Respondent was paid

one month's salary in lieu of notice pay and was also paid legal dues of Rs.45,375/- towards full and final settlement. It is Petitioner's case that Respondent did not protest about her termination, accepted the legal dues and in fact requested for experience certificate for securing another job by her letter dated 7 July 2006.

3) Respondent thereafter raised an industrial dispute. The matter was taken before the Conciliation Officer and upon submission of failure report, a Reference was made to Labour Court Mumbai, which was registered Reference (IDA) No. 284 of 2007. Respondent filed his Statement of Claim and prayed for withdrawal of termination Order and for reinstatement with full backwages and continuity. The reference was opposed by Petitioner by filing Written Statement. Both the parties filed various documents. Petitioner led evidence of Mr. Bhalchandra Pandarinath Patil, Accountant/Cashier. Respondent examined herself as a witness. Labour Court passed Award dated 28 February 2017 and answered the Reference partly in the affirmative by directing reinstatement of Respondent with continuity and 50% backwages. Petitioner has filed a present Petition challenging the Award dated 28 February 2017.

4) Respondent appeared in Writ Petition No. 533 of 2018. Petition was admitted by Order dated 26 June 2018 subject to Petitioner depositing the entire amount of 50% backwages as ordered by the Labour Court. Respondent was also granted leave and liberty to apply for relief under Section 17-B of the Industrial Disputes Act. Respondent filed Notice of Motion No. 405 of 2019 seeking payment of wages under Section 17-B of Industrial Disputes Act. It appears that the Petitioner failed to deposit the amount of 50% backwages as directed to this Court vide Order dated 26 June 2018. This Court directed by Order dated 3 January 2022 that an

amount of Rs.4,50,000/- towards backwages must be deposited in the Court. It appears that Respondent attained the age of superannuation on 3 February 2019. Notice of Motion No. 405 of 2019 filed by Respondent for payment of wages under Section 17-B of Industrial Dispute Act came to be decided by Order dated 31 January 2022 holding that she was entitled to last drawn wages from 6 September 2018 to 3 February 2019. Respondent was granted liberty to withdraw the amount of Rs. 4,50,000/- subject to filing an undertaking to refund the said amount in the event of Petitioner succeeding in the Petition. It appears that the Respondent has accordingly withdrawn the deposit amount of Rs. 4,50,000/- from this Court after filing an affidavit as directed by this Court.

5) During pendency of Writ Petition No. 533 of 2018, Respondent filed Writ Petition (L) No. 16697 of 2021 on 02 July 2021 to the limited extent of denial of 50% backwages in the Award dated 28 February 2017. Both the Petitions are taken up for hearing together as they arise out of the same Award passed by the Labour Court.

6) Mr. Bhosale, the learned counsel appearing for the Petitioner would submit that the Labour Court as erred in the holding that the Model Standing Orders under the Industrial Employment (Standing Orders) Act 1946 (**the Act of 1946**) is applicable to the establishment of the Petitioner. Relying upon Section 1 of the Act of 1946, he would submit that the Act applies only to Industrial establishment where 100 or more workmen are employed. He would also rely upon provisions of the Payment of Wages Act 1936 and the Factories Act 1948 to demonstrate that Petitioner is not an Industrial establishment and that therefore the provisions of Model Standing Orders are inapplicable in the present case.

7) Mr. Bhosale would submit that Petitioner has strictly followed provisions of Section 25-F (a) of the Industrial Disputes Act (**the Act**) by paying one month's salary in lieu of notice under Section 25-F (a) and by paying retrenchment compensation as per Section 25-F (b) of the Act. That the said amounts are accepted by Respondent without any demur. That she applied for experience certificate from Petitioner and approached the Labour Court after receiving Service Certificate for securing alternate employment. That the Respondent has been terminated for unauthorized absence and provisions of Section 25-G or 25-H or 25-N are not applicable in the present case. He would submit that Respondent was repeatedly reporting late as well as remaining unauthorisedly absent and therefore her services have rightly been terminated. That during the period from January to November 2014, she remained absent for 133 days. That she admitted the absence but gave false and vague justifications. That the medical certificate relied upon by her merely shows presence of urine stone, which could not be reason for prolonged absence. He would pray for setting aside the Award of the Labour Court.

8) Mr. Shimpi, the learned counsel appearing on behalf of the Respondent-employee would oppose the Writ Petition No. 533 of 2018. He would submit that Respondent was unlawfully terminated from service without conducting any enquiry. That the termination is founded on misconduct and therefore conduct of enquiry was imminent. That Respondent's termination is clearly in violation of the provisions of Industrial Disputes Act. That Petitioner was paid neither salary in lieu of notice nor retrenchment compensation as provided for under Section 25-F of the Industrial Disputes Act. That the Labour Court has rightly appreciated the illegality in the termination Order and directed her reinstatement in service.

9) So far as Writ Petition (L) No. 16697 of 2021 is concerned, Mr. Shimpi would submit that the Labour Court has erred in denying 50% backwages to Respondent. That once the termination is held to be unlawful, order of payment of full backwages must follow. As termination is found to be totally unlawful and as Respondent is deprived of her livelihood, an order for payment of 100% backwages ought to have been passed by Labour Court. Inviting my attention to paragraph 48 of the Labour Court's Award, Mr. Shimpi would submit that no cogent reasons are recorded for a denial of 100% backwages. That the Labour Court has erroneously held Respondent responsible for delay in approaching the authorities without appreciating the position of Petitioner deliberately delaying the conciliation proceedings. He would therefore pray for Award of 100% backwages.

10) Mr. Bhosale would oppose Writ Petition (L) No. 16697 of 2021 on the ground of delay and laches. He would submit that the Petition is filed after delay of four long years and that the same deserves to be dismissed on that ground alone. He would further submit that Respondent raised industrial disputes after lapse of considerable period of time and was also not vigilant in prosecuting the Reference before Labour Court. That she delayed its decision. That therefore the Labour Court has rightly denied 100% backwages to her. He would pray for dismissal for Writ Petition (L) No. 16697 of 2021.

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

12) Respondent has been terminated from service on misconduct of unauthorized absence. Various correspondence prior to the termination letter dated 17 May 2005 undoubtedly shows that Respondent was irregular

in her attendance and was also reporting late for duties since May 2002. Initially she used to report late for duties, however from the October 2004 onwards she started remaining absent frequently. Letter dated 8 December 2004 issued by Petitioner shows that she remained absent for 133 days during January to November 2004 and in the month of February 2004 alone, she was absent for 27 days and in November 2004 she was absent for 23 days. If Respondent's response dated 6 January 2005 is perused, the same shows absence of any justified reasons for remaining absent consistently throughout the year during 2004. Except her sister's sickness with cancer and her death in February 2004, there is no justifiable reason for absence after March 2004 onwards. The reasons given by her to justify absence were sickness, attendance of family Court and travel for pilgrimage etc. The saga of her absence continued in 2005 as well. Immediately preceding her termination, she was absent for as many as 12 days in April 2005. This is the background in which services of Respondent were terminated by Petitioner.

13) Admittedly the termination is founded on misconduct of unauthorised absence. Though there was sufficient material to prove the charge of unauthorised absence, Petitioner did not conduct domestic enquiry to prove the charge. It straightway proceeded to terminate her services. The issue that arose before the Labour Court was whether the services could be terminated without conducting enquiry. Respondent pleaded before the Labour Court that Model Standing Orders were applicable to Petitioner-establishment, under which termination could not be resorted to without holding an enquiry. The Labour Court held that Petitioner is an Industry and Respondent a 'workman'. The next issue considered by the Labour Court was about the applicability of the provisions of the Industrial Employment (Standing Orders) Act 1946. It appears that

Petitioner took defence before Labour Court that it is governed by the Maharashtra Shops and Establishments Act and that therefore provisions of Act of 1946 are not applicable to it. The said contention is repelled by the Labour Court on account of failure on the part of the Petitioner to prove its registration under the Maharashtra Shops and Establishments Act. Though Mr. Bhosale has relied upon Section 1 of the Act of 1946 in support of his contention that employment of atleast 100 workmen is necessary for application of the Act to an establishment, the Labour Court has apparently considered the said requirement as 50 workmen. This is how the Labour Court has held that the Model Standing Orders would apply to the establishment of Petitioner. I do not see any error in the said finding recorded by the Labour Court.

14) Once applicability of Model Standing Orders under the Act of 1946 was established, termination without enquiry is automatically rendered unlawful. This is not a case of retrenchment for non-availability of work. Since termination is founded on misconduct, conduct of domestic enquiry was pre-condition before resorting to termination of services of Respondent. I therefore do not see any patent error on the part of the Labour Court in holding Respondent's termination as bad in law.

15) The next issue is about the nature of relief that could be granted to Respondent for admittedly remaining absent from time to time. Though misconduct alleged against Respondent was required to be proved by conduct of enquiry, the misconduct alleged against Respondent was of such nature that the same is virtually admitted. There is no dispute amongst parties as to whether Respondent attended office on days when absence is alleged. The only issue is about justification for such absence. The period of absence was long, continuous as well as frequent and the employer was not

supposed to be a mute spectator to Respondent's conduct of remaining absent frequently.

16) Respondent attained the age of superannuation on 3 February 2019. She was terminated on 17 May 2005. Thus, the period during which she is prevented from working with Petitioner is from 17 May 2005 to 3 February 2019.

17) It has come on record that Petitioner accepted the amount paid to her without any demur. Far from raising any grievance about termination of her services and/or amount paid her, she in fact requested the employee to issue her experience certificate for securing an alternate job. She raised dispute with regard to her termination two years later. Reference made at her behest remained pending before the Labour Court for 10 long years. In my view therefore, Respondent was actually not entitled to the relief of backwages merely because Petitioner failed to conduct enquiry to prove the charge of absence, which could have easily established by it. It is also required to be noted that Respondent obtained experience certificate from Petitioner for securing alternate job. Nonetheless, Labour Court thought it appropriate to award 50% backwages to the Respondent. Petitioner has already deposited, and Respondent has withdrawn the amount of backwages upto 6 September 2018 i.e. in respect of period from 6 September 2018 to 3 February 2019. Mr. Bhosale has submitted that, further amount of approximately Rs. 30,346/- is deposited and withdrawn by Respondent. This is how Respondent has received amount of Rs.4,86,346/- towards backwages. Additionally she was paid amount of Rs.5,149/- towards notice wages as well as Rs.45,375/- towards her dues at the time of terminating her services. This is how the total amounts received by Respondent from Petitioner are approximately to the tune of

Rs.5,36,870/-. In my view, payment of the said amount of Rs.5,36,870/- can be treated as lumpsum compensation in lieu of reinstatement and backwages, which would provide adequate relief to Respondent for commission of technical violation by Petitioner in not conducting enquiry as per the Model Standing Orders.

18) I am therefore of the view that Petitioner needs to be awarded a lump-sum compensation in lieu of reinstatement and backwages for technical violation committed by Petitioner in not conducting enquiry to prove the charge of absence. Since lump-sum compensation is being awarded to the Petitioner, Writ Petition (L) No. 16697 of 2021 filed by Respondent for payment of 100% backwages deserves to be dismissed.

19) I accordingly proceed to pass following Order:

### **ORDER**

i) Award dated 28 February 2017 passed by Presiding Officer Labour Court in Mumbai in Reference (IDA) No. 284 of 2007 is modified to the extent that Respondent shall be entitled to lump-sum compensation of 5,36,870/- in lieu of reinstatement and backwages.

ii) The amount of Rs. 5,36,870/- is already paid to Respondent and therefore Petitioner shall be not liable to pay any further amount to the Respondent towards compensation and in view of compensation so awarded, Respondent shall not be entitled to demand any further amount from the Petitioner.

20) Writ Petition No. 533 of 2018 is partly allowed to the above extent and Writ Petition (L) No. 16697 of 2021 is dismissed. Rule is made partly absolute in Writ Petition No. 533 of 2018 and Rule is discharged in Writ Petition (L) No. 16697 of 2021. There shall be no order as to costs.

21) In view of Writ Petition No. 533 of 2018 is allowed, Chamber Order (Chol) No. 883 of 2019 and Chamber Summons (Chsw) No. 226 of 2018 do not survive and the same are also disposed of.

**[SANDEEP V. MARNE J.]**