

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10454 OF 2024

M/s J Fibre Corporation ... Petitioner
V/s.
Shri Maruti Harishchandra Amrute and ors. ... Respondents

Mr. Shailesh K. More, *Advocate for the Petitioner.*

Mr. R. S. Pawar, *Advocate for the State.*

Mr. Maruti H. Amrute, *Advocate for Respondent No.1 in-person is present.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 27th FEBRUARY 2025

PRONOUNCED ON : 05th MARCH 2025

JUDGMENT:

1. The Petition is filed by the employer challenging the Award dated 2nd November, 2022 passed by the Presiding Officer, 3rd Labour Court, Thane, in Reference (IDA) No.246 of 2018. The Labour Court has directed Petitioner to reinstate the Respondent No.1-workman with full backwages and continuity of service with effect from 17th May 2018.

2. Petitioner is a partnership firm and engaged in manufacturing of non-woven fabric, nylon, monofilament yarn and drinking straw. Respondent No.1 was employed as Shift Supervisor with the Petitioner since 1st April 2011. According to Petitioner, the nature of duties of the Respondent No.1

were to supervise production, marking of attendance of workmen, writing of Supervisor report in daily record book etc. That he was drawing gross salary of Rs.12,650/- and therefore, not a 'workman' within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. It is Petitioner's case that due to prevailing market conditions resulting in lesser demand, Petitioner decided to operate only one out of two manufacturing machines and informed the Respondent No.1-workman on 17th May 2018 that one shift supervisor shall look after 2nd and 3rd shifts, whereas the 1st shift production would be supervised by the production executive herself. The services of the Respondent No.1 were not required on account of cost cutting and being a junior most as compared to other two supervisors, the Petitioner-Management decided to terminate the services of Respondent No.1 vide letter dated 17th May 2018. Respondent No.1 refused to acknowledge the termination letter and the enclosed cheque towards one month notice period. On 19th May 2018, Respondent No.1-workman accepted the termination letter but returned the cheque of notice pay. Respondent No.1 sent demand letter for his reinstatement and sought intervention of the Conciliation Officer. The Conciliation Officer made a failure report. The Petitioner decided to make payment of Rs. 53,428/- towards retrenchment compensation together with 10% interest and credited the said amount in the account of the Respondent No.1. Additionally, Petitioner paid amount of Rs.68,817/- towards gratuity and notice pay in the account of the Respondent No.1.

3. The Deputy Commissioner of Labour, Thane referred the dispute relating to termination, which was registered as Reference (IDA) No.246 of 2018. Respondent No.1 filed Statement of Claim, which was resisted by the

Petitioner by filing written statement. Parties led evidence in support of the respective claims. The Labour Court declared award dated 2nd November 2022 directing reinstatement of the Respondent No.1 with effect from 17th May, 2018 with full backwages and continuity of service. It appears that Petitioner did not immediately challenge the award dated 2nd November, 2022 and attempted to settle the matter with the Respondent No.1. In the meantime, Tahasildar attempted to recover amount of Rs.7,23,450/- from the Petitioner towards the execution of the Award.

4. In the above background, Petitioner has filed the present Petition challenging the award dated 2nd November 2022. This Court issued notice to Respondent No.1 by order dated 7th August 2024 and stayed execution of the Award subject to the condition of Petitioner depositing 50% wages for the period from 17th May 2018 to 24th June, 2021. Accordingly, the Petitioner has deposited amount of Rs.2,35,828/- towards 50% backwages for the period from 17th May, 2018 to 24th June, 2021.

5. I have heard Mr. More, the learned counsel appearing for Petitioner and Respondent No.1, who has appeared in person. I have also gone through the findings recorded by the Labour Court in its Award dated 2nd November 2022 as well as the relevant records of the case filed alongwith the petition.

6. The Labour Court has directed reinstatement of Respondent No.1 and according to the Petitioner, Respondent No.1 has already crossed the age of retirement and therefore, there is no question of his reinstatement. It appears that before the Labour Court, PAN Card of Respondent No.1 was

produced reflecting his date of birth as 24th June 1961. However, the Labour Court held that the first party had reported before the Court that ‘the second party has already gone beyond the age of 58 years at the time of filing evidence affidavit as his date of birth is 24th June 1961. Though it is so, there being no clear evidence as to superannuation age the order in respect of reinstatement has to follow the above findings’. The Labour Court, in my view, has grossly erred in directing reinstatement of Respondent No.1. Even if the age of retirement is assumed as 60 years, Respondent No.1 has attained the age of 60 years on 24th June 2021. In that view of the matter, the Labour Court could not have directed reinstatement in Award passed on 2nd November 2022. The direction for reinstatement of Respondent No.1 is thus clearly erroneous.

7. As a matter of fact, it is the case of Petitioner-employer that the age of retirement is actually 58 years, and that Respondent No.1 would have otherwise retired on 24th June, 2019. However, no evidence was led about age of retirement being 58 years. In fact, the memo of the petition begins with an assertion that Respondent No.1 reached the age of superannuation on 24th June, 2021. Since the Petitioner has admitted in petition that the date of retirement of Respondent No.1 is 24th June, 2021 it is not necessary to go into dispute about the exact age of superannuation.

8. Having held that Respondent No.1 crossed the age of retirement on 24th June, 2021, he cannot be reinstated and the only issue that arises is in respect of his monetary entitlements during the period from 17th May, 2018, when he was terminated till 24th June, 2021.

9. Mr. More has strenuously submitted before me that the due procedure was followed while retrenching the services of the Respondent No.1-workman. It is seen that retrenchment compensation was not offered at the time of issuance of termination letter dated 17th May 2018. The same was directly credited in the bank account of the Respondent No.1 in November 2018 i.e. after six months from the date of termination. Petitioner-Management did not produce seniority list before the Labour Court to demonstrate that the Respondent No.1 was a junior most Supervisor for being selected for retrenchment due to lesser production work. Therefore, I do not find any serious flaw in the findings recorded by the Labour Court holding the termination to be illegal.

10. So far as the issue of status of Respondent No.1 as 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act is concerned, Labour Court has conducted factual inquiry into the duties and responsibilities performed by the Respondent No.1. It is held that predominant work of the Respondent No.1 was of technical nature. It is further held that entries made in the reports written by the Respondent No.1 could at best be treated as clerical work and not supervisory work. The finding of fact about status of the Respondent No.1 is well supported by the evidence on record and I am not inclined to interfere in the same.

11. The termination of Respondent No.1 is thus found to be erroneous and he could not be reinstated in service on account of crossing the age of retirement on 24th June, 2021. The Petitioner-Management led evidence before the Labour Court that the sales of the company had gone down drastically and that it was forced to terminate the services of the

Respondent No.1 on account of non-availability of sufficient work. If the prescribed procedure was to be followed while effecting retrenchment, the Labour Court would not have interfered in the same. The reference has been answered in the affirmative on account of failure on the part of the Petitioner to follow due procedure of law while effecting retrenchment of the Respondent No.1. Otherwise the Labour Court has not found any flaw in the case put forth by Petitioner about loss of production work. In my view, payment of lumpsum compensation instead of backwages would meet ends of justice in the facts and circumstances of the present case.

12. The next issue would be about the exact amount that can be awarded to the Respondent No.1-workman towards lumpsum compensation. There is no dispute to the position that the Petitioner has deposited in the account of Respondent No.1 the following amounts :-

Sr.No.	Particulars	Amount in Rs.
1.	Retrenchment compensation	53,428/-
2.	Salary for 7 days on May, 2018	5,931/-
3.	Leave Salary from January, 2017 to May, 2018	13,890/-
4.	Notice pay	12,650/-
5.	Gratuity	36,346/-
	Total	1,22,245/-

13. As observed above, this Court has directed Petitioner to deposit 50% backwages from the date of termination (17th May, 2018) till date of attaining his superannuation (24th June, 2021). Accordingly, Petitioner has deposited amount of Rs.2,35,828/- in this Court. In my view, the said deposited amount of Rs.2,35,828/- plus amount already credited in the

account of Respondent No.1 of Rs.1,22,245/-, total amount of Rs. 3,58,073/- can be awarded as the lumpsum compensation for loss of job for the Respondent No.1 for about three years from 17th May, 2018 to 24th June, 2021.

14. Accordingly, I proceed to pass the following order:-

- (i) Award dated 2nd November 2022 passed by 3rd Labour Court, Thane is modified to the extent Respondent No.1 shall be entitled to lumpsum compensation of Rs.3,58,073/- in lieu of reinstatement and backwages.
- (ii) Beyond the amount of Rs. 3,58,073/-, Respondent No.1 shall not be entitled to any service related benefits from the Petitioner.
- (iii) Respondent No.1 is permitted to withdraw the entire amount deposited in this Court alongwith accrued interest.
- (iv) Since the order of the Labour Court is modified, the Tahasildar shall forthwith remove the seal/lock put on Petitioner's premises.

15. With the above directions, the Writ Petition is partly allowed and disposed of. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)