

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11861 OF 2024

Nahar Constructions Pvt. Ltd.

....Petitioner

V/S

Sanjay Pandurang Marathe

....Respondent

Mr. Filji Fredrick a/w Ms. Hzitika Shroff, Mr. Pranay Patil i/b
M/s. FF & Associates *for the Petitioners.*

Mr. Mayuresh Nagle *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 23 APRIL 2025.

P.C.:

1. The Petition challenges Award dated 30 April 2024 passed by the learned Presiding Officer, XI Labour Court, Mumbai, by which Reference (IDA) No.316 of 2016 has been answered partly in the affirmative. Termination of the Respondent with effect from 7 September 2015 is declared illegal and has been set aside. Th Labour Court has directed Petitioner to reinstate the Respondent in service with 80% of backwages from the date of termination till the date of reinstatement. The Labour Court has also directed payment of full salary from September 2014 to December 2014.

2. I have heard Mr. Fredrick, the learned counsel appearing for the Petitioner and Mr. Nagle, the learned counsel appearing

for the Respondent. I have gone through the impugned award passed by the Labour Court as well as the relevant documents filed alongwith the Petition.

3. It is the case of the Petitioner that services of the Respondent were never terminated and that he voluntarily left the services by addressing email dated 19 December 2014. On the other hand, it is the case of the Respondent that he was left with no other choice but to send email dated 19 December 2014 as the Petitioner did not pay him any salary from September 2014. That since Respondent was left in a penurious situation, he was forced to address letter dated 19 December 2014. Parties are thus at loggerheads as to whether there is termination or resignation. The Labour Court has refused to accept letter dated 19 December 2014 as a resignation letter and has arrived at finding that services of the Respondent are terminated by not paying him salary from September 2014. This is a reason why the Labour Court has directed payment of full salary from September 2014 to December 2014. While setting aside termination effected on 7 September 2015 the Labour Court has directed payment of 80% backwages calculated at the rate of Rs.25,000/- per month from January 2015 till the date of reinstatement.

4. According to Mr. Fredrick, there was a theft of stock in the custody of the Respondent on 30 September 2014 when

plumbing goods worth Rs.3,00,000/- were found to have been stolen and FIR was lodged on 2 October 2014. Mr. Fredrick would therefore contend that the Respondent was unable to reconcile the stock and therefore resigned from services on 19 December 2014 without issuing any prior notice and without reconciling the stock. On the other hand, it is the contention of Mr. Nagle that Respondent was infact the first informant in the FIR lodged on 2 October 2014. That Respondent was never treated as an accused nor any investigations were conducted against him. That therefore there was no question of Respondent resigning from services on account of lodging of FIR dated 2 October 2014.

5. Though the resignation is shown to have been tendered on 19 December 2014, there is apparently no response from the Petitioner showing that the resignation was accepted. If the entire letter dated 19 December 2014 is perused, the same reflects Respondent's complaint of non-payment of salary for three months and his inability to cope up with his daily expenses. Respondent expressed inability to report to duty on account of non-availability of funds to buy bus/train tickets. In these circumstances, the Labour Court has held that letter dated 19 December 2014 was not voluntary and what was expressed in that letter was mere inability to report to work on account of non-availability of funds due to non-payment of salary. Though no serious flaw can be traced in the approach adopted by the

Labour Court, at the same time the employer can also not be faulted for assuming the letter dated 19 December 2014 to be a resignation letter as the Respondent used the word 'resignation' therein. In the light of these unique facts and circumstances of the case, the issue that arises for consideration is the nature of relief to be granted in favour of Respondent.

6. Considering the above facts and circumstances of the case, in my view, it would be appropriate to award lumpsum compensation to the Respondent instead of directing reinstatement with 80% backwages. The Respondent has ceased to be in service from 7 September 2015 and by now period of almost 10 years has elapsed. The unsavory relationship between the parties during last 10 years of litigation would be another reason why reinstatement of the Respondent in service would not be in his own interest. The Respondent himself has expressed willingness not to work with the Petitioner and in that view, grant of reinstatement with backwages is otherwise not warranted. Considering the facts and circumstances of the present case, in my view, award of lumpsum compensation of Rs.5,00,000/- to the Respondent would meet the ends of justice.

7. The Petition succeeds partly and I proceed to pass the following order:

i) The impugned award dated 30 April 2024 passed by the Labour Court in Reference (IDA) No.316 of 2016 is modified by

directing that Petitioner shall pay to the Respondent lumpsum compensation of Rs.5,00,000/- in lieu of reinstatement and backwages.

ii) Beyond the lumpsum compensation of Rs.5,00,000/- Respondent shall not be entitled to any other service related benefits from the Petitioner.

iii) The amount of compensation shall be paid by the Petitioner to the Respondent within a period of four weeks.

8. With the above directions, the Petition is partly allowed and **disposed of**.

(SANDEEP V. MARNE, J.)

Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
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