

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

WRIT PETITION NO.13174 OF 2024

Air Plaza Retail Holdings Pvt. Ltd.

....Petitioner

V/S

Birsingh Deshraj Singh

....Respondent

Mr. Kapil Sankhla (through video conferencing) i/b Mr. Gopal Tripathi *for the Petitioner.*

Mr. Laukik Palekar a/w Mr. Sanath Warkar i/b Mr. Laukik Deshmukh *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 23 APRIL 2025.**

P.C.:

1. The Petition challenges Award dated 26 December 2022 passed by the Presiding Officer, Labour Court No.4, Pune, by which Reference (IDA) No.194 of 2019 has been answered in the affirmative and the Labour Court has directed reinstatement of the Respondent in service alongwith full backwages and consequential benefits. The Labour Court has also awarded costs of Rs.5,000/- to the Respondent.

2. I have heard Mr. Sankhla, the learned counsel appearing for the Petitioner and Mr. Palekar, the learned counsel appearing for the Respondent.

3. The Respondent came to be employed with M/s. Vishal Mega Mart on 1 September 2006 whose administration came to be taken over by the Petitioner. It is the case of the Petitioner that since no work was available, Respondent was called upon to tender his resignation and accordingly he tendered resignation which was accepted on 5 January 2015. It is Petitioner's case that services of the Respondent were never terminated. On the other hand, it is the case of Respondent that though he was asked to resign in January 2015, the Respondent never actually tendered any resignation but he was prevented from joining the duties from 19 January 2015. Respondent thus claims that his services were terminated in an indirect manner on 19 January 2015.

4. The date of birth of the Respondent is 4 December 1959 and he attained the age of 60 years on 4 December 2019. It is the case of the Petitioner that as on the date of passing of the impugned award dated 26 December 2022, the Respondent had already crossed the age of superannuation and that therefore there was no question of his reinstatement. On the other hand, it is the contention of the Respondent that M/s. Vishal Retail Limited had issued appointment letter to him on 23 September 2006 indicating the age of retirement as 65 years.

5. On the other hand, Petitioner relies on offer-cum-appointment letter dated 14 March 2011 under which

Respondent was shown to have been appointed with the Petitioner and his age of retirement was 60 years. While Petitioner disputes genuineness of appointment letter dated 23 September 2006 shown to have been issued by M/s. Vishal Retail Limited, Respondent disputes authenticity of appointment letter dated 14 March 2011 issued by the Petitioner.

6. Though Petitioner claims that resignation was tendered by the Respondent, it appears that Petitioner failed to file Written Statement though it had put in appearance before the Labour Court. Thus the Reference has been decided by the Labour Court in absence of any opposition on the part of either Petitioner or M/s. Vishal Mega Mart. It therefore becomes difficult to accept the theory of resignation by the Respondent as sought to be propounded by the Petitioner. Even with the present Petition, the alleged resignation letter of the Respondent has not been placed on record. In that view of the matter, I do not find any valid reason to interfere with the findings recorded by the Labour Court that the services of the Respondent were terminated without following provisions of Section 25F of the Industrial Disputes Act, 1947 (**ID Act**).

7. The next question for determination is the nature of relief that could be granted in favour of the Respondent. As observed above, Respondent crossed age of 60 years on 4 December 2019. It becomes difficult to accept that the Respondent could be

permitted to serve with the Petitioner till he attained the age of 65 years. There is also no documentary evidence on record to indicate that the Petitioner had fixed the age of superannuation of the Respondent as 65 years. In my view therefore, the Respondent could have served with the Petitioner till 4 December 2019. As a result of setting aside termination, Respondent would be entitled to draw wages from 19 January 2015 to 4 December 2019. As observed by the Labour Court, the last drawn wages of the Respondent was Rs.18,000/-. In my view therefore, appropriate relief to be granted in favour of the Respondent is to award lumpsum compensation of Rs.10,00,000/- in lieu of reinstatement and backwages.

8. The Petition accordingly succeeds partly and I proceeded to pass the following order:

- i) Award dated 26 December 2022 passed by the Labour Court in Reference (IDA) No.194 of 2019 is modified to the extent of Respondent is not entitled for reinstatement in service.
- ii) The Petitioner shall pay to the Respondent lumpsum compensation of Rs.10,00,000/- in lieu of reinstatement and backwages within a period of six weeks.
- iii) Over and above the amount of lumpsum compensation of Rs.10,00,000/- Respondent shall not be entitled to any service related benefits from the Petitioner.

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

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
Date: 2025.04.28
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Note: Correction carried out in paragraph 7 of the order in view of speaking to the minutes of order dated 28 April 2025.