

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1895 OF 2025

M/s. Kapil Electricals Corporation

Thr. Mrs. Dipti D. Shetye

...PETITIONER

V/S.

Balu Tatyaba Misle

....RESPONDENT

Mr. Yogendra M. Pendse, *a/w. Ms. Priyanka Patkar for the Petitioner.*

Mr. Mahesh Shukla *i/b. Mr. Niraj Prajapati a/w. Ms. Bhavika Rathod for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 5 March 2025.

ORAL ORDER :

1. Rule.
2. Rule is made returnable forthwith. With the consent of learned Counsel appearing for the parties, petition is taken up for final hearing and disposal.
3. The petition challenges Award dated 13th September 2024 passed by Presiding Officer, Second Labour Court, Thane

answering Reference (IDA) No.27 of 2019 partly by setting aside the termination order dated 4th June 2018 and directing reinstatement of the Respondent with 50% backwages and continuation of his services.

4. The Petitioner is proprietary concern and is engaged in the business of maintenance and repairing work of lifts on contract basis for various elevator companies. Respondent claims that he was in the employment of Petitioner since year 2010. However, his pay slips show that the date of his initial engagement was from 1st August 2011. Respondent was terminated vide letter dated 4th June 2018 for the following reasons :-

1. Failed to report office within 15 days of warning period.
2. Violating company's safety rules by not using proper PPE while working.
3. You have failed to meet the performance agreed upon.
4. Irresponsible and arrogant behaviour towards work, site engineers, clients and co-workers.
5. Backbiting co-workers and company.

5. At the instance of Respondent, Reference was registered with Labour Court, Thane as Reference (IDA) No.27 of 2019. Respondent has filed his statement of claim which was resisted by the Petitioner by filing Written Statement. Both sides led evidence in support their respective claims. Labour Court has proceeded to answer the Reference in the affirmative by setting aside the termination order dated 4th June 2018 and has directed Petitioner

to reinstate Respondent with 50% backwages and continuity of service.

6. I have heard Mr. Pendse, learned counsel appearing for Petitioner and Mr. Shukla, learned counsel appearing for Respondent. I have also gone through the findings recorded by the Labour Court in the impugned Award and relevant records filed with the petition.

7. It is the case of the Petitioner that engagement of Respondent was not continuous in nature and he used to intermittently work with the Petitioner and did not complete 240 days of service in any of the 12 calendar months. However, perusal of the termination order dated 4th August 2018 would indicate that the services are terminated not because the Respondent was pure temporary worker who was yet to complete 240 days of service. Termination was premised on allegation of misconduct. If Respondent was merely a temporary worker, his services could have been dispensed with without assigning any reason for termination. The fact that the Petitioner alleged specific misconduct for terminating services of Respondent in the letter dated 4th June 2018, without any whisper about non-completion of 240 days of service, it is difficult to believe that Respondent was temporary worker on 4th June 2018.

8. Admittedly, in the present case no procedure is followed while retrenching the services of Respondent. He was not paid

retrenchment compensation nor it is proved that he was a junior-most employee in the establishment. As a matter of fact, termination appears to be premised on allegation of misconduct. However, domestic enquiry was not conducted before resorting to termination of service of Respondent.

9. Mr. Pendse would submit that even though domestic enquiry was not conducted, the termination of Respondent's services could always be justified by leading evidence before the Labour Court and that Petitioner indeed justified its action by leading such evidence. It appears that the Petitioner examined two witnesses namely Mr. Dilip Shetye, Manager of Proprietor and Mr. Rohit Jagdale, another workman. The evidence of Mr. Rohit Jagdale is in respect of alleged incident where he was likely to suffer injuries on account of negligence on the part of Respondent while maintaining and repairing an elevator. However, the alleged negligence on the part of Respondent resulting in any threat to Mr. Rohit Jagdale was never cited as one of the reasons for terminating his services. In that view of the matter, evidence of Mr. Rohit Jagdale is irrelevant for justifying termination letter dated 4th June 2018. So far as the evidence of Dilip Shetye, Manager is concerned, he stated that Schindler Elevators Company Ltd. stopped providing work to the Petitioner since June 2018 on account of Respondent's conduct. However no such allegation is to be seen in the termination letter dated 4th June 2018. His statement in the affidavit of evidence about not following safety norms and not-

wearing PPE, etc. lacks any material details and any contemporaneous documentary evidence.

10. Considering the evidence on record, it is difficult to hold that the Petitioner - Employer was able to justify action of termination by leading evidence before Labour Court.

11. Labour Court has directed reinstatement of Respondent with 50% backwages and continuation in service. It is case of Petitioner that during the conciliation proceedings held in October 2018, Petitioner had offered to reinstate the Respondent on condition of tendering of an apology and that Respondent did not show any interest in rejoining the work. However, the offer for reinstatement was not unconditional and was subject to condition of tendering of apology. It therefore cannot be held that there was any unconditional offer for reinstatement on the part of Petitioner, which the Respondent failed to avail.

12. It is the case of the Petitioner that it has now virtually closed the establishment on account of non-availability of any work. While issuing letter dated 24th December 2024, Petitioner communicated to the Respondent that the Company does not have any contract and till award of any fresh contract, Respondent could attend residence of the Proprietor of the Petitioner from 9:00 a.m. to 6:00 p.m. Again the order dated 24th December 2024 cannot be treated as an offer for reinstatement and the same merely contemplated attending residence of Proprietor of the Petitioner

without even communicating the exact residential address. I am therefore not inclined to accept the contention of learned Counsel appearing on behalf of Petitioner that the Respondent was time and again offered work which he refused to accept.

13. Order of the Labour Court directs reinstatement with 50% backwages. Services of the Respondent were terminated on 4th June 2018 and by now, period of almost seven long years has elapsed. There is unsavoury relationship between Petitioner and Respondent and it is not in the interest of Respondent also to continue to work with the Petitioner. In my view therefore, grant of lump sum compensation to the Respondent in lieu of reinstatement and backwages would meet the ends of justice considering the peculiar facts and circumstances of the case.

14. According to Respondent his last drawn salary was Rs.15,400/- per month. However according to Mr. Pendse, salary slips of the Respondent would show that his last drawn wages were only Rs.8,000/- In absence of any consensus between the parties about exact wages that the Respondent drew at the time of cessation of his services, this Court left with no other alternative but to undertake the exercise of guess work for the purpose of deciding the figure of lump sum compensation. Considering peculiar facts and circumstances of the case, in my view award of compensation of Rs.3,00,000/- in lieu of reinstatement and backwages would be appropriate. I therefore proceed to pass following order :-

ORDER

(i) Award dated 13th September 2024 passed by Second Labour Court, Thane in Reference (IDA) No.27 of 2019 shall stand modified to the extent that the Petitioner shall pay to the Respondent lump sum compensation of Rs.3,00,000/- (Rupees Three Lakh only) in lieu of reinstatement and backwages.

(ii) Apart from lump sum compensation of Rs.3,00,000/- (Rupees Three Lakh only), Respondent shall not be entitled to any other service related benefits from the Petitioner.

(iii) Lump sum compensation of Rs.3,00,000/- (Rupees Three Lakh only) shall be paid by Petitioner within a period of eight weeks from today, failing which Petitioner shall to pay interest at the rate of 8% per annum on the amount of Rs.3,00,000/- (Rupees Three Lakh only) with effect from date of expiry of period of eight weeks.

15. With the above directions, petition is partly allowed and disposed of.

16. Rule is made partly absolute.

SANDEEP V. MARNE, J.

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