



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.917 OF 2024

Manohar Khandu Walunj

...*Petitioner*

V/s.

1. Cricket Club of India
2. R.N. Ranjen, and his successor in title,
Chief Executive Officer, both having
their office address at J.N. Tata Pavilion,
Brabourne Stadium, Dinshaw Wacha
Road,
Mumbai- 400 020

...*Respondents*

Mr. Sushan Mhatre *for the Petitioner.*

Mr. Shailesh S. Pathak *with Mr. T.R. Yadav and Mr. Aditya Tayade for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATED: 9 SEPTEMBER 2025.

Judgment:

1) **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final disposal.

2) Petitioner-workman has filed the present Petition challenging the judgment and order dated 25 November 2019 passed by the learned President, Industrial Court, Maharashtra, Mumbai, allowing Revision Application (ULP) No.31 of 2018 filed by the Respondents and setting aside judgment and order dated 29 December 2017 passed by the

Judge, Labour Court, Mumbai in Complaint (ULP) No.489 of 1999, by which Labour Court had directed payment of compensation to the tune of 40 months' salary including allowances to the Petitioner for wrongful termination of his services. The Petitioner had filed cross Revision Application (ULP) No.157 of 2018 to the extent of denial of relief of backwages, which has been dismissed by the Industrial Court vide common judgment and order dated 25 November 2019.

3) Brief facts leading to filing of the present Petition are that Petitioner was appointed with Respondent No.1-Cricket Club of India as Junior Attendant in its reception office. He was promoted in the year 1981 to the position of Receptionist and thereafter as Senior Receptionist. Petitioner remained absent during 19 April 1997 to 23 April 1997 due to demise of his father-in-law. Again, in November-1997 he was absent from duties. A show cause notice was issued to the Petitioner in respect of absence, which was replied by him on 29 July 1998. Respondent No. 1 issued charge-sheet dated 3 September 1998 to the Petitioner alleging absence from duty for 28 days in November-1997, 17 days in June-1998 and 27 days in July 1998. Another charge-sheet dated 14 September 1998 was issued to the Petitioner alleging that Petitioner had received video camera valued approximately at Rs.50,000/- forgotten by a member in the banquet hall but did not make any entry with regard to receipt of the same, which was subsequently found to be missing. Accordingly, charge of the theft, fraud and dishonesty as well as habitual neglect of work was levelled against the Petitioner. Domestic enquiry was conducted against the Petitioner and the Enquiry Officer submitted report dated 7 April 1999 holding Petitioner guilty of misconduct of theft, fraud and dishonesty. After considering Petitioner's representation, order dated 14 May 1999 was passed dismissing the Petitioner from service.

4) Petitioner filed Complaint (ULP) No.489 of 1999 before 9th Labour Court, Mumbai challenging the dismissal order dated 14 May 1999 and praying for reinstatement with full backwages. Complaint was resisted by Respondents by filing written statement. The Complaint (ULP) No.489 of 1999 was dismissed for non-prosecution by order dated 29 August 2006. Petitioner filed application for restoration of the complaint bearing Miscellaneous Application Restoration (ULP) No.39 of 2010. By order dated 2 February 2011, application for restoration was rejected. Petitioner filed Revision Application (ULP) No.130 of 2011 challenging order dated 2 February 2011. By judgment and order dated 6 March 2013 revision application was partly allowed and order dated 2 February 2011 was set aside and the restoration application was remanded for fresh decision. By order dated 9 May 2013 restoration application was allowed by Labour Court and Complaint (ULP) No.489 of 1999 was restored.

5) Labour Court proceeded to decide preliminary issues vide order dated 8 October 2014 holding that the enquiry was fair and proper but the findings recorded by the Enquiry Officer were perverse. Respondent No.1 led evidence before the Labour Court since findings of the Enquiry Officer were held to be perverse. After considering the evidence on record the Labour Court delivered the final judgment and order dated 29 December 2017 partly allowing Complaint (ULP) No.489 of 1999. While declaring that Respondents had engaged in unfair labour practices as per item 1(d), 1(e) and 1(g) of the Schedule -IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**), The Labour Court directed Respondents to pay compensation in favour of the Petitioner to

the tune of 40 months' salary including usual allowances within a period of three months from the date of the order.

6) Petitioner as well as Respondent No.1 filed cross revision application against final judgment and order dated 29 December 2017 passed by the Labour Court. Respondent No.1 filed Revision Application (ULP) No.31 of 2018 challenging the direction for payment of compensation whereas Petitioner filed Revision Application No.157 of 2018 challenging non-grant of backwages by the Labour Court. By common judgment and order dated 25 November 2019, the Industrial Court has dismissed Revision Application (ULP) No.157 of 2018 while allowing Revision Application (ULP) No.31 of 2018 preferred by Respondent No.1. The Industrial Court has accordingly set aside judgment and order dated 29 December 2017 passed by the Labour Court thereby denying even the benefit of compensation to the Petitioner. Aggrieved by common judgment and order dated 25 November 2019 passed by the Industrial Court, Petitioner has filed the present Petition.

7) Mr. Mhatre, the learned counsel appearing for the Petitioner would submit that the Industrial Court has erred in setting aside the order passed by the Labour Court, which had held the penalty of dismissal to be illegal. He would submit that the Industrial Court has not disturbed the finding of the Labour Court that charges levelled in both the charge-sheets have not been proved. Once the charges levelled against the Petitioner are held to be disproved, the Petitioner's dismissal automatically becomes illegal. That therefore the Labour Court ought to have granted full backwages in favour of the Petitioner from the date of dismissal till the date of attaining superannuation. That instead of granting full backwages, the Labour Court had erroneously granted

compensation in favour of the Petitioner. That the Industrial Court has set aside even the direction for payment of compensation without recording any reason for the same. That the Petitioner is not granted any benefit even after the Labour and Industrial Courts holding that misconduct levelled against him was not proved. Mr. Mhatre would submit that the Industrial Court has erred in setting aside direction for payment of compensation by taking into account the factum of dismissal and restoration of the Complaint. That the said factor would be relevant for the purpose of denying backwages during the time when complaint was dismissed for want of prosecution. That Petitioner however would be entitled to full backwages in respect of rest of the period. He would submit that the Petitioner was entitled to continue in service till 4 June 2016 considering the age of retirement is of 58 years or June 2018 if age of retirement of 60 years is taken into consideration. That therefore Petitioner deserves to be granted full backwages by excluding the period for which complaint was dismissed for default. In support of his contention of payment of full backwages, Mr. Mhatre placed reliance on judgment of the Apex Court in *Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidya*¹ and *M/s. Hindustan Tin Works Pvt. Ltd. V/s. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Others*². Mr. Mhatre would rely upon judgment of the Apex Court in *O.P. Bhandari V/s. Indian Tourism Development Corporation Ltd. and Others*³ in support of his contention that compensation as per the formula determined by the Apex Court deserves to be paid to the Petitioner in the event of this Court not granting full backwages.

¹(2013) 10 SCC 324

²(1979) 2 SCC 80

³1993 Supp (4) SCC 468

8) Mr. Pathak, the learned counsel appearing for Respondent - Employer would oppose the Petition submitting that the Industrial Court has correctly appreciated the position where the Petitioner had prosecuted the Complaint in most casual and cavalier manner. And that therefore Respondent -Employer could not be saddled with the liability to pay him either backwages or compensation. That the Complaint of the Petitioner was dismissed for default on 29 August 2006 and came to be restored after 7 long years on 9 May 2013. He would submit that there is gross delay on the part of the Petitioner in filing the present Petition as the Petition has been filed in October -2021 challenging the order passed by the Industrial Court on 25 November 2019. That the Petitioner has voluntarily remained absent from duties. That he was not placed under suspension but continued to remain absent till he was dismissed from service on 14 May 1999. He would submit that considering the admitted absence on the part of the Petitioner, neither backwages nor any compensation is payable to him. He would rely on order dated 20 March 2014 passed by this Court in Writ Petition No.606 of 2014 in support of his contention that the complaint was restored subject to the condition of non- grant of backwages. He would rely upon judgment of the Apex Court in ***State of Jammu and Kashmit V/s. R.K. Zalpuri and Others***⁴ in support of his contention that no relief deserves to be granted in favour of the Petitioner considering the gross delay and laches on his part, both in seeking restoration of the complaint as well as filing of the present Petition. He would accordingly pray for dismissal of the Petition.

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

⁴ (2015) 15 SCC 602

10) While working on the position of Senior Receptionist with the Cricket Club of India, Petitioner was visited with two charge-sheets. In the first charge-sheet dated 3 September 1998, allegation of absence from duty was levelled wherein it was alleged that Petitioner was remained unauthorisedly absent for 28 days in November -1997 and 17 days in June 1998 and 27 days in July 1998. By second charge-sheet in quick succession on 14 September 1998 Petitioner was held responsible for loss of video camera worth Rs.50,000/- which was allegedly forgotten by a member of the Club and handed over to the Petitioner, but he did not make entry in respect thereof in the daily log book and which was found to be missing. Petitioner was accordingly held responsible for theft and neglect of work.

11) It appears that an independent enquiry officer was appointed to conduct enquiry into both the charge-sheets. The Enquiry Officer submitted report and findings dated 7 April 1999 in which only the charge of theft was held to be proved. This is clear from following findings recorded in the dismissal order dated 14 May 1999.

You were also served with the another Chargesheet No.SEC/4145/98 dated Sept.14, 1998 for comitting misconducts as stated therein. The Enquiry was also conducted by independent Enquiry Officer in respect thereof. After completion of the Enquiry, the Enquiry Officer submitted his Report and Findings dated April.7,1999, in which he has held you guilty of the following misconduct. i.e.

1. Theft, fraud or dishonesty in connection with employers business or property.

12) Dismissal order dated 14 May 1999 does not indicate that the Enquiry Officer had held the charge relating to absence from duty was also proved. However, dismissal order proceeded to record that the 'charges' levelled against the Petitioner in charge-sheets dated 3

September 1998 and 14 September 1998 were proved. In order dated 8 October 2014 passed on preliminary issues relating to fairness of enquiry and perversity in the findings of the Enquiry Officer, the Labour Court partly ruled in favour of the Petitioner. It held that the enquiry was fair and proper. However, so far as findings of the Enquiry Officer are concerned, the Labour Court proceeded to hold that charge of absenteeism was not proved against the Petitioner. It was held that Petitioner had given due intimation of his absence to the employer. So far as the charge relating to theft of camera is concerned, the Labour Court held that there was no evidence on record to hold that the charge of theft can be held to be proved against the Respondent. The Labour Court therefore held that findings recorded by the Enquiry Officer were perverse. Both, Petitioner as well as Respondent No.1 unsuccessfully challenged order dated 8 October 2014 passed on preliminary issues and their respective Revision Applications were dismissed as discussed above. This led to decision on remaining points by the Labour Court relating to validity of the dismissal order.

13) On account of findings of Enquiry Officer being held to be perverse, Respondents led evidence before the Labour Court to prove the misconduct. The Labour Court proceeded to assess the evidence led by Respondent No.1. It held that Respondent did not lead any evidence to prove the charge of absenteeism. So far as second charge of theft is concerned, the Labour Court held that the witness examined by Respondent No.1 was not even aware of facts of the case. The Labour Court therefore held that Respondent No.1 was unsuccessful in proving the charges even before the Labour Court.

14) Industrial Court has confirmed the above findings recorded by the Labour Court by holding as under:-

15. The complainant has alleged in the complaint that he was absent from 19.04.1997 to 23.04.1997 because of sad demise of his father-in-law. He has also admitted that he was absent in the month of November as he was down with Malaria and had forwarded a medical certificate to that effect to the Personnel Department of CCI. He has further stated in para 3(j) of the complaint that he remained absent from 22.08.1998. It is pertinent to note that it was for the complainant to prove that he had remained absent for valid reasons. He could discharge this burden only when he had the opportunity to cross examine the witnesses of the CCI because he had forwarded medical certificates to the Personnel Department of the CCI. The CCI did not step into the witness box to prove the absenteeism. Therefore, it will have to be held that the complainant remained absent for the valid reason. Therefore, the charge of absenteeism without prior permission, without leave or without intimation cannot be sustained. As indicated earlier the charge of theft has not been proved as CCI did not step into the witness box to prove the said charge.

15) The Industrial Court thus held that both the charges of absenteeism as well as theft were not proved by first Respondent-employer. Despite recording above findings, the Industrial Court erroneously answered point No.1 relating to commission of unfair labour practices in the negative. This is an obvious error, and the issue ought to be actually answered by the Industrial Court in the affirmative by holding that unfair labour practices are committed by the Respondent. Thus, both Labour as well as Industrial Court have concurrently held that charges relating to absenteeism as well as theft are not established against the Petitioner.

16) When it came to grant of relief in favour of the Petitioner, Labour Court noted that Petitioner had attained the age of 57 years by the time final order was passed on 29 December 2017. Therefore, the Labour

Court thought it appropriate not to grant reinstatement. Instead, it decided to award compensation in lieu of reinstatement and backwages after taken into consideration the judgment of the Apex Court in *Deepali Gundu Surwase* (supra) and *O.P. Bhandari* (supra). The Labour Court proceeded to award compensation in the form of salary and allowances for 40 months in favour of the Petitioner.

17) The Industrial Court has however, set aside the said direction of the Labour Court for payment of compensation in the form of salary and allowances of 40 months. The Industrial Court framed point Nos.2 and 3 relating to backwages and relating to interference in the order of the Labour Court. It held that Petitioner was not entitled to backwages. For denying backwages the Industrial Court considered admission given by the Petitioner in the cross-examination that he was earning from self-employment subsequent to the year 1998 because of which he had not made any attempts to search for any other employment. The Industrial Court thereafter took into consideration conduct of the Petitioner for denying him backwages. The Industrial Court noted that Petitioner's complaint was dismissed for want of prosecution on 29 August 2006 and he did not make any efforts to have it restored for four years. It held that since the Complaint was restored in the year 2013 Petitioner was not entitled for backwages from 2006 to 2013. The Industrial Court held that no evidence was led by the Petitioner to prove that he searched for job but could not secured the same. On these reasonings, the Industrial Court has proceeded to deny backwages to the Petitioner. The Labour Court had granted mere compensation in the form of 40 months salary and allowances to the Petitioner. There is absolutely no discussion in the judgment and order of the Industrial Court as to why it has set aside direction for payment of compensation. The relevant

findings recorded by the Industrial Court in paragraph 21 of the judgment are as under:-

21. Moreover, the conduct of the complainant also disentitles him from claiming back wages. It is pertinent to note that this complaint was dismissed by the Ld. Trial Court vide order dated 29.08.2006 for non prosecution and the complainant did not get it restored for 4 years. In the year 2010 he applied for restoration. The complaint was restored in the year 2013. Thus, from 2006 to 2013 he is not entitled to back wages because this period was consumed because of his own laxity. Secondly, the complainant has relied on his own affidavit at Exh. U-9 (filed during the hearing of preliminary issues) for proving that he searched for the job but he did not get it. This affidavit was filed on 26.11.2013. The complainant did not lead evidence after the decision on preliminary issue. The complaint was decided on 29.12.2017. Thus, from 26.11.2013 till the date of decision of the complaint nothing has been placed on record to show that he made efforts for getting the job but he did not get it. The complainant has not adduced any evidence that during this period he tried to search for the job but he could not succeed in getting it. Therefore, for this period also he is not entitled to back wages. The complainant has also admitted in cross examination vide Exh.U-9 that he remained absent since 23.08.1998. This clearly shows that from 23.08.1998 till the date of his termination he did not report to his duties. In this view of the matter, it cannot be said that the complainant is entitled to back wages. The Ld. Trial Court completely lost sight of this fact. It is settled law that revisional court can interfere with the findings of the Labour Court if it has ignored the material evidence. In the case at hand the Ld. Trial Court ignored the admission given by the complainant. Ignoring of this admission leads this Court to interfere in the finding of the Ld. Trial Court. In this view of the matter, it has become necessary to interfere in the finding recorded by the Ld. Labour Court. Reliance placed by the Ld. Labour Court in the case of O.P. Bhandari is misplaced. In that case the dismissal of the employee in managerial cadre was found to be invalid. 8 years service was left for retirement. Moreover, there was no evidence to show that the employee was gainfully employed. Such is not the situation in the case in hand. For the reasons recorded above the complainant is not entitled to back wages. Hence, I answer Point No.2 in the negative and Point No.3 in the affirmative.

Thus, there is no discussion by the Industrial Court as to why it has set aside the direction for payment of compensation.

18) The position that emerges is such that the Industrial Court has agreed with the findings of the Labour Court that both the charges are not proved against the Petitioner. Since charges are not proved, dismissal order becomes illegal. Though the Industrial Court held the dismissal to be illegal, it has not granted any benefit in favour of the Petitioner as compensation granted by the Labour Court is withdrawn by the Industrial Court. As observed above, no reasons are accorded by the Industrial Court for setting aside direction for payment of compensation.

19) Mr. Mhatre has strenuously contended that once the dismissal is found to be illegal, payment of backwages must follow as a natural consequence of illegal dismissal. Reliance in this regard is placed on judgments in *The Employees of M/s. Hindustan Tin Works Pvt. Ltd.* and *Deepali Gundu Surwase* (supra). Considering the peculiar facts and circumstances of the present case, it would not be prudent to award backwages to the Petitioner for variety of reasons. Firstly, the Petitioner was casual in prosecuting the Complaint, which was dismissed in the year 2006 and the Petitioner did not take any steps for its restoration for seven long years. The Complaint was ultimately restored in the year 2013. When restoration of the Complaint was challenged by Respondent No.1 in Writ Petition No.606 of 2014 following observations were made by this Court:-

5. ...The Respondent is out of service and does not stand to gain to delay the complaint. As regards the apprehension of the learned counsel for the Petitioner that the Respondent might insist on payment of full back wages; this apprehension is taken care of by the Industrial Court by observing that while granting relief, if any, the point of delay will be kept in mind. This clarification sufficiently takes care of the interest of the Petitioner. The orders passed are equitable. There is no failure of justice or perversity.

Thus, while upholding the restoration of the Complaint, this Court took note of the fact that delay on the part of the Petitioner in applying for restoration would be taken into consideration while deciding the issue of backwages.

20) Present Petition is also filed with substantial delay. The Industrial Court's order is passed on 25 November 2019 whereas the present Petition is filed in October 2021 i.e. after delay of almost two long years. Considering the above position, I am of the view that Petitioner's claim for backwages is clearly untenable.

21) Coming to the issue of compensation, in my view Labour Court was justified in awarding compensation to the Petitioner. Since dismissal is found to be unjustified, at least compensation deserves to be paid to the Petitioner when it was found that reinstatement was not possible on account of advanced age of the Petitioner. The Labour Court has considered it appropriate to award salary and allowances of 40 months as compensation in lieu of reinstatement and backwages. The quantum of compensation is decided by the Labour Court after taking into consideration the formula in judgment of the Apex Court in ***O.P. Bhandari*** (supra). As observed above, the Industrial Court has failed to record even a single reason as to why it has set aside direction for payment of compensation. Payment of full backwages and payment of compensation in lieu of backwages are two different and distinct concepts. Merely because the workman is not held entitled for backwages, the same would not *ipso facto* mean that compensation would also not be justified, especially when the dismissal is found to be unjustified.

22) Considering the overall conspectus of the case, I am of the view that the Labour Court had rightly awarded compensation in favour of the Petitioner in the form of salary and usual allowances for 40 months. The Industrial Court has erred in allowing Revision Application No.31 of 2018 filed by Respondent No.1. To this limited extent order dated 25 November 2019 passed by the Industrial Court deserves to be set aside. At the same time Petitioner is not held entitled for full backwages. Therefore the order of the Industrial Court dismissing the Petitioner's Revision (ULP) No.157 of 2018 deserves to be upheld.

23) The Labour Court had directed payment of compensation by order dated 29 December 2017. Therefore, Petitioner needs to be paid interest on the amount of compensation, which he was entitled to receive immediately after Labour Court's order dated 29 December 2017. On account of erroneous orders passed by the Industrial Court, Petitioner is deprived of the amount of compensation, which he was entitled to receive on 29 December 2017. Considering this position, it would be appropriate that Respondent No.1 is directed to pay interest @8% per annum from 29 December 2017 on the amount of compensation payable to the Petitioner as per Labour Court's order dated 29 December 2017.

24) Petition succeeds partly and I proceed to pass following order:-

- (i) Judgment and order dated 25 November 2019 passed by the Industrial Court in Revision Application (ULP) No.31 of 2018 is set aside. However, the same is sustained to the extent of dismissal of Revision Application (ULP) No.157 of 2018.

- (ii) Accordingly, order dated 29 December 2017 passed by the Labour Court in Complaint (ULP) No.489 of 1999 is upheld.
- (iii) Respondent No.1 is directed to pay compensation awarded by the Labour Court to the Petitioner alongwith interest @8% per annum w.e.f. 29 December 2017 till the date of payment.
- (iv) The amount of compensation together with interest shall be paid by Respondent No.1 to the Petitioner within a period of two months.

25) With the above direction, Petition is **partly allowed**. Rule is partly made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]