



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH

**WRIT PETITION NO. 6313 OF 2023**

Navdurga Krushi Kendra,  
through its proprietor Sunil s/o Sampatrao Pardhi,  
aged about 51 years, Occ. Business,  
R/o Subji Market Tumsar, Tahsil – Tumsar,  
District – Bhandara.

...PETITIONER

**Versus**

Harendra s/o Arjun Bhavsagar,  
aged about 47 years, Occ. Nil,  
R/o Near Thaware Statue, Ravidas Nagar,  
Tumsar, District – Bhandara.

...RESPONDENT

Mr. V.B. Gawali, Counsel for the petitioner.  
Mr. D.C.R. Mishra, Counsel for the respondent.

**CORAM : ANIL L. PANSARE, J.**

**DATE : FEBRUARY 13, 2025**

**ORAL JUDGMENT :**

Issue rule returnable forthwith. Learned counsel Mr. D.C.R. Mishra waives service of rule on behalf of the respondent. With consent of the learned counsel for the parties, the petition is taken up for final hearing.

2]           The petitioner – employer is aggrieved by judgment dated 9/2/2022 passed by the Labour Court, Bhandara, which has been upheld by the Industrial Court, Bhandara, vide

judgment and order dated 30/11/2022. Both the Courts below have held that the petitioner – original respondent has committed unfair labour practice by terminating the services of the respondent – original complainant. Accordingly, the so called oral termination dated 12/10/2015 was set aside and the petitioner was directed to re-instate the respondent on his former post with continuity of service and full backwages.

Corrected as per Court's order dated 20/2/2025 – replaced date by '12/10/2025' by '12/10/2015'.

3] Having heard both sides and having gone through the record, it transpires that though the respondent claims to have been appointed by the petitioner in the year 2003 and his service is terminated in October, 2015, he was never paid monthly salary.

Corrected as per Court's order dated 20/2/2025 – replaced words 'March – April, 2015' by 'October, 2015'.

4] The petitioner's case was that the respondent was doing the work of collection of amount from various shops and was accordingly paid remuneration. The respondent had recovered an amount of Rs.3,00,000/- from various Krishi Kendras but did not deposit it with the petitioner. Accordingly, the petitioner lodged report of misappropriation of amount with the concerned police station. Later on, the parties settled the matter, which, according to the respondent, was settled

under coercion. In the settlement, Rs.35,000/- was paid to the respondent and Rs.2,65,000/- was given to the petitioner.

5] According to the respondent, he was prevented from attending duties with effect from 12/10/2015 and, thus, his services were illegally terminated. The Labour Court noted that the respondent had admitted in the evidence that he never visited the office of the petitioner after 13/6/2015. The Labour Court was of the view that since on 12/6/2015, the petitioner had lodged report of misappropriation against the respondent, the relation between the parties were strained and, therefore, the conduct of the respondent in not attending duties was natural. According to the Labour Court, such act would not amount to abandonment of work, rather possibility of he having been compelled to abstain work cannot be ruled out.

6] The Labour Court has also relied upon the terms of settlement to opine that the terms would reflect that unpaid salary was paid to the respondent. The Labour Court has then relied upon the cross-examination of the respondent, wherein suggestion was given by the petitioner's Counsel that he (respondent) had himself left the job and that the petitioner

has not terminated the services. According to the Labour Court, this suggestion itself is an evidence of respondent's employment, that too salaried. The Court further was of the view, that, had the respondent abstained work, he would not have filed complaint before the Labour Welfare Officer and/or police station.

7] Considering the aforesaid circumstances, the Labour Court held that the respondent has established that he was appointed as clerk and his services were orally terminated.

8] The Industrial Court, while upholding the finding of the Labour Court, has also referred to the terms of settlement to observe that the terms are silent on the point of resumption of duty by the respondent or about him leaving the job. According to the Industrial Court, the petitioner in its evidence or written statement has not averred that he is ready to allow the respondent to join the services.

9] Accordingly, both the Courts below rendered a finding that the order of oral termination was illegal as it was passed without following the provisions of Sections 25F and 25G of the Industrial Disputes Act, 1947.

10]           The learned Counsel for the respondent has supported the finding, however, and as rightly argued by the learned Counsel for the petitioner, both the Courts below have rendered finding on surmises and conjectures and have ignored relevant evidence and facts.

11]           First and foremost fact that is ignored is that though the respondent claims that he was appointed on a monthly salary of Rs.7,000/-, he himself came up with a case that he was not paid monthly salary right from the beginning, i.e., from the year 2003 till March – April, 2015, the date of oral termination.

12]           This evidence not only will destroy the case of the respondent but will support the case of the petitioner that the respondent's services were availed on task done basis. No person would remain silent for twelve years without getting monthly salary. Further, the allegation of misappropriation of amount levelled by the petitioner against the respondent is also substantiated on the basis of report lodged with the police station. In this regard, what has respondent stated is that he had recovered amount of Rs.3,00,000/- from various Krishi

Kendras in the month of May – June, 2015 and informed the fact of recovery and also about unpaid salary to the petitioner. He further stated that the petitioner instructed him orally to keep the amount towards part of arrears of salary and at the same time, lodged report with the police. This story is put forth by the respondent without any evidence in support and only to come out of the allegation of misappropriation of funds. Thus, there are reasons to believe that this is a concocted story to neutralize the allegation of misappropriation of funds. This fact is ignored by both the Courts.

13] Then comes the settlement between the parties. According to the respondent, he was paid Rs.35,000/- towards monthly salary for the period from May to September, 2015. The respondent, however, has not explained as to why should he agreed for monthly salary for the period from May to September, 2015 and why did not he insist for the arrears of salary. He has for no reasons returned back Rs.2,65,000/- to the petitioner. That apart, the terms of settlement nowhere indicates that the amount of Rs.35,000/- was paid towards salary. What has been noted is that the petitioner has willfully

paid Rs.35,000/- to the respondent and that the said amount was paid for the work done by him. Thus the theory of payment on task done basis is further certified. Despite such status, the Labour Court held that the terms of settlement indicates that part of unpaid salary was paid to the respondent.

14] In this connection, the learned Counsel for the respondent was called upon to show from the terms of settlement the use of word 'salary', the learned Counsel, however, failed to show the said terminology.

15] Thus, the Labour Court of its own has introduced the word 'salary' in the terms of settlement, which otherwise was not used by the parties. As stated earlier, the terms of settlement indicates that the petitioner has willingly paid Rs.35,000/- for the work done by the respondent.

16] The Labour Court has further committed perversity by ignoring the evidence of the respondent about abandonment of work. The respondent admitted that after 13/6/2015, he never visited the office of the petitioner. The Labour Court has of its own created a background for such abandonment by noting in the judgment that because on 12/6/2015, the

petitioner had lodged report of misappropriation of funds against the respondent, the relation between the parties were strained and, therefore, it is natural on part of the respondent to abstain from surprisingly work. Such is not the case of the respondent.

17]           Thus, the Labour Court has justified the respondent's abstainment from work from 13/6/2015 but has not tested the said evidence in the light of his pleadings that his service was orally terminated with effect from 12/10/2015. It is not known as to why did the respondent stop going to the office from 13/6/2015 and lodged complaint of oral termination with effect from 12/10/2015. Despite such fact, the Labour Court has cropped up a theory of lodging FIR and strained relations to justify the abstainment of work by the respondent.

18]           It is worth mentioning here that the parties have settled the dispute on 1/10/2015 and the theory of removal, is from 12/10/2015. What had transpired between 1/10/2015 to 12/10/2015 is not known nor is it justified by the respondent. The Industrial Court has, however, referred to terms of

settlement to opine that the terms are silent as regards resumption of duty or willingness of the respondent to leave the job. The Industrial Court has noted that the petitioner has not averred and proved that he was ready to allow the respondent to work.

19] In this regard, both the Courts below should have put a question to themselves as to what would employer do if the employee makes an attempt to misappropriate the funds. Normally, the employer will terminate the services, if the employee is in service, as he would lose faith in such employee. Here, the respondent-employee was not even in service. The Courts below, however, expect the petitioner to show willingness to permit the respondent to resume duties.

20] The record indicates that the respondent has not placed on record appointment order. He was not paid monthly salary from the beginning of the alleged service till the date of alleged termination, which span runs into twelve years. The respondent admits that he himself abandoned the work from 13/6/2015 but comes up with a case that he was orally terminated from 12/10/2015. He carries a blame of

misappropriation of funds, which, to certain extent, is substantiated by the manner in which the dispute was settled. According to the respondent, the settlement was done under coercion but no evidence was led in support. These facts have been ignored by the Courts below by assigning self conceived reasons, which are sans consideration to the vital admissions given by the respondent as also the pleadings. The finding so rendered is apparently perverse and will not stand scrutiny of law. Hence, following order :

**ORDER**

- I] The petition is allowed.
- II] The judgment and order dated 30/11/2022 passed by the Member, Industrial Court, Bhandara, in Revision (ULP) No. 8/2022, so also judgment and order dated 9/2/2022 passed by the Judge, Labour Court, Bhandara, in Complaint (ULP) No. 10/2016, are quashed and set aside.
- III] Rule is made absolute in the aforesaid terms with no order as to costs.

Corrected as per Court's order dated 20/2/2025 – replaced paragraph no. '21' by 'III'.

Sumit

**JUDGE**