



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

WRIT PETITION NO.5508 OF 2021

M/s. Suttatti Enterprises Limited

....Petitioner

V/S

Mandabai Dattatraya Garad

....Respondent

Mr. Nitin A. Kulkarni *for the Petitioner.*

Mr. A.S. Peerzada *i/b Mr. Iqbal Shaikh for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 3 SEPTEMBER 2026.

PRONOUNCED ON : 17 SEPTEMBER 2026.

J U D G M E N T :

1. The Petitioner-Employer has filed this Petition challenging the Award dated 30 January 2020 passed by the learned Presiding Officer, Labour Court No. 4, Pune answering Reference (IDA) No.92 of 2011 in the affirmative and directing reinstatement of the Respondent alongwith continuity and full back wages from 5 September 2010.

2. Petitioner operates a factory at Hadapsar, Pune. Respondent was engaged as a Peon by the Petitioner. According to Respondent, her initial engagement was with effect from 24 April 1998, whereas, according to Petitioner, her initial engagement was from 1 July 2007. According to the Respondent, on 5 September 2010, Mr. Vijay Suttatti of Petitioner

directed her not to report for work and that someone else was appointed in her place. According to her, she approached the factory on 6 September 2010, when the security guard informed her that she was terminated, and therefore she need not come for work. Respondent submitted letter dated 20 September 2010 demanding reinstatement. She approached Labour Commissioner on 27 December 2010. After the conciliation failed, Reference was made to Labour Court, Pune which was registered as Reference (IDA) No.92 of 2011. Respondent filed her Statement of Claim, which was resisted by the Petitioner by filing a Written Statement. In its Written Statement, Petitioner contended that the Respondent was never terminated from service and that she remained unauthorizedly absent from 5 September 2010 and abandoned the services. Based on the pleadings, Labour Court framed issues. Respondent examined herself. On behalf of the Petitioner, two witnesses, Mr. Mukund Laxman Lonkar and Mr. Vijay Suttatti were examined. After considering the pleadings and evidence on record, the Labour Court proceeded to answer the Reference in the affirmative by Award dated 30 January 2020. The Labour Court has directed reinstatement of the Respondent with full backwages and continuity with effect from 5 September 2010. Aggrieved by the Award dated 30 January 2020, Petitioner has filed the present Petition.

3. Mr. Kulkarni, the learned counsel appearing for Petitioner, submits that the Labour Court has grossly erred in answering the Reference in affirmative. That Respondent was never terminated from service. That there is no evidence of any such termination. That Respondent remained

absent from service and had abandoned her job. She has no interest in joining the services. That despite repeatedly giving opportunities to rejoin the services, Respondent refused to do so. He takes me through cross-examination of the Respondent in support of his contention that she had no interest in joining the services. That there is express admission on failure to make any correspondence after alleged termination. That Petitioner had deputed HR Manager for contacting the Respondent and for requesting her to rejoin the duties. That Petitioner has made all efforts for reinstatement of the Respondent. He relies on judgments of Delhi High Court in **Diamond Toys Co. (P) Ltd. vs. Toofani Ram and Ors.**¹, **Chunmun Stores (P) Ltd. vs. Gaurav Chauhan**² and of this Court in **Sonal Garments vs. Trimbak Shankar Karve**³ in support of his contention that once the employee refuses to join despite offer of reinstatement, Labour Court cannot award backwages.

4. Mr. Kulkarni further submits that the Labour Court has misread the evidence of Petitioner's witness Mr. Mukund Lonkar. He never gave admission about security guard refusing to let the Respondent from entering the factory premises. Mr. Kulkarni further submits that the Reference was dismissed for default on 6 May 2016 and was restored on 8 February 2018. However, Labour Court has still awarded backwages to the Respondent. On the above broad submissions, Mr. Kulkarni prays for setting aside the impugned Award.

1 MANU/DE/7157/2007

2 2021 SCC OnLine Del 4510

3 2003 (1) L.L.N. 91

5. Mr. Peerzada, the learned counsel appearing for the Respondent, opposes the Petition, submitting that the Labour Court has rightly directed reinstatement with full backwages in the facts of the present case. That the Petitioner could not prove the defence of abandonment. That Petitioner never issued any letter to the Respondent alleging unauthorized absence or for calling her for duties. That Petitioner only created a false offer of reinstatement in affidavit of evidence. He takes me through admissions given by Petitioner's witness about security guard directing Respondent not to report for duties. That the theory of deputation of HR Manager to call back Respondent for duties is impossible to believe. That there was no offer for reinstatement in the Written Statement. That the Petition is filed after delay of 16 months. That the Respondent led evidence of absence of gainful employment. That therefore award of reinstatement with full backwages does not warrant any interference by this Court. In support of his contentions Mr. Peerzada relies on judgments in D.K. Yadav vs. J.M.A. Industries Limited⁴, Gaurishankar Vishwakarma vs. Eagle Spring Industries Pvt. Ltd.⁵, Noble Paints Private Limited vs. Ashok Tukaram Shinde⁶ and Bhushan Industries vs. Lohasingh Ramavadh Yadav⁷. He accordingly prays for dismissal of the Petition.

6. Rival contentions urged on behalf of the parties now fall for my consideration.

4 (1993) 3 SCC 259

5 1994 (3) LLJ 689

6 2004 (2) CLR 318

7 Writ Petition No.1025 of 2024 decided on 20 March 2024

7. Respondent came up with a case before the Labour Court that she was terminated with effect from 5 September 2010 when Mr. Vijay Suttatti told her not to come for duties. She further pleaded that on 6 September 2010, the security guard refused to let her inside the factory premises. On the other hand, the Petitioner filed Written Statement disputing the claim of termination and pleaded that she remained absent from duty from 5 September 2010 and abandoned the job.

8. Thus, the main issue before the Labour Court was whether Respondent was terminated from service or whether she voluntarily abandoned the job. In her Statement of Claim itself, Respondent pleaded that she had sent letter dated 20 October 2010 to the Petitioner demanding reinstatement. Petitioner admitted receipt of letter dated 20 October 2010 in paragraph 10 of the Written Statement. Letter dated 20 October 2010 clearly indicates two factors. It firstly indicates that the Respondent was firm on her stand right since 20 October 2010 that she was terminated. The termination is said to have occurred on 5 September 2010 and within a month, Respondent wrote a letter to the Petitioner complaining of termination. On the other hand, Petitioner did not respond to the letter dated 20 October 2010. This conduct on the part of the Petitioner belies its theory that Respondent had voluntarily abandoned the services. If there was abandonment, Petitioner would have responded to the letter dated 20 October 2010 and disputed the theory of termination. Petitioner, however, maintained silence and did not dispute the allegation of termination levelled in the letter dated 20 October 2010. Thus, from the letter dated 20 October 2010, the theory of

Respondent about termination appears to be more believable than the defence of the Petitioner of voluntary abandonment of job.

9. If any doubt remained about termination of the Respondent, the same got resolved on account of evidence of Petitioner's witness Mr. Mukund Lonkar who gave following admissions in his cross-examination:

दिनांक ०५/०९/२०१० रोजी श्री. विजय सुताटी यांनी द्वितीय पक्षकार यांना 'कामावर येवु नका', असे सांगितले होते, याबद्दल मला काहीही माहित नाही. तसेच, दिनांक ०६/०९/२०१० रोजी द्वितीय पक्षकार ह्या कामावर आल्या होत्या परंतु गेटवरील वॉचमनने त्यांना आत येण्यास मनाई केली, याबद्दल मला वैयक्तिक माहिती आहे. दिनांक ०६/०९/२०१० रोजी द्वितीय पक्षकार जेव्हा कामावर आल्या होत्या तेव्हा मी गेटवरच होतो, हे म्हणणे बरोबर ठरेल.

10. Thus, the Petitioner's own witness Mr. Mukund Lonkar deposed that though he did not have personal knowledge about Mr. Vijay Suttatti informing the Respondent on 5 September 2010 not to report for work, he admitted that on 6 September 2010, Respondent had reported for work, but the Watchman did not allow her to enter the gate. The witness has personal knowledge about the incident of 6 September 2010. He further admitted that on 6 September 2010, when the incident occurred, he was at the gate. Thus, there is emphatic admission by Petitioner's witness about Respondent reporting for duties on 6 September 2010 and security guard not letting her inside the factory premises. This deposition destroys the defence of voluntary abandonment of job. If Respondent had abandoned the job, she would not have reported for duties on 6 September 2010. The witness gave further admissions as under:

हे म्हणणे खरे नाही की, श्री. विजय सुताटी यांनी दिनांक ०५/०९/२०१० रोजी द्वितीय पक्षकार यांना असे सांगितले की, तुम्ही कामावर येवु नका, त्यानंतर दिनांक ०६/०९/२०१० रोजी जेव्हा द्वितीय

पक्षकार कामावर येण्यासाठी गेटवर आल्या असता त्यांना गेटवरील वॉचमनने आत येण्यास मनाई केली, त्यामुळे द्वितीय पक्षकार हे दिनांक ०६/०९/२०१० पासून कामावर येत नाहीत.

11. According to Mr. Kulkarni, the above deposition of the witness Mr. Mukund Lonkar is misread by the Labour Court. He submits that there is denial in respect of incidents of 5 September 2010 as well as 6 September 2010 in the above quoted deposition of the witness. No doubt, he denied suggestion of the Respondent in respect of incident dated 5 September 2010. However, in respect of incident of 6 September 2010, he did not say "हे म्हणणे खरे नाही की". When this deposition is read in conjunction with the earlier quoted deposition, it would leave no manner of doubt that the witness admitted the incident of 6 September 2010 when the Respondent had approached the factory premises and was prevented from entering the same by the security guard.

12. Thus, evidence of the witness Mr. Mukund Lonkar completely destroys the theory of voluntary abandonment of service sought to be raised by the Petitioner. Thus, the Labour Court has rightly held that the Respondent was terminated from service. The appreciation of evidence by the Labour Court and findings recorded by it about nature of cessation of services of the Respondent cannot be termed as perverse by any stretch of imagination. On the other hand, I am fully convinced that the only conclusion one can ever draw on the basis of conduct of the Petitioner after receipt of letter dated 20 October 2010 as well as from the deposition of the witness Mr. Mukund Lonkar is that the theory of voluntary retirement is totally false and what was effected was termination of services of the Respondent.

13. Mr. Peerzada has rightly relied on judgment of the Apex Court in ***D.K. Yadav*** (supra) in which in similar circumstances, when the employee was prevented from reporting for duty, the Apex Court set aside termination with 50% backwages. In ***Gaurishankar Vishwakarma*** (supra), this Court has held that the burden of proving abandonment is on the Management. In the present case, the Management has thoroughly failed to prove abandonment of services by the Respondent and on the contrary, its witness has given specific admission of Respondent being prevented from entering the factory premises by the security guard on 6 September 2010. Reliance by Mr. Peerzada on judgment of this Court in ***Noble Paints Private Limited*** (supra) is also apposite wherein similar circumstances were involved and this Court held in paragraphs 9 and 10 of the judgment as under:

9. Insofar as the question of abandonment is concerned, in view of the well settled position in law, abandonment or relinquishment of service, is a question of intention. Whether there has been a voluntary abandonment of service is a question of fact which has to be determined in the light of the surrounding circumstances of each case. In *G.T. Lad v. Chemicals & Fibres of India*, (1979) Vol. 1 L.L.J. Page 258 a Bench of three learned Judges of the Supreme Court, while laying down these principles, also held that normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. Insofar as this Court is concerned, in *Gaurishankar Vishwakarma v. Eagle Spring Industries Private Limited*, (1988) 1 C.L.R. Page 38, a Division Bench held that it is well settled that even in a case of abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and must hold an enquiry before terminating his service on that ground. In *Abdul Rashid v. Indian Sailors Home Society*, (1988) 1 L.L.N. Page 120, the Division Bench, in a case where the employer had raised the defence of abandonment of service, noted that if it was a case of voluntary abandonment, the employer would have communicated with the workman and asked him to report for duty. That was not done.

10. In the present case, the contention of the respondent, which has been accepted by the Labour Court, is that on 1st July 1997 when he reported for work, he was prevented from entering the premises by the Security Guard. The respondent has expressly stated so in the course of his cross-examination. On

17th July 1997, a letter of demand was addressed to the employer on behalf of the workman. The absence of an immediate response from the employer is significant, because if this was a case of abandonment, the employer, in the normal course, would have immediately responded to the letter of the workman. It was only belatedly on 5th September 1997 that the employer contended that the respondent had unauthorizedly remained absent and had abandoned the contract of employment as a result of which the employment stood terminated. If there was unauthorized absence on the part of the respondent, it was the obligation of the employer to hold a disciplinary enquiry if he chose to proceed against the employee. No disciplinary enquiry was held. Thereafter, before the Conciliation officer, the employer chose to remain absent. The Labour Court has, in these circumstances, quite correctly come to the conclusion that there was no abandonment of service, the employee had at all material times remained ready and willing to join the duties which he was prevented from rendering.

14. The judgment in ***Noble Paints Private Limited*** (supra) is followed by me in ***Bhushan Industries*** (supra), in which it is held in paragraph 15 as under:

15) The Petitioner has taken a plea of abandonment of employment by Respondent. It has been repeatedly held by this Court that abandonment of service is a question of fact that needs to be established by conduct of enquiry. In this regard reliance by Ms. Cox on judgment of this Court in ***Noble Paints Private Limited***, Gangaram K. Medekar and Gaurishankar Vishvkarma (supra) is apposite. If indeed Petitioner believed that Respondent had abandoned the service, atleast a show cause notice ought to have been issued to him. It is only after Respondent raised the issue of termination that Petitioner levelled allegations against him. Since correspondence was going on between the parties, Petitioner could have conducted domestic enquiry by accusing Respondent of absconding from duties. This is not a case where the whereabouts of Respondent was unknown to Petitioner. Therefore, conduct of domestic enquiry was possible in the facts and circumstance of the present case. I am therefore of the view that the plea of abandonment of employment cannot be accepted in the facts and circumstances of the present case.

15. There is no dispute to the position that no procedure was followed at the time of termination of services of the Respondent. She claims to be in service from 24 April 1998 whereas Petitioner claims that she was appointed only on 1 July 2007. Even if Petitioner's version is accepted,

Respondent had rendered about three years of service. Since she had completed 240 days of service in the preceding year, provisions of Section 25F of the Industrial Disputes Act, 1947 (**ID Act**) ought to have been followed by issuing notice / paying notice pay and by paying retrenchment compensation to the Respondent. Since provisions of Section 25F of the ID Act are violated with impunity while terminating the services of the Respondent, the termination is clearly rendered illegal.

16. I am therefore in full agreement with the conclusion arrived at by the Labour Court that the termination is bad in law.

17. Coming to the nature of relief to be granted to the Respondent after termination is found to be illegal, Mr. Kulkarni has raised two contentions for opposing relief of reinstatement and backwages. He has submitted that the Respondent was given offer for reinstatement, which she failed to avail. He has invited the attention of the Court to the evidence of Petitioner's witnesses Mr. Mukund Lonkar and Mr. Vijay Suttatti in support of his contention that Petitioner had deputed a person at the residence of the Respondent for calling her back for work, but she did not show any interest on the pretext that her husband was unwell. However, the evidence of Mr. Vijay Suttatti is filed on 7 August 2019. As against this, the Written Statement was filed on 6 October 2012, which did not contain any averment about offer for reinstatement. In paragraph 10 of the Written Statement, it was vaguely pleaded that a message was sent to another peon about absence of the Respondent and

asking her to report for duty. However, there is variance in the story put forth by the Petitioner. While conducting the cross-examination, a suggestion was given that Mr. Mukund Lonkar, HR Officer, was deputed to visit Respondent in connection with reinstatement, whereas paragraph 10 of the Written Statement contains averment about sending of message through another peon. Mr. Vijay Suttatti was also not very clear as to which of the persons, Mr. Santosh Sakhare or Mr. Mukund Lonkar, had approached the Respondent with the offer for reinstatement. It therefore becomes difficult to believe Petitioner's story that Respondent did not show any interest in reinstatement despite being called back for duties. Therefore, it is not necessary to discuss the ratio of judgments relied upon by Mr. Kulkarni in ***Diamond Toys, Chunmun Stores*** and ***Sonal Garments*** (supra).

18. The second point sought to be urged by Mr. Kulkarni is with regard to the aspect of backwages. He has submitted that the Reference was dismissed for non-prosecution on 6 May 2016 and was restored on 8 February 2018, and that in such circumstances, the Labour Court could not have rewarded Respondent with backwages in respect of the period when she was negligent in prosecuting the Reference. In my view, this factor can be kept in mind while deciding the nature of relief to be granted in favour of the Respondent. However, it also needs to be borne in mind that Petitioner is also slightly late in filing the present Petition. The Award was made on 30 January 2020, whereas the present Petition is filed on 29 July 2021. In the meantime, Respondent was required to file proceedings for execution of the Award. She filed Complaint (ULP)

No.175 of 2020 for implementation of the Award dated 30 January 2020. Petitioner failed to appear in the Complaint and the same was allowed *ex parte* on 10 March 2021, directing the Petitioner to implement the Award dated 30 January 2020 within one month. Thus, Petitioner also needs to share the blame in not timely raising the challenge to the impugned Award. Though the reason of COVID-19 pandemic cannot altogether be discarded, at the same time, delay on the part of Petitioner also needs to be borne in mind while considering Petitioner's allegation about Respondent being negligent in prosecuting the Reference.

19. Mr. Kulkarni has also relied on judgment of Division Bench of this Court in **Prabhakar Mahadu Salve vs. Divisional Controller, Maharashtra State Road Transport Corporation, Buldana**⁸ in support of his contention that the negligent manner in which Respondent prosecuted the Reference needs to be borne in mind. In case before the Division Bench in **Prabhakar Mahadu Salve** (supra), there was a delay of three years in filing Writ Petition challenging the order of Industrial Court and this aspect is kept in mind while considering the nature of relief to be granted in favour of the Appellant therein. In the present case as well, this Court is keeping in mind the fact that the Reference remained under dismissal from 6 May 2016 to 8 February 2018.

20. Coming back to the issue of nature of relief, it appears that date of birth of Respondent is 28 May 1965. This would mean that she has crossed the age of retirement of 58 years on 28 May 2023. Therefore,

⁸ Letters Patent Appeal No.25 of 2013 decided on 17 November 2021 (Nagpur Bench)

there is no question of her reinstatement at this point of time. Therefore, the only issue for consideration is whether the order for backwages from the date of termination, i.e., 5 September 2010 till 28 May 2023 can sustain or not. In my view, since Respondent failed to prove rendering of services from 24 April 1998 and possibly was appointed on 1 July 2007 coupled with the fact that the Reference remained dismissed from 6 May 2016 till its restoration on 8 February 2018, it would be appropriate to award lump sum compensation to the Respondent in lieu of reinstatement and backwages. Respondent was drawing salary of Rs.4,750/- at the time of her termination as admitted by her in her cross-examination. If she was continued in service, her monthly wages would have increased with inflation and experience. Considering this position, ends of justice would meet if Respondent is awarded lump sum compensation of Rs.6,00,000/-.

21. I accordingly proceed to pass the following order:

- i) Award dated 30 January 2020 passed by Labour Court in Reference (IDA) No.92 of 2011 is modified by directing that Petitioner shall pay to the Respondent lumpsum compensation of Rs.6,00,000/- in lieu of reinstatement, continuity and backwages towards full and final settlement;
- ii) Beyond the lumpsum compensation of Rs.6,00,000/- Respondent shall not be entitled to any other service-related benefits;

iii) The awarded compensation shall be paid by Petitioner to Respondent within a period of six weeks, failing which interest at the rate of 8% per annum shall be payable on the awarded sum of compensation from the date of expiry of period of six weeks.

22. With the above directions, Writ Petition is partly **allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)