



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

WRIT PETITION NO. 18109 OF 2024

M/S Hotel Ratanamahahal)
At Unit of G.M. Agency Hotel)
Sahara Chakala Road Andheri (East))
Mumbai 400099)

... Petitioner

Versus

1. Mr. Shivaji Chandrakant Sonawane)
Block no 31 mahatma Nagar)
Golibar road Santacruz (East))
Mumbai-400055)

2. Ld 10th Labour court)
New administrative building)
New gov colony Bandra (east))
Mumbai-400059)
(Formal party))

... Respondents

Mr. Sanjay Shinde *i/by Mr. Amit Gosavi, for the Petitioner.*

Mr. Raghavendra S. Mehrotra *with Mr. Madhat J. Shaikh and
Mr. Irfan Shaikh i/by Lawkhart Legal Advocate & Legal Consultant,
for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 6 January 2025.

PRONOUNCED ON : 10 January 2025.

JUDGMENT :

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

2) Receptionist employed in a Hotel in Mumbai, who developed interest in politics and left the job in 2014 and unsuccessfully contested two Lok Sabha Elections from Solapur and declared ownership of a gun (pistol) in his nomination, is directed to be reinstated by the Labour Court by rewarding him with 50% backwages. The Employer-Hotel has challenged the Award of the Labour Court in the present Petition.

3) Petition arises out of challenge to the Award dated 1 July 2024 passed by 10th Labour Court, Mumbai in Reference (IDA) No.56 of 2017. The Labour Court has answered Reference partly in the affirmative and has held Respondent No.1-workman to be entitled for reinstatement with continuity of service and 50% backwages with effect from 15 May 2014 till the date of his actual reinstatement.

4) Brief facts leading to filing of the Petition are that Petitioner is a unit of M/s. G.M. Agencies Hotel Private Ltd., a Company registered under the provisions of the Companies Act 1956, which is engaged in the business of operation of hotels and restaurants. The Company owned and operated hotel by name 'Hotel Ratnamahal' at Andheri (East), Mumbai 400099. Respondent No.1

was engaged in that hotel with effect from 1 October 2007 to work as Supervisor-cum-Receptionist.

5) Respondent No.1-workman claims that his services were terminated by the Petitioner with effect from 15 May 2014 without following the due process of law. He claims that the termination was effected on account of request made by him to reduce his hours of working from 16 hours a day to 8 hours. Respondent No.1 addressed letter dated 5 January 2015 to the Petitioner for his reinstatement. Respondent No.1, therefore, approached Assistant Commissioner of Labour, Mumbai with his demand for reinstatement. Petitioner appeared before the Assistant Commissioner of Labour, Mumbai and claimed that services of Respondent No.1 were never terminated and that Respondent No.1 had voluntarily abandoned the services for contesting elections. After attempting conciliation, the Assistant Labour Commissioner, Mumbai sent failure report to Deputy Commissioner of Labour on 9 December 2016. At the instance of Respondent No.1, Reference was made to 10th Labour Court, Mumbai relating to demand of Respondent No.1 for reinstatement with continuity of service and full back wages from 15 May 2014.

6) Respondent No.1 filed Statement of Claim before the 10th Labour Court, Mumbai, which was resisted by the Petitioner by filing a Written Statement. It was *inter alia* contended by the Petitioner in its written statement that Respondent No.1 had voluntarily abandoned the job and left for Solapur to contest Lok Sabha elections held in the year 2014 and that his services were never terminated. Petitioner further contended that it showed willingness to reinstate the Respondent No.1 in service and that he

refused to report on duty. Petitioner showed willingness to reinstate Respondent No.1 in service in the written statement as well.

7) Both the parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, Labour Court proceeded to answer the reference partly in the affirmative and held that services of Respondent No.1 were illegally terminated on 15 May 2014 and that Petitioner failed to prove that Respondent No.1 remained absent from his duties for contesting Lok Sabha Elections at Solapur and granted 50% back wages with effect from 15 May 2014 by Award dated 1 July 2024. Aggrieved by the Award dated 1 July 2024, Petitioner has filed the present Petition.

8) Mr. Shinde, the learned counsel appearing for the Petitioner-Employer would submit that the Labour Court has erred in directing reinstatement of Respondent No.1 in service by ignoring the position that he had voluntarily stopped attending duties for contesting elections. That Respondent No.1 was never interested in joining back services with the Petitioner. That he never approached Petitioner with a request for joining back the duties after he lost the elections. That during conciliation proceedings, Petitioner sent three letters to Respondent No.1 calling him upon to join back the duties, but he failed to join the duties. That even in the written statement Petitioner showed willingness for reinstatement of Respondent No.1, but he failed to join the service, which clearly indicates that Respondent No.1 had no interest in joining the services. He would submit that Respondent No.1 has contested Lok Sabha elections of 2024 as well. An affidavit filed by him while contesting 2024 Lok Sabha election shows that yearly income of Rs. 1,80,000/- as well as

ownership of Swift Dzire Car (2015 Model) which was not owned by him during 2014 elections. That Respondent No.1 also owns a pistol and gun of value of Rs.3,50,000/-. He would, therefore, submit that Respondent No.1, who has contested two Lok Sabha elections, has absolutely no interest in working as a Receptionist in a hotel and is otherwise well positioned in his life earning handsome income. He would, therefore, submit that the Labour Court has erred in granting reinstatement and 50% back wages to Respondent No.1. He would pray for setting aside the impugned award of the Labour Court.

9) The Petition is opposed by Mr. Mehrotra, the learned counsel appearing for Respondent No.1-workman. He would submit that the Labour Court has rightly held that services of Respondent No.1 are illegally terminated without holding any inquiry and without following the provisions of Section 25F of the Industrial Disputes Act, 1947 (**ID Act**). That the Labour Court has negated the theory of Petitioner about voluntarily abandonment of service. The action of Petitioner in not permitting Respondent No.1 to resume his duties would mean termination of his services. He would submit that Respondent No.1 has led evidence in support of his case that he had applied for oral leave before proceeding to Solapur and that therefore, Petitioner could not have removed his name from the muster roll. He would submit that there are specific attempts in the cross-examination of Petitioner's witness about the fact that services of Respondent No.1 are actually terminated, that too without issuance of any notice. He would submit that the so-called letters issued in the year 2017 are neither proved to have been served on the Respondent No.1 nor the theory of offer of reinstatement in 2017 is believable. That if indeed Petitioner was interested in offering the

job back to Respondent No.1, it would have acted upon letter of Respondent No.1 dated 5 January 2015. He would submit that in any case, the offer of reinstatement made in 2017 or in the written statement filed in the year 2018 was misconceived as Petitioner admitted in the written statement that the hotel was handed over to third party to operate on contract basis and that there were no employees on the rolls of the Company. That if the hotel itself was not operated by the Petitioner, there was no question of offering reinstatement to Respondent No.1. That no correspondence was made by the Petitioner to Respondent No.1 for long period between 2014 to 2017. That since termination has effected in gross violation of the provisions of ID Act, the Labour Court has rightly set aside the termination. He would pray for dismissal of the Petition.

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

11) Respondent No.1 was engaged to work as Receptionist-Cum-Supervisor in Petitioner-Hotel with effect from 1 October 2007. Reference to the Industrial Court was made at his instance and after registration of the Reference, Respondent No.1 filed his Statement of Claim contending therein that Petitioner terminated his services with effect from 15 May 2014. The reasons for his termination as pleaded by him in the Statement of Claim are as under :

“5. Workman joined services of the Company on 1.10.2007 to work as a Supervisor cum Receptionist in the Hotel. The duty hours of Workman on record of Hotel were from 11.00 a.m. to 11.00 p.m. and was required to put in 11 hours continuous work everyday. His initial salary was Rs.7,000/= p.m. and salary last drawn by him was Rs.10,000/= p.m.

6. Even though the Workman was putting in 11 hours duty everyday, he was denied by the Company overtime wages at double the rate at normal wages prescribed under The Maharashtra Shops and Establishment Act, 1948 and was also denied a day off from duties in a week. The Workman was neither given any leaves with wages nor was given wages in lieu of leaves and was also denied National Holidays throughout the tenure of his employment in the Hotel.

7. Workman on not getting any leave with wages, overtime wages (for the 3 hours work done by him beyond his 8 hours duty everyday) any wages for working on weekly off and National Holidays (at double the rate of normal wages prescribed under The Maharashtra Shops and Establishment Act, 1948), approached Shri Vivek Sonawane time and again with a request to extend to him all the benefits of service conditions, to which he was entitled under the existing Labour Laws, Shri Vivek Sonawane however gave to the Workman only empty assurances and made no efforts to regularise the terms of employment of the Workman and continued to exploit him economically.

8. Unfortunately, the exploitation of the Workman increased in 2011, when Shri Vivek Sonawane foisted upon him the additional job of driving his cars, as a result of which, w.e.f. 1st April, 2011, he was required to work as Supervisor cum Receptionist cum Driver and attend duties from 9.00 a.m. to 11.00 a.m. and 11.00 a.m. to 1.00 a.m. everyday.

9. In fact, 16 hours duty everyday was very tiresome for Workman and therefore he time and again requested Shri Vivek Sonawane either to restrict his duty to 8 hours everyday or pay him overtime wages for the additional 7 hours work done by him everyday at double the rate of his normal wages as per provisions laid down under The Maharashtra Shops and Establishments Act, 1948.

10. To the great shock of the Workman, Shri Vivek Sonawane, instead of conceding to his genuine and legitimate request, terminated his services w.e.f. 15.5.2014 without following due process of law in general, and section 25-F(a) and (b) of The Industrial Disputes Act, 1947 as well as section 66 of The Maharashtra Shops and Establishments Act, 1948, in particular.”

12) Respondent No.1, therefore, did not disclose the fact that he had left for Solapur or that he had contested 2014 Lok Sabha elections. However, after the Petitioner pleaded in the written statement that Respondent No.1 had left the services for contesting Lok Sabha elections from Solapur Constituency, Respondent No.1 finally admitted during the course of his cross-examination that he

had contested the 2014 Lok Sabha elections. Additionally, Petitioner filed on record information submitted by Respondent No.1 with the Election Commission of India for contesting 2014 Lok Sabha elections from Solapur Constituency.

13) Thus, Respondent No.1 suppressed the fact that he had left for Solapur for contesting 2014 Lok Sabha elections from Solapur Constituency in his Statement of Claim. On the contrary, Respondent No.1 falsely claimed in the Statement of Claim that his services were terminated with effect from 15 May 2014 on account of request made to the Petitioner for reduction of his duty hours. Thus, Respondent No.1 approached the Labour Court with unclean hands and suppressed the position that he had left for Solapur to contest Lok Sabha elections.

14) Before the Labour Court, Respondent No.1 attempted to justify his absence by contending that he had orally applied for leave but he could not produce any documentary evidence to show that leave was sanctioned to him for contesting the elections. In my view, conduct of Respondent No.1 in suppressing the position about contesting 2014 Lok Sabha elections from Solapur Constituency ought to have been taken serious note of by the Labour Court while considering his demand for reinstatement.

15) In my view, the plea adopted by Petitioner about Respondent No. 1 voluntarily stopping attendance of duties after leaving for Solapur to contest elections appears to be fully probable. Even if the story of Respondent No.1 about raising a demand for reinstatement in January 2015 is to be momentarily accepted as

true, there is absolutely no justification as to why he remained away from duties from 15 May 2014 till January 2015. The Labour Court has completely ignored this position. The Labour Court ought to have appreciated that according to the admission of Respondent No.1, he did not report the duties for about 8 long months between May 2014 to January 2015. He admitted during the course of cross-examination that he had contested 2014 Lok Sabha elections and had visited Solapur for the same. The Labour Court, therefore, ought to have drawn an inference that Respondent No.1 was no longer interested in serving as a Receptionist in Petitioner-Hotel as he had higher dreams of becoming a Member of Parliament by contesting the elections. It has come on record that Petitioner addressed letter dated 8 January 2017 to Respondent No.1 calling him upon to resume duties from 1 February 2017. However, Respondent No.1 refused to respond to the said letter of 8 January 2017. Petitioner sent two reminders dated 24 February 2017 and 11 March 2017. However, Respondent No.1 failed to join the duties despite receiving as many as three letters calling him upon to resume duties. Even in the written statement, Petitioner had offered job to Respondent No.1 and there is nothing on record to indicate that Respondent No.1 ever presented himself for reporting for duties. The contention of Mr. Mehrotra that the hotel business was contracted out by Petitioner to the third party and that therefore, offers of reinstatement were mischievous, cannot be accepted. This is not a case where Respondent No.1 presented himself for duties and that Petitioner was not willing to take him back on duty. Despite availability of four different occasions to report for duty, Respondent No.1 made a conscious call not to act on the said offers. This is yet another reason why the relief of reinstatement or back wages is clearly inadmissible for Respondent No.1.

16) What is more shocking is the further conduct of Respondent No.1 during pendency of Reference before the Labour Court. It appears that Respondent No.1 contested 2024 Lok Sabha elections from Solapur Constituency. Petitioner has placed on record affidavit filed by Respondent No.1 in Form 26 along with his nomination for the 2024 Lok Sabha elections. In the affidavit, Respondent No.1 disclosed his assets showing that he owns Swift Dzire car manufactured in 2015 with Mumbai Registration, value of which, as on the date of filing of affidavit, was declared as Rs. 2,70,000/-. He also owns Bajaj Discover Scooter manufactured in the year 2010 which was already reflected in the assets declared by him while contesting 2014 elections. However, it appears that Swift Dzire Car has been purchased by him after 2014 elections, as the same was not reflected in his 2014 declaration, which showed that he owned one motorcycle and one auto-rickshaw. Thus, during the course of his alleged termination from services, Respondent No.1 was able to better comforts of his life by upgrading from a motorcycle and auto-rickshaw to that of Swift Dzire car. What is more shocking is the declaration made by Respondent No.1 in his affidavit for 2024 Lok Sabha elections that he owns one Bore Pistol and Gun of approximate value of Rs. 3,50,000/-. Respondent No.1 has thus acquired a gun during the period of alleged termination which is worth Rs. 3,50,000/-. Petitioner further declared his annual income of Rs. 1,80,000/- in the said affidavit. The Labour Court has completely turned blind eye to this vital information placed on record by the Petitioner. In my view, this is not a case involving stray or ill-advised impulsive step in contesting the elections in the year 2014 resulting in loss of job. Respondent No.1 appears to be a seasoned player, who has so far contested atleast 2 elections. He undoubtedly has political ambitions. A person who possesses necessary comforts

and even owns a gun would no longer work as a receptionist in a hotel. The Labour Court ought to have appreciated this position and denied the relief of reinstatement or back wages to Respondent No.1 who had approached it by suppressing the position of him contesting 2014 Lok Sabha elections. The Labour Court ought to have considered the overall conduct of Respondent No.1 in suppressing factual position, repeatedly contesting elections and possessing sufficient means for drawl of inference against him of non-existence of any interest in working with the Petitioner-Hotel.

17) In my view, therefore, the impugned award passed by the Labour Court is clearly unsustainable and this appears to be a clear case of Respondent No.1 having complete lack of interest in working as a Receptionist in Petitioner-Hotel. In such circumstances, Petitioner-Hotel cannot be saddled with the liberty of payment of any back wages to Respondent No.1 or the relief of reinstatement. Even if it is momentarily accepted that Petitioner-Hotel ought to have conducted some inquiry for absence from duties for contesting elections without intimation to the employer or followed the provisions of Section 25F of the ID Act, I am not inclined to grant any compensation in favour of Respondent No.1 considering his conduct of suppression of facts, repeatedly contesting elections, possessing sufficient means and showing complete lack of interest in joining back services.

18) The machinery of Labour Court or the provisions of ID Act cannot be permitted to be misused by ex-workmen, who are no longer interested in working with the employer for the purpose of extracting amounts towards backwages/compensation. This clearly appears to be a case of gross abuse of machinery of Labour Court by

Respondent No. 1, who had left Mumbai for contesting elections in Solapur, did not turn up for resuming his duties immediately after elections, turned down offers of reinstatement and further contested 2024 elections. He therefore cannot expect relief of reinstatement or backwages. In such circumstances, voluntarily abandonment of service for contesting elections is the only probable inference that can be drawn in the facts and circumstances of the case.

19) The impugned Award of the Labour Court is thus indefensible and is liable to be set aside. Petition accordingly **succeeds**. Award dated 1 July 2024 passed by Labour Court, Mumbai in Reference IDA No.56 of 2017 is set aside. Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]

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