IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10533 OF 2022

Lumax Auto Technologies Limited
(Formerly known as
Dhanesh Auto Electricals Limited) ....Petitioner

V/S

Shri. Tarun Kumar Gangopadhyay ....Respondent

WITH
INTERIM APPLICATION NO.16720 OF 2022
IN
WRIT PETITION NO.10533 OF 2022

Lumax Auto Technologies Limited
(Formerly known as
Dhanesh Auto Electricals Limited) ....Applicant
IN THE MATTER BETWEEN
Lumax Auto Technologies Limited
(Formerly known as
Dhanesh Auto Electricals Limited) ....Petitioner
V/S
Shri. Tarun Kumar Gangopadhyay ....Respondent

Mr. Varun R. Joshi (through video conferencing) with Mr. Rishabh N. Chaurasia i/b Mr. Chetan A. Alai *for the Petitioner.*

Mr. Prashant C. Kamble *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 27 JULY 2026.
PRONOUNCED ON : 04 AUGUST 2026.

J U D G M E N T :

1. By this Petition, Petitioner-Employer has challenged the judgment and order dated 17 March 2021 passed by the learned Member, Industrial Court, Pune dismissing Revision Application (ULP) No.59 of 2019 and confirming the judgment and order dated 3 July 2019 passed by the Labour Court, Pune in Complaint (ULP) No.38 of 2015. The Labour Court has partly allowed Complaint (ULP) No.38 of 2015 and has directed reinstatement of the Respondent with continuity of service and 50% backwages.

2. Petitioner-Employer is an incorporated entity, which was formerly known as Dhanesh Auto Electricals Limited. It has a manufacturing facility at MIDC, Bhosari, Pune. Respondent was appointed as Helper with the Petitioner-Employer on 1 June 1986. In the year 2003, he was working as Junior Supervisor. Petitioner claims to have faced severe financial crises in the year 2003 and entered into arrangement with Maharashtra Labour Union by offering compensation to the workers in the manufacturing facility at MIDC, Bhosari, Pune. A Settlement Agreement dated 13 September 2003 was executed with the Union under which workers not willing to work would quit the employment and they had agreed to accept dues under the Agreement without objection. On 13 September 2003, about 28 workers signed the Agreement for Settlement and accepted their dues whereas the rest of the workers including the Respondent were continued in service. According to the Petitioner, Respondent remained absent from work and filed Complaint (ULP) No.178 of 2003 alleging illegal termination. In that Complaint, interim

order was passed permitting Respondent to rejoin duties. Petitioner thereafter issued notice of retrenchment dated 28 January 2004 and by offering retrenchment compensation, proceeded to retrench the service of the Respondent. Respondent refused to accept the retrenchment notice as well as cheque for compensation. Respondent filed Complaint (ULP) No.38 of 2015 alleging unfair labour practices. Petitioner resisted the Complaint by filing Written Statement. The Labour Court allowed the Complaint by judgment and order date 3 July 2019 directing Petitioner to reinstate the Respondent in service with continuity and 50% backwages. Petitioner-Employer filed Revision Application (ULP) No.59 of 2019 challenging the order of the Labour Court, which has been dismissed by the Industrial Court by judgment and order dated 17 March 2021. Petitioner has accordingly filed the present Petition challenging the orders passed by the Labour and Industrial Courts.

3. Mr. Joshi, the learned counsel appearing for Petitioner submits that the Labour and Industrial Courts have grossly erred in allowing the Complaint and directing reinstatement of the Respondent. That the retrenchment was effected after following due process of law. That a copy of notice under Section 25-F(c) of the Industrial Disputes Act, 1947 (**ID Act**) was issued. That seniority list of the workers was published. That retrenchment compensation, gratuity, leave encashment, bonus, one month's notice pay and other benefits totally amounting to Rs.1,58,673/- were offered, which was refused by the Respondent. That there is ample evidence on record to prove sufferance of losses by the Petitioner requiring retrenchment of the workers. He submits that Labour Court has recorded several perverse findings and that the

Industrial Court has correctly appreciated this position, but despite noticing perversity in the findings of the Labour Court, the Industrial Court has erroneously dismissed the Revision Application. He accordingly prays for setting aside the orders passed by the Labour and Industrial Courts.

4. *Per contra*, Mr. Kamble, the learned counsel appearing for Respondent opposes the Petition submitting that there are concurrent findings recorded by Labour and Industrial Courts indicating gross illegalities in the retrenchment order. That services of the Respondent are unceremoniously retrenched without following due process of law. That both the Courts have concurrently held that retrenchment is in violation of provisions of Section 25-F of the ID Act. That there is absolutely no evidence of losses being suffered by the Petitioner. That there is no material to indicate closure of the establishment. That mere photocopy of the certificate of Chartered Accountant was produced without even bothering to examine him. That the Labour Court has found that the Company had net worth of Rs.3.50 crores and that financial condition was sound. That therefore commission of unfair labour practices under Item 1(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) is clearly proved in the present case. That though termination is proved to be illegal, the Labour Court has awarded only 50% backwages in favour of the Respondent. He accordingly prays for dismissal of the Petition.

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

6. The Complaint (ULP) No.38 of 2015 filed by the Respondent involved the issue of legality of retrenchment notice dated 28 January 2004 issued by the Petitioner. Perusal of the letter of retrenchment would indicate that the decision to retrench was taken citing the reason of severe recession in the market and reduction in volume of business.

7. At the time of issuance of the retrenchment notice, Respondent was offered an amount of Rs.1,58,673/- under various heads including retrenchment compensation and one month's notice pay. Respondent however refused to accept both retrenchment notice as well as the cheque for Rs.1,58,673/-.

8. The Labour Court has held that a notice in the prescribed manner is not served to the Appropriate Government. Though the Labour Court has taken note of notice issued under Section 25-F(c) of the ID Act, it had recorded a finding that the notice was not exhibited but only the certificate under posting was exhibited. The Industrial Court has held this finding to be perverse. The Industrial Court has held that:

> "31. … … … In the present case, the respondent company has served notice on appropriate Government and complied clause (c) of section 25-F. Hence, I hold that the findings recorded by the ld. Trial Court as to non-compliance of clause (c) of section 25-F is perverse."

9. The Labour Court has held that Petitioner failed to demonstrate displaying of seniority list before effecting termination. Here there appears to be concurrent findings by the Labour and Industrial Courts as both the Courts have held that the Petitioner-Employer failed to publish seniority list as per Rule 81 of the Industrial Disputes (Maharashtra)

Rules, 1957 (**ID Rules**). I find no reason to interfere in the said concurrent findings of fact recorded by the both the Courts. Though Mr. Joshi has invited my attention to a document claiming to be a seniority list of workers employed at MIDC, Bhosari, Pune, there is no evidence of publication of the such seniority list as concurrently held by the Labour and Industrial Courts. Thus, there appears to be some irregularity in effecting retrenchment on account of non-publication of the seniority list and non-following of the principle of 'last come first go'.

10. So far as reason for termination is concerned, the same was cited as precarious financial condition of the Petitioner. However, beyond producing certificate of Chartered Accountant, Petitioner did not lead any specific evidence to prove its financial condition. The Chartered Accountant was not examined as witness and the certificate remained unproved. The Labour and the Industrial Courts have therefore concurrently held that Petitioner failed to prove poor financial condition. Therefore, though service of notice under Section 25-F(c) of the ID Act to the Appropriate Government is proved, necessary documents were not produced in the form of balance-sheet, profit and loss statement, etc. to prove precarious financial condition requiring retrenchment of the Respondent.

11. Thus, except service of notice under Section 25-F(c) of the ID Act there are concurrent findings on other aspects of retrenchment and Petitioner has not been able to indicate any gross perversity in findings recorded by the Labour and Industrial Courts on those aspects. Therefore, it is difficult to hold that retrenchment of the Respondent is

wholly illegal, though there are certain mitigating factors in favour of the Petitioner.

12. The Labour Court has granted reinstatement with 50% backwages to the Respondent. For reasons unknown, the Complaint (ULP) No.38 of 2015 was filed after substantial delay. The termination was effected by notice dated 28 January 2004 whereas Complaint (ULP) No.38 of 2015 was filed 11 years later on 4 April 2015. Despite this position, the Labour Court has considered it appropriate to grant the relief of reinstatement and backwages to the Respondent. At the time of filing of the Complaint, Respondent has declared his age as 47 years which means that by the time the Complaint was decided on 3 July 2019, his age was 51 years. This factor is taken into consideration by the Labour Court for granting 50% backwages by observing that period of 15 years had elapsed from the date of termination. Going by the age declared in Complaint (ULP) No.38 of 2015, the age of Respondent would now be 58 years. On the other hand, by order dated 12 September 2023 this Court has recorded that the age of the Respondent was 61 years and that he had already crossed the age of superannuation. Therefore, there is no question of reinstatement of the Respondent.

13. The Labour and Industrial Courts have essentially held the retrenchment to be illegal on account of failure to prove factors such as publication of seniority list and sufferance of financial losses. Though some supporting documents were produced, the same were not properly proved by the Petitioner. It is also a matter of fact that several other workers were retrenched by offering compensation at the rate of 30 days

wages for completed years of service. It is therefore difficult to hold that retrenchment of Respondent was by way of a discriminatory treatment or was as a measure of victimization. In my view therefore, it would be appropriate to award lumpsum compensation to the Respondent in lieu of reinstatement and backwages.

14. The Respondent was offered retrenchment compensation by considering 15 days wages per completed years of service of Rs.75,726/-. It appears that other workers who accepted the settlement were paid compensation at the rate of 30 days wages per completed years of service. If Respondent is put on par with those workers who accepted voluntary settlements, he would have received compensation roughly to the tune of Rs.1,50,000/- in addition to gratuity of Rs.54,355/-, notice pay of Rs.8,909/-, leave encashment of Rs.6,075/- and few other sundry payments such as bonus, LTA etc. Thus, he would have received an amount of roughly Rs.2,35,000/- in the year 2014. Even if the amount of Rs.2,35,000/- was to be invested at compound rate of 8% per annum for the last 22 long years, the maturity amount would have been approximately Rs.13,50,000/-. However, since Respondent is required to litigate at three hierarchal Courts levels, it would be appropriate to offer some more amount to him and this is how I deem it appropriate to award compensation of Rs.15,00,000/-.

15. I accordingly proceed to pass the following order:

i) Judgment and order dated 3 July 2019 passed by Labour Court, Pune in Complaint (ULP) No.38 of 2015 as well as judgment and order dated 17 March 2021 passed by Industrial Court in

Revision Application (ULP) No.59 of 2019 are set aside and modified.

ii) While holding that retrenchment of the Respondent is illegal, it is directed that Respondent shall be entitled to lumpsum compensation of Rs. 15,00,000/- in lieu of reinstatement and backwages.

iii) Petitioner-Employer shall pay to the Respondent lumpsum compensation of Rs.15,00,000/- within a period of two months, failing which the same shall carry interest at the rate of 8% per annum from the date of expiry of two months.

iv) Beyond the lumpsum compensation so awarded, Respondent shall not be entitled to any other service related benefits from the Petitioner.

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

17. In view of disposal of the Writ Petition, nothing would survive in the Interim Application and the same is also accordingly **disposed of.**

(SANDEEP V. MARNE, J.)