



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4071 OF 2023

M/s. Olive Salon

...Petitioner

V/s.

Nazim Barkat Shaikh

...Respondent

Mr. Dhananjay J. Bhanage *i/b. Mr. Mayur Dilip Joglekar for the Petitioner.*

Mr. Sangram Chinnappa *(through VC) i/b. Ms. Kranti L.C. & Mr. Kaustubh Gidh for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 24 JULY 2026.

Judgment pronounced on: 4 AUGUST 2026.

JUDGMENT:

1) **Rule.** Rule is made returnable forthwith. Since pleadings in the Petition are complete, the same is taken up for final hearing with the consent of the learned counsel appearing for parties.

2) Petitioner-employer has filed the present Petition challenging the judgment and order dated 5 December 2022 passed by the learned Member, Industrial Court, Pune, dismissing Revision Application (ULP) No.144 of 2018 and confirming the judgment and order dated 28 August 2018 passed by the learned Judge, Labour Court No.2, Pune. The Labour Court has partly allowed the Complaint (ULP) No.20 of 2015 filed by the Respondent and has directed the Petitioner to pay monthly salary of Rs.16,995/- to the Respondent for the period from 4 February 2015 to 21 July 2017. The Petitioner is also directed to pay salary of one month in



lieu of notice under Section 25-F of the Industrial Disputes Act, 1947 (**ID Act**). **ID:26:BHC-AS:32024**

3) Briefly stated, facts of the case are that the Petitioner used to run a Salon by name M/s. Olive Salon in Hotel Sun-N-Sand, Bund Garden Road, Pune. The Respondent was employed by the Petitioner as a Hair Dresser w.e.f. 6 October 2012. According to the Petitioner, the Respondent started showing casual and indifferent attitude towards his duties. That he used to indulge in various acts of indiscipline and was also remaining unauthorisedly absent for several days. That considering his unsatisfactory performance, his increment was reduced from 10% to 3%. It is claimed that during December-2014 and January-2015, the customers complained about the hair treatment given by the Respondent and sought refund of monies. The Petitioner accordingly terminated the services of the Respondent w.e.f. 4 February 2015.

4) The Respondent filed Complaint (ULP) No.20 of 2015 alleging unfair labour practices under Items 1(a), (b),(f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**M.R.T.U & P.U.L.P. Act**). The Complaint was resisted by the Petitioner by filing written statement. The Respondent filed application for interim relief. By order dated 23 June 2015, the Labour Court directed the Petitioner to pay retrenchment compensation and pay in lieu of notice under Section 25-F of the ID Act as interim relief. The Respondent challenged the said interim order of the Labour Court by filing Revision Application (ULP) No.50 of 2015. By order dated 8 September 2017 the Industrial Court has set aside the interim order of the Labour Court. However, the Petitioner still offered an amount of



Rs.16,000/- to the Respondent, which the Respondent has refused to accept.

5) The Respondent examined himself. Proprietor of the Petitioner, Ms. K.J. Rose Solome, examined herself in support of her defence. The Petitioner also examined Ms. Poune Hesho, a beautician working with the Petitioner. After considering the pleadings, documentary and oral evidence, the Labour Court has allowed the Complaint of the Respondent vide order dated 28 August 2018. The Labour Court held that the Petitioner has engaged in unfair labour practices by terminating the services of the Respondent w.e.f. 4 February 2015. The Labour Court accordingly directed the Petitioner to pay monthly salary of Rs.16,995/- to the Respondent for the period from 4 February 2015 to 21 July 2017, on which day the establishment of the Petitioner was closed. Additionally, the Labour Court has also directed payment of one month's pay in lieu of notice to the Respondent. Petitioner's revision against order of the Labour Court has been dismissed by the Industrial Court by judgment and order dated 5 December 2022. Aggrieved by the orders passed by the Labour and Industrial Courts, the Petitioner has filed the present Petition.

6) I have heard Mr. Bhanage, the learned counsel appearing for the Petitioner, who has submitted that the Respondent erroneously described his cessation from service as termination simplicitor. That what was effected by the Petitioner was dismissal of the Respondent on account of commission of misconduct. That the Respondent was fully aware of his dismissal on account of misconduct as he had approached Hotel Sun-N-Sand (**the Hotel**) with complaint dated 14 February 2015 and a detailed response was sent by the Petitioner to the Hotel pointing



out acts of misconduct of the Respondent. That even before the Labour Court, the Petitioner proved misconduct of the Respondent by examining the proprietor as well as one more employee of the establishment. He would submit that the Petitioner was a small establishment employing less than 5 employees. That it was essentially being run by husband and wife assisted by couple of other employees. That therefore Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 do not apply to the establishment and what applied was the Maharashtra Shops and Establishments Act, 1948 (**Shop Act**). He relies on Section 66 of the Shop Act in support of his contention that services of the employees can be dispensed with for misconduct without issuing notice. He therefore, submits that the Labour Court has erroneously interfered with the order of dismissal. He further submits that towards interim order the Petitioner had offered retrenchment compensation as well as notice pay to the Respondent, who refused to accept the same. He would take me through the entire allegations of misconduct levelled against the Respondent. He would submit that it was impossible for the Petitioner to run the Salon on account of behaviour and disciplinary issues of the Respondent. That his dismissal from service was the only option for the Petitioner. Without prejudice, Mr. Bhanage submits that the Petitioner herself is a workman. That the Salon has been closed long back and the Petitioner has settled at Manipur and that she herself is working as a workman. That she does not have financial means of paying any amount to the Respondent. He prays for setting aside the orders passed by the Labour and Industrial Courts.

7) Mr. Chinnappa, the learned counsel appearing for the Respondent opposes the Petition submitting that there are concurrent findings



recorded against the Petitioner by the Industrial and Labour Courts which do not warrant any interference in absence of an element of perversity. He submits that the Respondent is unceremoniously thrown out of the service without following provisions of Section 25-F of the ID Act. That he was never served with any charge-sheet and that therefore the plea raised by the Petitioner about dismissal because of misconduct is totally baseless. That if any misconduct was committed by the Respondent, the Petitioner ought to have conducted enquiry against the Respondent. That there is violation of provisions of Section 66 (a) of the Shop Act. That the Labour and the Industrial Courts have rightly granted relief in favour of the Respondent and that there is no warrant for interference in direction for payment of wages of barely two and half years. He prays for dismissal of the Petition.

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

9) The Respondent was appointed by the Petitioner, who was running a Salon by name M/s. Olive Salon in Sun-N-Sand Hotel at Pune. The appointment was effected by letter dated 6 October 2012 on fixed salary of Rs.15,000/- per month (Rs.1,80,000/- per year). Mr. Bhanage has relied upon a clause in the appointment order, which entitled the employer to terminate the services immediately on disciplinary grounds. Though appointment was effected through written appointment letter, the termination was made on 4 February 2015 without issuing any written termination order. Mr. Bhanage fairly admits that termination was orally effected. The Respondent accordingly filed Complaint of unfair labour practices challenging his discharge from services on 4 February 2015.



10) Mr. Bhanage submits that the Complaint was defective since it described the act of cessation as termination/discharge. According to him, it was removal/dismissal of the Respondent on account of commission of misconduct. However, the Petitioner never communicated to the Respondent any act of misconduct in any manner. There is no written order issued to the Respondent allegedly dismissing him from service. Even after the act of termination/dismissal, there is no communication that the termination was effected owing to commission of any misconduct. It is only after the Respondent complained to the Hotel about illegal termination that the Petitioner responded not to the Respondent but to the Hotel with an undated letter, which is placed on record at page 89 to 91 of the Petition. In that letter, Petitioner herself described that what was effected was 'termination'. She stated '*I the undersigned hereby response or clarify to his job termination from Olive Salon*'. In that letter, the Petitioner did allege skill issues and behaviour issues against the Respondent. The immediate reason for termination is apparent from the allegation that '*on 2nd Feb, 2015, he handled the account and there were shortage of cash. On finding the facts, he was immediately terminated.*' The Petitioner admittedly did not subject the Respondent to any domestic enquiry. The Petitioner could have terminated the Respondent without conducting enquiry into the alleged misconduct and could have justified its action by leading evidence before the Court. However, this course of action was not adopted by the Petitioner. In that view of the matter, I do not find any serious flaw in the findings recorded by the Labour Court that termination is in violation of provisions of Section 25-F of the ID Act.



11) Reliance by Mr. Bhanage on provisions of Section 66 of the Shop Act does not cut any ice. Section 66 provides thus:

66. Notice of termination of service.- No employer shall dispense with the services of an employee who has been in his continuous employment-

(a) for not less than a year, without giving such person at least thirty days' notice in writing, or wages in lieu of such notice;

(b) for less than a year but more than three months, without giving such person at least fourteen days' notice in writing, or wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employees are dispensed with for misconduct.

Explanation. - For the purposes of this section, "misconduct" shall include-

(a) absence from service without notice in writing or without sufficient reasons for seven days or more;

(b) going on or abetting a strike in contravention of any law for the time being in force; and

(c) causing damage to the property of his employer.

12) Thus, under Section 66 of the Shop Act, if the employee is in service for more than a year, a prior notice of 30 days is required to be given or wages in lieu of such notice are required to be paid before dispensing with services of such employee. In the present case, there is no dispute to the position that the Respondent had put in more than one year of service and therefore, issuance of one month's notice was warranted. Mr. Bhanage has relied on Proviso to Section 66 of the Shop Act, under which notice is not necessary where services of employees are dispensed with for misconduct. However, as observed above, the Petitioner never communicated to the Respondent that his services have been dispensed with on account of misconduct. Therefore, Proviso to Section 66 of the Shop Act will have no application to the facts of the present case. I am therefore, not inclined to interfere in the findings



recorded by the Labour Court that the Respondent has been illegally terminated from service by the Petitioner.

13) It appears that the Salon of the Petitioner was closed from 21 July 2017. This is a reason why the Respondent is awarded wages only during the period from 4 February 2015 to 21 July 2017. It is Mr. Bhanage's contention that the Petitioner herself is working as a worker after her shifting to Manipur. Present Petition appears to have been affirmed before the District Court in Manipur. There is no dispute to the position that the Salon operated by the Petitioner was an extremely tiny establishment without having many employees. Award of wages @ Rs.16,995/- during 4 February 2015 till 21 July 2017 in addition to wages for one month puts financial burden of about Rs.5.20 lakhs on the Petitioner. Since the order of the Labour Court was dated 28 August 2018, the Respondent can claim interest on the awarded amount. The Petitioner has committed an error in not following the provisions of Section 25-F of the ID Act and /or Section 66(a) of the Shop Act. If termination was effected either alleging misconduct or a simplicitor termination was effected by paying one month's salary, the Labour Court would not have possibly interfered in the termination. However, the termination is rendered illegal, essentially on account of technical failure on the part of the Petitioner to issue prior notice or to pay notice wages.

14) It appears that during pendency of the Complaint, the Labour Court had granted interim relief in favour of the Respondent on 23 June 2015 thereby directing the Petitioner to pay to the Respondent legal dues and pay in lieu of notice under Section 25-F of the ID Act. However, for



some unknown reasons, the Respondent challenged interim order dated 23 June 2015 of the Labour Court by filing Revision Application (ULP) No.50 of 2015 before the Industrial Court. The Industrial Court set aside order of the Labour Court holding that the Labour Court could not have directed the Petitioner to cure the illegality. The Industrial Court also held that since the case involved termination, relief of reinstatement by way of interim relief could not have been granted and that the Labour Court ought to have rejected interim application on merits. The Petitioner, on 22 July 2015, offered amount of Rs.16,000/- to the Respondent towards implementation of interim order dated 23 June 2015. The Respondent however, refused to accept the same contending that the interim order passed by the Labour Court was erroneous. Be that as it may. It is not necessary to delve deeper into the aspect of correctness of interim order passed by the Labour Court. Suffice it to observe that the Petitioner could have avoided consequences of illegal termination by simply following provisions of Section 25-F of the ID Act and /66(a) of the Shop Act.

15) The fact that termination is rendered illegal on account of technical failure on the part of the Petitioner coupled with the fact that the Respondent had rendered services of only about two and half years, in my view award of full salary to him from 4 February 2015 to 21 July 2017 was clearly unwarranted. The establishment itself is closed in the year 2017 and the Petitioner has apparently moved to Manipur. In such circumstances, it would otherwise be harsh for the Petitioner to pay entire amount of wages to the Respondent for two and half years when he worked for the Petitioner for equivalent time. Instead, award of lumpsum compensation to the Respondent would be in order.



Considering the fact that the Respondent has worked with the Petitioner for only two and half years and was drawing salary of Rs.16,995/-, in my view lumpsum compensation of Rs.3,00,000/-can be awarded to the Respondent in lieu of backwages.

16) The Petition accordingly succeeds and I proceed to pass the following order:-

- (i) Judgment and order dated 28 August 2018 passed by the Labour Court in Complaint (ULP) No.20 of 2015 as well as judgment and order dated 5 December 2022 passed by the Industrial Court in Revision Application (ULP) No.144 of 2018 are modified.
- (ii) The Petitioner shall pay to the Respondent lumpsum compensation of Rs.3,00,000/- within a period of two months.
- (iii) Beyond the lumpsum compensation so awarded, the Respondent shall not be entitled to any other service related benefits from the Petitioner.
- (iv) Failure to pay awarded compensation within the stipulated time shall entail interest @ 8% per annum after expiry of period of two months.

17) Writ Petition is partly allowed and **disposed of**. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]