



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 770 OF 2008

Larsen & Toubro Ltd. .. PETITIONER
: **VERSUS** :
M. Thomas & Anr. ... RESPONDENTS

Mr. S.P. Salkar, for the Petitioner.

Ms. Manisha Desai i/b. M.P. Vashi & Associates, for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

DATED : 6 MARCH 2026.

JUDGMENT :

1) By this petition, the Employer-Larsen & Toubro Ltd. has challenged award dated 13 June 2007 passed by the Learned Judge, 3rd Labour Court, Mumbai in Reference (IDA) 47/2003. By the impugned Award the Labour Court has set aside termination order dated 2 October 2001 and has directed reinstatement of Respondent No.1-Workman with full backwages and continuity of service.

2) Petitioner-L & T Ltd. is a Public Limited Company engaged in the business *inter-alia* of turnkey engineering, construction of project,

manufacture of heavy engineering equipment's, Electrical Low Tension Control Gears, Electronic Control/Automatic System etc. Petitioner has several establishments all across India. The dispute pertains to Petitioner's Powai works in Mumbai. Respondent No.1 was employed as Clerk in the Accounts Department of the Petitioner in the year 1977. Initially he was working at Powai office and was later transferred to Bandra Kurla complex office. While working so, a show cause notice dated 21 September 2001 was issued alleging that the workman was in the habit of reporting late for duty. It was alleged that during April, May and June 2001, the Respondent-Workman reported late for duties on several occasions. That though the reporting time was 8.45 a.m, Respondent No.1 invariably reported at around 10.35 a.m. Respondent-Workman submitted his written explanation dated 27 September 2001 taking a defence that though he reported late, he was working well beyond his duty hours. The written explanation of Respondent-Workman was found to be unsatisfactory and accordingly his services were terminated vide letter dated 2 December 2001. Aggrieved by the termination, the First Respondent raised industrial dispute which was referred to the 3rd Labour Court, Mumbai for adjudication and was numbered as Reference (IDA) No. 47/2003. Respondent No.1 filed his Statement of Claim and prayed for reinstatement with full backwages and continuity of service. The claim was resisted by the Petitioner by filing written statement. Based on the pleadings, Labour Court framed issues. Both the parties led evidence in support of their respective claims. Respondent No.1 examined himself.

Petitioner led evidence of Mr. Ajay M. Deshmukh, the then Joint General Manager, and Mr. J. Muthuswamy the then Manager, Commercial. The Labour Court has rendered Award dated 13 June 2007 answering the reference in the affirmative. The Labour Court has set aside termination order dated 2 October 2001 and has directed reinstatement of the First Respondent with full backwages and continuity of service.

3) Aggrieved by the Award dated 13 June 2007, the Petitioner has filed the present petition. By order dated 2 April 2008, this Court admitted the petition and stayed the award. Respondent No.1 appeared in the petition and filed Notice of Motion No. 448 of 2008 for recall of *ex-parte ad-interim* order, which was withdrawn by him on 5 January 2009. Respondent No.1 thereafter filed Notice of Motion No. 204 of 2009 for payment of backwages in pursuance of the Award. However, by order dated 29 July 2009, the Motion was disposed of directing that the Petition itself would be taken up for hearing. It appears that the petition came up before this Court on 20 June 2014, when this court suggested the parties to explore the possibility of settlement. It appears that the settlement talks failed. The petition is now called out for final hearing.

4) Mr. Salkar, the learned counsel appearing for the Petitioner submits that the Labour Court has grossly erred in answering the reference in the affirmative. He submits that the Labour Court has erroneously set aside termination order on the ground of non-conduct of

enquiry ignoring the position that conduct of any enquiry was not necessary in the light of express admission of charge by Respondent No.1. He takes me through the reply submitted to the show cause notice by Respondent No.1, in which he specifically admitted the charge of reporting late for duties. He submits that Respondent No.1 was habitual in reporting late for duties and there were as many as 35 occasions when Respondent No.1 was reporting late at around 10.30 a.m. even though the reporting time was 9.45 a.m. That after 1 July 2001, Respondent No.1 reported for duties at 10.00 a.m. everyday. He submits that once the charge itself was proved on admission, there is no need of holding any enquiry. That the charge was serious enough so as to warrant termination as employer cannot permit continuous and repeated misconduct of the employee. That there is loss of confidence by the employer in the employee . That though termination could be justified only on the basis of admission in the reply, Petitioner still justified the punishment by leading evidence. That both the management witnesses clearly led evidence of late reporting by the Respondent No.1. He would pray for setting aside the impugned Award.

5) *Per contra* Ms. Desai, the learned Counsel appearing for Respondent No.1 opposes the petition. She submits that the Labour Court has rightly set aside the punishment of termination effected without holding any disciplinary enquiry. That termination of services is in gross violation of provisions of Section 25F of the Industrial Disputes Act, 1947.

That there was no admission on the part of Respondent No.1 and he took specific defence of working till late hours to finish the work. That Respondent No.1 was terminated only because he refused to accept voluntary retirement. She submits that the Respondent No.1 has suffered immensely on account of his wrongful termination. She would pray for dismissal of the petition.

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

7) Services of Respondent No.1 are terminated by the Petitioner without holding any domestic enquiry. Petitioner merely issued a show cause notice to Respondent no.1 on 21 September 2001 alleging that he reported late for duties on 35 occasions during April to June 2001. It was alleged that the office reporting time was 9.45 a.m. whereas Respondent No.1 invariably attended office at around 10.30 a.m.

8) It is the case of the petitioner that conduct of any enquiry was not necessary on account of admission of the allegations in the show cause notice by Respondent no.1. Therefore, it would be necessary to consider reply of Respondent No. 1 to the show cause notice. The reply dated 27 September 2001 reads thus:

To,

The Jt. General Manager
Personnel Department
Powai

Through - AK Shukla (Branch Manager BKC)

Sir,

Your show cause notice dated September 21st 2001 wherein you have listed the time of my reporting for duty but the time of my departure is missing. It is clear that if I have come late I have also gone back late. To be frank since 1984 till date even though I have sat late and finished the work on hand and I have not claimed any overtime for the same even though I am an unioinized employee. If you leaf through my records you will find that I have sat late as 9 pm on normal working days and upto 6.30 to 7 pm on half days. To do the work and finish it to the satisfaction of my boss was my first priority working mostly in a service oriented department the fruit of my labour dwindle down to the person directly concerned. I am reminded of the saying.

"Nothing contributes more to cheerfulness than the habit of looking at the good side of things. The good side is God's side of them".

Since 1998 February, I have been transferred to BKC which basically is a sales office, where people walk in and out to as late as 3 pm. I am entrusted with the work of Bank Guarantee, Cash Register and any other work as the situation so demands.

1. As the Sales Engineers first priority is sales, follow up, etc., hence they often return back late usually around 4.45 pm the request for a Bank Guarantee is made and in all probability the next day the tender is due, or the payment is due. I have without any reservation sat late and finished the work and ensured that the Guarantee is made available on time for the tender with all the formalities complete in all respects.

2. It is during this period that I observed that the Bank was charging excess commission of Bank Guarantees. I sat late worked the figure and went and sat with the Bank Manager who had taken over as the earlier manager was transferred. According to the time available with him and got a refund cheque of nearly 2 lakhs which was excess commission charged by the Bank for the period from Sept. 1999 to Feb 2000 (Money charged excess when it had to be returned had to be doubly made save that the figure was right).

3. Similarly, I found that the limit of utilization of Bank Guarantee figures which we were reporting to the Head Office was wrong. I worked back

month to month year to year and arrived at the correct figure which the bank also acknowledged.

"It is said don't work hard to make a living struggle to make a living work"

It is while working in this office that I fell ill and had to consult various doctors at Hinduja, our company doctor, Doctor at Bandra & Andheri. Working in a sales office I requested my Department Head to allow me to come late so that I could follow the modalities lay down by these Doctors.

L&T is philanthropic - the Powai Pagent keeps printing about the generous aid and welfare our Andheri Welfare Centre does, the beautification of garden at Matunga, the mobile ambulance coach which does yomen medical service to various villages around Awarpur, etc. I am sure welfare starts at home, a personnel problem of a serving employee will be looked with more compassion. I have also ensured that my late coming does not affect the work in hand, on the other hand it have strived to ensure productivity is to the maximum.

"Pascal says all men's miseries derive from not being able to sit quietly in a room alone. Simple truth is that people who truly change the world often have no Armies and Nuclear weapon to help them".

Thanking you,

Yours faithfully,
Sd/-
THOMAS MATHEW
P.S. No. 45620

9) Thus, in his reply Respondent No.1 stated that '*it is clear that if I have come late, I have gone back late*'. This is treated as admission of allegation of late reporting by the Petitioner. However, if the entire reply is holistically considered, it is difficult to accept that Respondent No.1 admitted the allegations in the show cause notice in any manner. He stated that since 1984, he performed duties till late hours but never claimed any overtime allowance. As against normal duty working hours,

he used to work till 9.00 p.m. He also alleged that after being transferred to BKC office, he noticed that other co-workers were reporting as late as 3.00 p.m. He also set out the amount of efforts taken by him for completing the work of bank guarantee, cash register etc. Considering the above reply, it is difficult to hold that Petitioner admitted the allegations leveled in the show cause notice.

10) Even otherwise, show cause notice is issued towards preliminary enquiry. Show cause notice cannot be a substitute for chargesheet for initiating disciplinary action. Even in the show cause notice dated 21 September 2001, Petitioner threatened Respondent No.1 with the consequence of initiation of disciplinary action under the Model Standing Orders. This is clear from following portion of the show cause notice :

The act as above alleged to have committed by you amounts to serious misconduct under the provisions of the Model Standing Orders and the company will be fully justified in taking suitable disciplinary action against you. You are required to give your explanation in writing within the stipulated period, on receipt of which we will decide the course of action against you.

11) However, instead of initiating disciplinary action after being dissatisfied with the written explanation of Respondent No.1, Petitioner arbitrarily proceeded to terminate his services by order dated 2 October 2009. Curiously, though the stand of the Petitioner before me is that Respondent No. 1 admitted the allegations in the chargesheet, the

termination order dated 2 October 2001, did not state so. On the other hand, termination order deals with merits of defence raised by Respondent No.1. The termination order reads thus:

Ref.: PS 45620
October 2, 2001

Mr M Thomas
PS 45620
BKC Accts

Thro' AKS

This has reference to your written explanation bearing no date to the Show Cause Notice No. PS45620 dated 21.9.2001 issued to you for your habitual late attendance on duty on as many as 35 days during the period April 2001 to June 2001.

We regret to say that your explanation is found to be totally unsatisfactory. You are aware that the office commences at 8.45 am but you have reported late between 1.30 hours to 2.00 hours on each occasion in spite of your having been counseled several times by your superiors. Further, your sitting late beyond your duty hours was unauthorized as you were not asked to sit late beyond your duty hours by your superiors. Your contention that you sat late hours but did not claim overtime is therefore untenable. An employee is not permitted to decide his duty timings according to his own convenience without seeking prior permission from his superiors. We, therefore, take a serious view of our conduct, which is in breach of the office discipline. Your services are therefore hereby terminated with immediate effect. You will be paid one month's salary in lieu of notice and all other legal dues as per the Rules of the company which you are advised to collect immediately.

For LARSEN & TOUBRO LTD

Sd/-
(A M DESHMUKH)
Joint General Manager
Powai Works Personnel

12) Respondent no.1 was working with the Petitioner since the year 1977 and by the time the show cause notice was issued to him, he had completed 24 years of service. However, an employee working for such a long time was issued only 48 hours show cause notice on 21 September 2001 and was terminated within 11 days on 2 October 2001. Such an action on the part of the Petitioner is wholly illegal, arbitrary and capricious. In my view, the Labour Court has rightly set aside the termination order.

13) Mr. Salkar has taken me through the findings of the Labour Court in support of his contention that even the Court proceeded on a footing that the charge of reporting late was admitted by the Petitioner. In my view, this is incorrect way of reading both the written explanation of Respondent No.1, as well as findings recorded by the Labour Court. Respondent No.1 took the defence of working in the office at a time different than the one fixed by the employer. Though he came late, he worked till late hours. The employer has held in the termination order that the employee cannot decide the timings. Thus, the allegation essentially was about the employee deciding the work timings as per his convenience. He took a defence that he was working since 1984 without any complaint. In the Statement of Claim, he has also sought to add the flavour of victimization by referring to pressure tactics by the Petitioner for voluntary retirement. It is however not necessary to delve deeper into that aspect. Suffice it to observe that services of employee working for over 24

years, could not have been hurriedly terminated in an unceremonious manner and without holding any enquiry.

14) So far as evidence of the two witnesses examined by the Petitioner is concerned, the same is appreciated by the Labour Court and it has arrived at a conclusion that evidence of both the witnesses did not inspire confidence. Moreover, Petitioner did not produce relevant documentary evidence. Here again, it is not necessary to go deeper as Respondent No.1 himself took a stand that he worked during different work hours than the work prescribed by the management. Thus, what is proved, at the highest, based on evidence produced before Labour court was unilateral shift in working hours by Respondent No.1.

15) Considering the above position, the issue that arises for consideration is whether punishment of termination was warranted for proof of allegation of unilateral shift of duty hours by Respondent No.1. The answer, to my mind, appears to be in the negative.

16) It is a plea raised by Respondent No.1 that such unilateral shifting of duty hours was going on since 1984. Even otherwise, the allegation is not so serious so as to warrant extreme punishment of termination especially considering the fact that Respondent No.1 had put in over 24 years of service by the time he was terminated.

17) The next issue for consideration is the nature of relief that can be granted in favour of Respondent No.1. He was terminated on 2 October 2009 and the termination was set aside on 13 June 2007. It appears that Respondent No.1 was due for superannuation in the year 2010. In fact, a suggestion was made on behalf of the Petitioner before the Labour Court that reasonable compensation be awarded to Respondent No.1 in lieu of reinstatement considering the fact that he was due to retire in 2010. This is clear from submissions of counsel of Petitioner recorded in para-35 of the impugned Award.

18) Respondent No.1 is deprived of about 9 years of service on account of wrongful termination. The last drawn salary of Respondent No.1 was Rs. 15,486/-. It appears that alongwith Notice of Motion No. 48 of 2008, Respondent No.1 had produced a statement of backwages of Rs.16,00,000/- upto April 2008 considering even bonus and ex-gratia. In the present case, some misconduct on the part of Respondent No.1 is proved where he is found to have unilaterally altered the duty hours without the permission of the employer. Considering all the factors, in my view, ends of justice would meet if Respondent No.1 is awarded lumpsum compensation of Rs.10,00,000/- in lieu of reinstatement and backwages. It however needs to be clarified that the lumpsum compensation would only be in lieu of reinstatement and backwages and over and above the other

statutory dues payable to Respondent No.1 such as provident fund and gratuity.

19) I accordingly proceed to pass the following order :

- (i) Award dated 13 June 2007 by the Labour Court in Reference (IDA) No. 47of 2003 is modified.
- (ii) Petitioner shall pay to Respondent No.1 lumpsum compensation of Rs.10,00,000/- in lieu of reinstatement and backwages. Beyond the lumpsum compensation so awarded, Respondent No.1 shall not be entitled to any other financial benefits, except provident fund and gratuity.
- (iii) The amount of lumpsum compensation shall be paid to Respondent No.1 by the Petitioner within a period of 8 weeks.

20) With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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