

Bombay High Court Sonal Garments vs Trimbak Shankar Karve on 29 August, 2002 Equivalent citations: 2002 (6) BomCR 529, 2003 (96) FLR 498 Author: R Kochar Bench: R Kochar JUDGMENT R.J. Kochar, J. 1. The petitioner employer is aggrieved by the Award dated 7th January, 1995 passed by the Labour Court in Reference I.D.A. No. 447 of 1992 in the industrial dispute raised by the respondent workman and referred by the State Government for adjudication to the Labour Court under section 10(1)(c) of the Industrial Disputes Act, 1947. 2. According to the respondent workman, he was employed by the petitioner employer in June 1990. According to him, he was terminated from employment with effect from 23rd April, 1991 orally. It was his case that no retrenchment compensation was given to him and no wages in lieu of one month's notice were also offered at the time of termination. Both the parties appeared before the Labour Court and filed their pleadings. According to the petitioner employer, the respondent workman was never terminated from employment but he remained absent from February 1991. It was further averred in the written statement that as and when he reports for duty, he will have to explain his unauthorised absence. The petitioner employer further specifically averred that if the respondent workman was really interested to resume duties he could do so. It was the specific case of the petitioner employer that the respondent workman was never terminated by the petitioner and that he remained absent unauthorisedly and that he was welcome to join his duties. It appears that the offer of the petitioner employer was not heeded and accepted by the respondent workman and he never reported for work as stated by the petitioner employer in its written statement dated 10th January, 1994. Both the parties adduced oral evidence in support of their pleadings. The Labour Court recorded its findings that the respondent workman was illegally terminated and that he was entitled to be reinstated with full backwages and continuity of service. It appears that the Labour Court accepted the date of termination as 23rd April, 1991 and, therefore, computed that the respondent workman had completed 240 days of continuous employment and that he was entitled to get the benefit of section 25-F of the I.D. Act. The Labour Court further accepted that the petitioner employer had orally terminated the employment of the respondent and that the respondent workman had not abandoned the employment. The Labour Court did not accept the version of the petitioner employer. The findings recorded by the Labour Court are entirely based on the facts and evidence on record. It is, therefore, not possible for me to interfere with the Award for reinstatement under Articles 226 and 227 of the Constitution of India. 3. The Award of full backwages, however, is totally erroneous. The Labour Court has not at all considered the offer of the petitioner employer in the written statement that the respondent workman, if really, interested to resume duties, could do so. In my opinion, the respondent workman will not be entitled to get the backwages from the date of the written statement as it appears that there was no response from the respondent workman and that he did not report for work at all. Had he reported for work after the written statement was filed, he would have definitely stated so in his oral evidence which was recorded on 3rd September, 1994 to say that he had reported for work but he was not taken back as stated in the

written statement. The respondent workman is absolutely silent on that point. It is, therefore, clear that the respondent workman did not accept the offer of reinstatement given by the petitioner employer in his written statement. At the time of admission of the petition, this Court had granted rule only to the extent of backwages. There was no rule on the reinstatement. 4. However, as the offer of petitioner to reinstate the respondent was not accepted, he is not entitled to the relief of reinstatement and any backwages at all. His conduct lends support to the version of the employer that he had abandoned the employment and that he never came back to report for duty and that it was not a case of termination by the petitioner employer. Whenever the employer offers to reinstate the workman at any stage of the dispute or proceeding and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any backwages from the date of such offer, conditional or unconditional. He must first accept the offer and get reinstated in employment and therefore continue to contest for the relief of back wages, if any. In the present case there was an unconditional offer of reinstatement made by the employer in the written statement itself but it was not accepted by the workman. Therefore, as stated by me hereinbefore, he is not entitled to get reinstatement with full back wages at all. 5. The Award is therefore, quashed and set aside. Rule is made absolute. No orders as to costs.