

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
INTERIM APPLICATION NO.3461 OF 2023  
IN  
WRIT PETITION NO.4839 OF 2023**

M/s. Rudra Health Spa Pvt. Ltd. ... Applicant/Petitioner  
versus  
Madhukar K. Tambe ... Respondent

Mr. Rohaan Cama with Mr Phiroze Mehta, Mr. Nishit Dhruva, Mr Prakash Shinde, Ms. Niyati Merchant, Mr. Yash Dhruva, Mr. Haresh Sheth i/by MDP and Partners for Applicant/Petitioner.  
Mr. G.R.Naik for Respondent.

**CORAM: N.J.JAMADAR, J.**

**DATE : 18 APRIL 2023**

**P.C.**

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an Award dated 20 September 2022 passed by the Labour Court in Reference IDA No.229 of 2017, whereby the Reference came to be answered in the affirmative and the termination of the services of the Respondent with effect from 19 March 2015 was declared illegal. The Petitioner has been directed to reinstate the services of the Respondent with full back wages and continuity of services with consequential effect from 19 March 2015 along with all consequential benefits.
3. Before the Labour Court, the Petitioner had raised grounds that the Respondent has abandoned the services on his own and did not report to work despite

having called upon to do so; the establishment itself was closed with effect from 30 September 2017 and no evidence was led by the Respondent to show that he was gainfully employed during the intervening period.

4. The learned Presiding Officer, Labour Court, was persuaded to negative each of the contentions raised on behalf of the Petitioner.

5. The learned Counsel for the Respondent submitted that there was no material before the Labour Court to substantiate the contention on behalf of the Petitioner that the establishment has been closed with effect from 30 September 2017 and the ground of abandonment was also not proved as the Petitioner had neither addressed any notice, nor initiated any disciplinary action against the Respondent for non-reporting to duty.

6. I have perused the impugned order. The question as to whether the Respondent should have been, in the circumstances of the case, reinstated with full back wages, deserves consideration as the Labour Court has proceeded on the premise that the Petitioner company continued to be a functional entity with the Registrar of Companies and the balance sheets were filed. The question as to whether the business of spa where the Respondent had been working as a masseur has not been adequately dealt with.

7. In view of the above, issue notice to the Respondent, returnable on 20 June 2023.

8. The learned Counsel for the Respondent waives service of notice.
9. In the meanwhile, there shall be ad-interim relief in terms of prayer clause (a) of the Application.
10. The Respondent is at liberty to file an Affidavit in Reply within a period of three weeks.
11. Rejoinder, if any, to be filed within one week thereafter.

**( N.J.JAMADAR, J. )**