

(2023) 07 MP CK 0062

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13725, 18545 Of 2014

Depot Manager And Others

APPELLANT

Vs

Vidyawati Ramswaroop Verma And Others

RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 136, 227
Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2023) 07 MP CK 0062

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Anoop Nair, L.C. Patne, Abhay Pandey

Final Decision : Dismissed

Judgement

Anand Pathak, J

1. Regard being had to the similitude of the issue involved, both the petitions were heard analogously and decided by this common order. For convenience sake, facts of Writ Petition No.13725/2014 are taken into consideration.

2. Present petition is preferred by the Senior Depot Manager of IOCL being crestfallen by the award dated 31-03-2014 (Annexure P/1) passed by the Central Government Industrial Tribunal/Labour Court, Jabalpur (hereinafter referred as "Tribunal") whereby the reference answered in favour of workman and award is passed and action of management/petitioner found illegal and improper and petitioner is directed to reinstate the workman with 30% back wages.

3. Precisely stated facts of the case are that petitioner appointed the respondent/workman on the post of Typist cum Clerk w.e.f. 30-09-1999 and was posted in the Office of Senior Depot Manager, IOCL Marketing Division, Mangaliagaon, Depot Indore. Respondent is differently abled lady and was offered appointment under physically handicapped category by the petitioner. On account of her own health condition as well as medical condition of her mother, she applied for grant

of leave from time to time which were duly sanctioned to her by the petitioner considering her claim. It appears that because of medical condition of her mother, she sought Leave Without Pay on 24-03-2000. She was called by the then Depot Manager, Shri S.G. Alone (MW-1) and asked the petitioner to sign some papers for purpose of regularizing her leave. She signed those blank papers as per the direction of the said officer.

4. When petitioner came to join the duties back in the month of April, 2000 she was not allowed to join citing her alleged resignation from the services of petitioner. From the documents, it appear that on 25-03-2000 she filed her resignation to Senior Depot Manager and requested that she should be relieved with effect either from 25-03-2000 or from 26-03-2000.

5. When workman/respondent was not allowed to resume her duties despite her several requests then petitioner approached the Central Government Industrial Tribunal, Jabalpur and submitted her statement of claim seeking reinstatement with all consequential and monetary benefits.

6. Petitioner/management contested the claim on the ground that respondent submitted her resignation on 25-03-2000 and the said letter was forwarded to the Western Regional Office of petitioner company at Mumbai and resignation was accepted. Thereafter cheque bearing No.220718 dated 01-10-2002 amounting to Rs.22,262/-in the name of respondent was drawn on State Bank of India.

7. Before the Tribunal, after completion of pleading, evidence was led by the parties and thereafter impugned award has been passed. By the said award, retrenchment action of the management of the petitioner company in obtaining resignation letter from respondent was found to be illegal and improper and she is directed to be reinstated with continuity of services with 30% back wages. Therefore, this petition is preferred under Article 227 of the Constitution by the petitioner/management.

8. On the other hand, respondent/workman of this petition also filed petition under Article 227 of the Constitution vide W.P.No.18545/2014 in which she sought modification of award dated 31-03-2014 so far as it denies the respondent full back wages for the period during which she remained out of employment.

9. It is the submission of learned counsel for the petitioner/management that learned Tribunal erred in ignoring the fact that respondent/workman on her own had submitted resignation letter which was accepted by the petitioner. Prior to 26-04-2001, petitioner has not given any letter whatsoever of any kind either to recall her resignation letter or to join the duties. According to him, much inconsistencies exist in the evidence submitted by the respondent/workman and although inconsistencies in the dates as narrated by the management existed but same does not amount to any material contradiction/inconsistency so as to pass impugned award.

10. It is further submitted that question of leave was not even the issue which was referred to and Tribunal erred in going into the issue of leave. Once the respondent submitted her resignation, the same was effective after acceptance and cannot be withdrawn subsequently. Petitioner relied upon the judgment of Apex Court in the case of State Bank of Patiala Vs. Phoolpati, (2005) 3 SCC 88, Oshiar Prasad and others Vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited Dhanbad, Jharkhand, (2015) 4 SCC 71.

11. Per contra, learned counsel for the respondent/workman matched the vehemence and supported the impugned award so far as reinstatement is concerned. It is the submission of learned counsel for the respondent that scope of interference by High Court under Article 227 of the Constitution is not to reappreciate the evidence and not to disturb the finding of fact arrived at by the Court below. When learned Tribunal considered the pleadings and evidence on record and thereafter reached to a conclusion about the act of petitioner/management then scope constricts. He relied upon the judgment of Apex Court in the case of Dr. Kazimunnisa (Dead) by Legal Representative V. Zakia Sultana (Dead) by Legal Representative & Others, (2018) 11 SCC 208.

12. It is further submitted that learned Tribunal rightly found that the alleged resignation by the respondent/workman was not at her own will and was a result of misrepresentation/coercion/pressure exerted by the then Senior Depot Manager. Resignation should be unconditional with intention to operate as such. He relied upon the judgment of Division Bench of this Court in this regard passed in the case of Vijay Shankar Tripathi Vs. Project Officer and another, 2004 (5) MPLJ 329. It is further submitted by learned counsel for the respondent that no order and letter showing acceptance of alleged resignation letter by the competent authority has been brought on record by the petitioner/management. Only letter dated 18-04-2000 by which proposal for acceptance of resignation was prepared was brought on record. Concerned officer, namely S.G. Patwardhan, Assistant Manager (Personnel) and Mr. Dilip Hari, Senior Manager (WR) who purportedly signed the aforesaid proposal were not examined by the petitioner. This is a quasi-judicial adjudication and therefore, either of the said documents were required to be examined and in absence thereof management could not prove its case. He relied upon Roop Singh Negi Vs. Punjab National Bank and others, (2009) 2 SCC 570, Santosh Bharti Vs. State of M.P. and others, 2016 (4) MPLJ 311 of Coordinate Bench of this Court which was affirmed by the Division Bench of this Court in the case of State of M.P. & Others Vs. Santosh Bahrti, 2016 SCC Online MP 11039. It was further submitted that document of resignation was never produced in original and only photocopy was produced.

13. Learned counsel for the respondent also addressed over the point that learned Tribunal erred in passing the impugned award while granting only 30% of the back wages after reinstatement where as per the judgment of Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya

(D.ED.) and others, (2013) 10 SCC 324 respondent/workman was entitled for grant of full back wages for the period she was forced to remain out of employment. He also referred the judgment of Apex Court in the case of Krushnakant B. Parmar Vs. Union of India (2012) 3 SCC 178 to submit that employee cannot be penalized for his absentism from duties where such absence from duties is attributable to compelling circumstances such as ill health, medication etc. Respondent/workman prayed for dismissal of writ petition No.13725/2014 and prayed for allowing writ petition No.18545/2014 so that respondent/workman can get 100% back wages after reinstatement instead of 30% only, as awarded by the Tribunal.

14. Heard rival submissions at length and perused the documents appended thereto.

15. The instant petition bearing No.13725/2014 is a petition under Article 227 of the Constitution taking exception to the award dated 31-03-2014. Scope of petition under Article 227 of Constitution is well defined and limited. Scope of petition under Article 227 of the Constitution is already discussed in Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329 and in Dr. Kazimunnisa (Dead) by Legal Representative (supra).

16. In the instant case, learned Tribunal has narrated the facts and framed the following issues/points for consideration:

“(i) Whether the action of the management of Sr. Depot Manager, IOCL, Marketing division, Mangliagaon, Indore in obtaining resignation letter from Ku. Vidyawati Ramswaroop Verm under duress and influence is justified ?

In Negative

(ii) If not, what relief the workman is entitled to ?

As per final order;

17. It has to be kept in mind that respondent appointed in the handicapped (differently abled) category. She produced medical papers about illness of her mother. Indeed, she remained absent for some considerable period of time but she was having a reason for such absence and that was medical condition of her mother.

18. Respondent categorically alleged that under the garb of medical condition she was compelled (or persuaded) to sign over the blank papers where she also made a request for leave without pay for 08-03-2000 till indefinite period. Incidentally, workman rendered resignation on 25-03-2000 but vide letter dated 29-03-2000 respondent/workman was directed to join on or before 10-04-2000. Evidence of management witness was found to be inconsistent about the date of relieving of workman. Some documents Ex-M/1 and M/2 show that workman had requested to relieve her from 26-04-2000 whereas resignation letter was to relieve her from 25/26-03-2000. Even resignation was not sent to the competent

authority but it was addressed to Senior Depot Manager who does not have any authority to act upon such resignation.

19. Learned Tribunal rightly came to the conclusion that when workman was granted leave without pay, therefore, there was no reason for her to submit resignation and both the witnesses of petitioner/management were silent about the reason for submitting resignation by workman. Even the letter issued by Senior Depot Manager about resignation is not produced in original on record and therefore, plea of workman was rightly accepted by the Tribunal that there was no reason for submitting resignation by her. Petitioner being model employer has to act in Fair, Transparent and Just manner and petitioner/management nowhere made any remark while forwarding resignation of workman that workman was apprised of the consequences of the resignation and without one month notice immediately resignation was accepted.

20. Petitioner is a model employer and has to act in just, fair and transparent manner and Principle of Natural Justice includes Fairness by authority concerned and it is an expanding concept. {See: Dev Dutt Vs. Union of India and others, (2008) 8 SCC 725}. Here, it appears that petitioner did not perform their duties in fair and transparent manner otherwise they would have apprised the workman about her step taken. One more aspect deserves consideration in this case is that respondent/workman is differently abled employee and to address their problems, earlier The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted but it was found inadequate with the march of time and therefore, The Rights of Persons with Disabilities Act, 2016 came into being and it is based upon United Nations General Assembly Convention, 2006. Principles for empowerment of persons with disabilities enumerate freedom to make own choices and independence of persons, full and effective participation and inclusion in society and equality of opportunity besides other principles. Therefore, petitioner/management ignored those attributes and trappings of Act of 1995. Now Act of 2016 is more inclusive and pervasive. Therefore, on this count also, case of respondent/workman gains grounds.

21 When petitioner has to act in just and fair manner then allegation of respondent gains ground that resignation was obtained through fraud by the then Senior Depot Manager and fraud vitiates all solemn proceedings. Here action of petitioner/management suggests that they played fraud over the respondent to obtain her signature.

22. It is well settled principle of law that Fraud Vitiates Everything. This principle has been dealt with by the Apex Court in its various judgments viz. in the case of R. Ravindra Reddy Vs. H. Ramaiah Reddy, (2010) 3 SCC 214, Uddar Gagan Properties Ltd. Vs. Sant Singh, (2016) 11 SCC 378, K.D. Sharma Vs. SAIL, (2008) 12 SCC 481, Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133, DDA Vs. Skipper Construction, (2007) 15 SCC 601 and in the case of Jai Narain Parasrampur v. Pushpa Devi Saraf, reported in (2006) 7 SCC 756. In R. Ravindra Reddy (supra), the Apex Court held as under:

"39. As far as fraud is concerned, it is no doubt true, as submitted by Mr Ramachandran, that fraud vitiates all actions taken pursuant thereto and in Lord Denning's words "fraud unravels everything....."

23. Therefore, petitioner/management cannot act in such a way being model and benevolent employer and treatment meted out to a newly appointed employee under physically handicapped category and instead of giving her encouragement and confidence she was treated in such manner. This Court does not intend to reiterate the discussion made by learned Tribunal for brevity, but is agreed by the discussion for arriving to the conclusion that action of the management - Senior Depot Manager, Marketing Division, Mangaliagaon, Depot Indore in obtaining resignation letter from the respondent -Ku. Vidyawati Verma is not legal and proper. Therefore, the petition preferred by the petitioner/management against the order of reinstatement as well as back wages is hereby dismissed.

Regarding Writ Petition No.18545/2014:

24. This is the petition preferred by the workman taking exception to the back wages awarded to the tune of 30%. Petitioner/workman although supported the impugned award so far as reinstatement is concerned but his grievance is that back wages should have been 100%.

25. It is true that petitioner took care of her mother and therefore, took leave including leave without pay for indefinite period. Besides that, she herself is a differently abled lady and despite her limitations she took care of her mother. She was subjected to misrepresentation and fraud, therefore, in peculiar facts and circumstances of the case, learned Tribunal has awarded 30% of the back wages to the petitioner. Grant of back wages is not automatic and it depends on individual facts and circumstances of the case. The propositions culled out by the Apex Court in the case of Deepali Gundu Surwase (supra) are as under:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the

employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of

natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

26. The case in hand is not a case of wrongful termination of services, it is a case of resignation of employee where management allegedly played fraud in obtaining resignation which found to be a way of removal from services ultimately. Therefore, benefit of doubt has been given to the petitioner in the given facts and circumstances of the case. In other words, by adopting criminal parlance, its the petitioner/workman who succeeded on "Benefit of Doubt". Therefore, awarding 30% of back wages in overall facts and circumstances of the case appears to be just and proper and do the justice in the present set of facts. Therefore, the plea of workman that 100% back wages should have been awarded by the Tribunal appears to be misplaced.

Accordingly, the writ petition No.18545/2014 so far as seeking 100% back

wages, sans merits and is hereby dismissed.

27. Resultantly, the writ petition No.13725/2014 and writ petition No.18545/2014 stand dismissed. Impugned award dated 31-03-2014 passed by CGIT/Labour Court, Jabalpur is hereby affirmed. Since case is of year 2000 and it appears that workman was suffering litigation for last 23 years, therefore, management -IOCL is directed to reinstate the workman immediately and pay her back wages if not already paid while continuity in service along with 30% back wages as awarded by the learned Tribunal within three months from the date of this order without any delay. In case of compliance as per Section 17B of the Act 1947, already paid amount shall be deducted from payment by employer/management.

28. Both the petitions stand dismissed.