
(2016) 07 BOM CK 0111
In the Bombay High Court
Case No : Writ Petition No.2050 of 2010

Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Arjun

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2016) 5 ALLMR 868 : (2016) 3 CLR 358

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Mrs. Ranjana Reddy, Advocate, for the Petitioner; Mr. S.C. Swamy h/ f Mr. V.D. Gunale, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J.(Oral)—This matter has been heard at length on 25/07/2016 and today.

2. The petitioner/Corporation is aggrieved by the judgment of the Labour Court dated 24/07/2008, by which Complaint (ULP) No.31/2003, filed by the respondent, has been allowed and the Labour Court has passed the following order :

"1. Complaint is allowed.

2. It is declared that the respondents have engaged in unfair labour practise as per Item 1 (a and b) of Schedule IV of M.R.T.U. and P.U.L.P. Act and respondents should desist from the same.

3. The respondents are directed to reinstate and absorb the complainant by accepting his proposal of reinstatement even after resignation from service by virtue of circular dated 04/04/1981 and precedents followed by the respondents

on the same scale of driver till he attains the age of retirement.

4. The services of complainant be treated as continued from 01/02/1999 on the same scale of Rs.4,720/- and he be paid all the differences of wages and that wages from 01/02/1999 till the age of retirement with interest thereon @ 12% per annum from the date of judgment till its realisation.

5. No order as to costs."

3. The petitioner is also aggrieved by the judgment of the Industrial Court dated 14/01/2010 by which Revision (ULP) No.21/2008, filed by the petitioner/ Corporation, has been partly allowed and the following order has been passed :

"1. Revision is partly allowed and the operative order passed in the impugned complaint is modified as follows :

"a. The complaint is allowed.

b. It is declared that the petitioner/original respondents have engaged in unfair labour practise as per Item 1(a) and (b) of Schedule IV of the MRTU and PULP Act and respondents should desist from the same.

c. The respondents are directed to reinstate the complainant with continuity of service in the post of peon by protecting his original pay of the post of driver till the complainant attains the age of retirement.

d. The respondents are directed to pay 25% of the back wages w.e.f. 01/02/1999 with interest @ 6% per annum only.

e. Respondents shall pay cost of Rs.500/- to the complainant"

2. The petitioner shall pay amount of Rs.500/- cost of this revision to the complainant.

3. Inform the learned Judge, Labour Court, Latur accordingly.

4. Record and proceeding be sent back immediately and both parties are directed to appear before the Hon"ble Labour Court, Latur."

4. The undisputed facts of the case are as under :

a. The respondent/employee joined as a "Driver" with the Corporation in 1981.

b. On 01/02/1999, he was removed from service due to poor eyesight.

c. He was given an alternate job as a "Peon" on 20/05/1999.

d. The respondent submitted a resignation dated 20/06/2000, specifically praying for acceptance of the resignation from the very next day 21/06/2000.

e. The respondent/employee claimed that his signature was obtained on a blank paper and a resignation was subsequently typed thereon.

f. The Corporation passed an order on 08/08/2000 and accepted the resignation

of the employee w.e.f. 10/08/2000 and removed his name from the muster roll as a "Peon", which was communicated to him.

g. For the first time, after 6 months, the respondent filed an application on 05/01/2001 claiming reemployment on the ground that he was forced to resign.

h. In the said application, he has not stated that his signature was obtained on a blank paper. He has, in fact stated that because he had to repay amounts to other persons, he resigned from service so as to collect his legal dues.

i. The respondent preferred Complaint (ULP) No.31/2003 alleging that he was forced to resign on 20/06/2000.

5. Learned Advocate for the petitioner submits that after acceptance of resignation and upon payment of legal dues by virtue of the order dated 08/08/2000, there could not have been an application for withdrawal of resignation after 7 months on 05/01/2001. Had the respondent applied for withdrawing his resignation before it was accepted on 08/08/2000, which is practically after about 7 weeks, his case could have been considered. The Labour Court has expressed undue sympathy towards the respondent and granted him continuity of service from 01/02/1999 on a particular scale without the said issue having been addressed to the Court and moreso after the complaint was filed on 22/04/2003. It is further submitted that instead of correcting the error, the Industrial Court proceeded to grant further benefits, though by reducing the back wages component.

6. Learned Advocate for the respondent has supported the impugned judgment of the Industrial Court. He has not preferred a petition against the said judgment, by which his back wages were reduced. It is submitted that the Labour Court was convinced that the respondent was forced to resign and the said conclusions should not be interfered with.

7. He further submits that the Labour Court considered the circular dated 04/04/1981 and granted reinstatement with continuity of service after concluding that the resignation was extracted after mentally torchering the respondent. He, therefore, prays that this petition be dismissed with costs and interest be awarded in so far as his retiral benefits are concerned, w.e.f. April 2013 when he retired from service after been reinstated on 28/07/2010.

8. I have considered the submissions of the learned Advocates.

9. It is trite law that a resignation or even an application for voluntary retirement, if the V.R. scheme provides for a retracting / withdrawal clause, can be withdrawn before it is accepted.

10. There is no dispute that the respondent purportedly resigned on 20/06/2000 and the same was accepted by order dated 08/08/2000. This clearly indicates that his resignation is not accepted hurriedly or in undue haste.

11. The ingredients to prove a forceful resignation ought to appear through such

events and attending circumstances that it could be easily gathered that the employee has suffered duress and coercion while resigning. He must, therefore, adopt steps with promptitude to undo the damage caused. From the facts emerging from this petition, the respondent was relieved from service after 10/08/2000 and he has filed an application on 05/01/2001, not for recalling or withdrawing his resignation letter, but praying for reemployment as a Peon under the 1981 circular.

12. It is trite law that withdrawal of resignation after its acceptance is not to be entertained. See *Indrajit Bhanot v. Punjab National Bank and others*, 2007 LLR 125. So also once an employee has opted for retirement, he cannot allege coercion after receiving his legal dues. Read : *K.V. Ramchandran and others v. Presiding Officer, Labour Court, Chennai*, 2007 LLR 319, *Tulip Star Hotels v. Union of Centaur Tulip Employees and others*, 2007 LLR 1002, *M.P. Behere v. Union Bank of India*, 2009(3) CLR 909 Bombay Division Bench, *P. Lal v. Union of India*, 2003 AIR SC Weekly 849

13. The Hon"ble Supreme Court in the matter of *Gyanendra Sahay v. Tata Iron and Steel C.Ltd.*, (2006) 5 SCC 759 has concluded in paragraph No.14 as under :

"14. We have also perused the memo of appeal and other representation made by the appellant. The appellant has made a vague allegation that he was forced to take retirement. Neither has he made it specific nor had given the name of any officer who compelled him to write the letter dated 1-4-1995 or exercised undue and excessive pressure to sign the letter of premature/voluntary retirement. Though the Labour Court has come to the conclusion that the appellant was compelled to submit the letter of resignation, the same is not supported by any acceptable evidence. It is settled law that suspicion and doubt cannot take the place of evidence. No finding of fact can be given on mere doubt and suspicion or on the basis of baseless allegations. The appellant having written a letter of voluntary retirement and after having accepted the retiral benefits without any protest cannot now turn round and say that he was compelled to submit his premature/voluntary retirement. The appeal has absolutely no merits and we, therefore, have no hesitation to dismiss the same and to affirm the order passed by the learned Judges of the Division Bench of the High Court. No order as to costs."

14. I have perused the letter dated 05/01/2001, which is admittedly filed by the respondent, in which he claims that after resignation he has not received some amounts. He was compelled to resign because of the mistakes committed by the Officers and therefore he should be reappointed on the post of Peon. Nowhere has he stated that he had never resigned, that he had signed on a blank paper and that the blank paper was misused for typing a resignation.

15. The above crucial factors, coupled with the fact that the respondent was silent for more than 6 months post resignation, have been lost sight of by the Labour Court as well as the Industrial Court. In matters of withdrawal of

resignation or forceful resignation resulting in illegal termination, time is the essence and attending circumstances are crucial. I do not find any attending circumstances which could convince me that the respondent had opposed his resignation on the ground that he was forced to resign or that he had approached any specific authority making a grievance of force and duress being purportedly exerted on him.

16. The respondent was silent for more than 6 months and despite having the knowledge of the acceptance of the his resignation and having been relieved w.e.f. 10/08/2000, he raised the issue of reappointment on 05/01/2001 and lodged the ULP complaint before the Labour Court on 22/04/2003, which is practically after about 2 years and 10 months from the date of his resignation. These factors having been overlooked by the Labour Court as well as by the Industrial Court, would clearly indicate that the relief granted by these two courts is an act of misplaced sympathy.

17. I am equally surprised by the conclusions of the Industrial Court that "merely because of complainant has not filed any police complaint, it cannot be directly said that the resignation was voluntary. In view of the above definition of the said term "voluntary", it is necessary to consider all the circumstances existing at the time when the alleged resignation is tendered or signed."

18. When it comes to attending circumstances to be considered while assessing a case of forceful resignation, the silence maintained by an employee for a considerable period would be detrimental to his case. It is not expected that an employee would take his forceful resignation lying down. Any employee would react to such a situation by raising a grievance if he has been forced or coerced to file a resignation. In the instant case, the application/letter put forth by the respondent on 05/01/2001 nowhere makes any grievance about any purported blank paper bearing his signature and being used as a resignation letter or any grievance that he had never tendered a resignation. This, therefore, indicates that because the respondent was aggrieved by his non-employment, he has preferred a complaint before the Labour Court and that too after about 2 years and 10 months.

19. As such, this petition is allowed. The impugned judgment of the Labour Court dated 24/07/2008 is quashed and set aside and complaint (ULP) No.31/2003 stands dismissed. Consequentially, the judgment of the Industrial Court dated 14/01/2010 is quashed and set aside.

20. Learned Advocate for the respondent submits that directions be issued to the petitioner/Corporation, at least, to process his retiral benefits, as may be available in law. Learned Advocate for the petitioner submits that the service papers of the respondent would be duly considered in accordance with the rules and regulations applicable in so far as grant of retiral benefits are concerned and to the extent of difference of wages and pay scale, if any.

21. Such a decision shall be taken within 12 weeks from today. Needless to state,

the respondent would be at liberty to raise a grievance, if he is not satisfied with the decision of the Corporation in so far as his retiral benefits are concerned.

22. Rule is made absolute in the above terms.

23. No costs.