

(2010) 09 GUJ CK 0128

In the Gujarat High Court

Case No : Special Civil Application No. 6447 of 1994

Fatesinh Mohansinh Makwana

APPELLANT

Vs

Jyoti Switch Gears Ltd.

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 09 GUJ CK 0128

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : P.C. Master, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and order quashing and setting aside the impugned judgment and award dated 2.12.1993 passed by Labour Court, Ahmedabad passed in Reference (LCA) No. 55 of 1992, by which the Labour Court has dismissed the said Reference.

2. The facts leading to the present Special Civil Application in nutshell are as under:

2.1. The petitioner was serving with the respondent and it appears that on 21.8.1983 he was caught red handed with one choke, which was found in his Tiffin and therefore, it was alleged against the petitioner that he has committed a theft of the company property. It appears that the company was to initiate criminal proceedings against him, however the petitioner requested not to take any action and not to initiate any proceedings and he tendered resignation, which came to be accepted on 24.8.1983. It appears that thereafter, as a second thought and after his resignation was accepted, petitioner by communication dated 21.8.1983 turn around and submitted that his resignation was by force, compulsion and under duress. Therefore, it was requested to take him back on

duty. That thereafter, petitioner raised an industrial dispute which was referred to Labour Court, Ahmedabad, which was numbered as Reference(LCA) No. 55 of 1992 and Labour Court by impugned judgment and award dismissed the said Reference by holding that once the resignation tendered by the petitioner was accepted, it was not open for the petitioner to withdraw the same. The Labour Court also found that the resignation tendered by the petitioner was not under duress. Being aggrieved and dissatisfied with the impugned judgment and award passed by the Labour Court, Ahmedabad in dismissing the said Reference, the petitioner has preferred present Special Civil Application under Article 227 of the Constitution of India.

3. Shri P.C. Master, learned advocate for the petitioner has vehemently submitted that as such the so called resignation of the petitioner was under duress. It is submitted that as such there was no theft committed by the petitioner at all and, therefore, any admission or confession made by the petitioner cannot be used as evidence against the petitioner without holding any inquiry and straightway order of termination could not have been passed and, therefore, it is requested to allow the present Special Civil Application.

4. Having heard the learned advocate for the petitioner and considering the impugned judgment and award, at the outset, it is required to be noted that it is not a question of termination of the petitioner on confession and/or admission. It is a question of resignation tendered by the petitioner. It appears that to avoid criminal proceedings and other departmental proceedings, the petitioner voluntarily tendered the resignation on 21.8.1983, which came to be accepted immediate on the very day. Thereafter, after a period of three days as an afterthought the petitioner submitted the application on 24.8.1983 and came out with a case that his alleged resignation was under duress and he tried to withdraw the same and retract the same. Considering the fact that earlier, the resignation submitted by the petitioner was already accepted and as rightly observed by the Labour Court that it was not open for the petitioner subsequently to withdraw the same.

5. Now so far as the contention on behalf of the petitioner that he has not committed theft is concerned, even in the cross-examination the petitioner has categorically stated that one choke was found from his Tiffin. Learned advocate for the petitioner is not in a position to satisfy the Court how the choke was found from the Tiffin. Therefore, it appears that to avoid any criminal proceedings, the petitioner voluntarily submitted the resignation, which came to be accepted on 24.8.1983 and as an afterthought subsequently he tried to retract the same, which is not permitted by the Labour Court, Ahmedabad.

6. In view of the above there is no substance in the petition, which deserve to be dismissed and is accordingly dismissed. Rule discharged.