
(1995) 04 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 2203 of 1992

Gangaram K. Medekar

APPELLANT

Vs

Zenith Safe Mfg. Co. and Others

RESPONDENT

Date of Decision : 17-04-1995

Acts Referred:

Citation : (1998) 3 LLJ 556

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

S.H. Kapadia, J.—By this writ petition, the petitioner - workman seeks to challenge Award of the First Labour Court at Bombay in Reference (IDA) No. 985 of 1986. By the impugned Award, workman's claim for reinstatement with back wages came to be rejected. Therefore, the present writ petition has been filed.

2. Facts giving rise to this writ petition, briefly, are as follows :

3. On 4th September 1967, petitioner joined as a Painter in the factory of respondent No. 1-Company which, at the relevant time, was a Partnership Firm. On 18th April 1986, services of the petitioner came to be orally terminated. On 28th March 1986, petitioner approached Government Labour Officer under the provisions of Industrial Disputes Act, 1947. On 26th April 1986, respondent No. 1-Company addressed a letter to the workman stating that the Peon of the Company one Laxman Mhatre had informed the Partner of respondent No. 1 (Shri Panchal) that the petitioner was sitting idle and whistling in the factory without doing any work. Thereupon, Shri Panchal, the Partner of the Company had paid a visit to the Department and found the petitioner sitting idle and whistling. That the Partner Shri Panchal thereupon asked the workman as to why he was not performing his work. That on this, the petitioner-workman shouted at the Partner and told that he may remove him (the petitioner) from the job because the petitioner was not interested in the job. That thereafter, the petitioner came to the Office and abused Laxman Mhatre (Peon) for informing Shri Panchal, the Partner of the Company, about the misconduct. That thereafter

the petitioner left the factory and did not report for work till 26th April 1986 when the above letter was addressed by the Company. That the production record indicated that the petitioner was deliberately giving less production despite repeated warnings. That there was no improvement of work as regards the output of the workman. That the petitioner was quarreling with other workers on flimsy grounds. That for the above reasons, the petitioner was not interested in the employment. That in the circumstances, by the said letter, the petitioner was asked to resume within forty eight hours. However, in the last sentence of the letter, the Company further mentioned that this offer asking the workman to report within forty eight hours was without prejudice to the right of the Company to take disciplinary action. This letter was received by the workman on 1st May 1986 as deposed in his evidence. On 3rd May 1986, the petitioner addressed a letter to J. P. Panchal, the Partner of respondent No. 1-Company denying the various allegations made by the Company in its letter dated 26th April 1986. By the said letter, the workman pointed out that the above allegations were made by the Company in its letter dated 26th April 1986. By the said letter, the workman pointed out that the above allegations were made by the Company in its letter dated 26th April 1986. By the said letter, the workman pointed out that the above allegations were made by the Company because the Company had wrongfully terminated the service after twenty years service and when the Company came to realise that the termination was illegal and improper in the sense that due process of law was not followed, the Company wrote letter on 26th April 1986 stating that the workman's services were not terminated, but that he was not interested in the employment. By the said letter dated 3rd May 1986 the workman pointed out that the letter dated 26th April 1986 was an after-thought on the part of the employer and it was devised only to defeat the rights of the workman. By the said letter dated 3rd May 1986, the workman also stated that after 18th April 1986, he has been continuously reporting to the factory for employment, but the same have been denied to him. That the workman received the letter dated 26th April 1986, he has been continuously reporting to the factory for employment, but the same have been denied to him. That the workman received the letter dated 26th April 1986 on 1st May 1986 and immediately on 2nd May 1986, he had reported to the factory for resumption of his duties without prejudice to his rights and contentions, but he was not allowed to resume. This letter was never replied to by the Company. On 22nd May 1986, the workman raised a demand for reinstatement. On 30th July 1986, failure report was filed by the Conciliation Officer because respondent No. 1-Company refused to take part in the Conciliation proceedings. Ultimately, Reference came to be made to the Labour Court. On 13th December 1986, the workman filed statement of claim in which the above facts were reiterated. Thereafter, Written Statement was filed by the Company. In the Written Statement, it was alleged by the Company that the workman was sitting idle and whistling when the Partner of respondent No. 1-Company attended the factory on 18th April 1986 pursuant to the information received from the Peon. As per the statement, the petitioner was asked reason for not performing his work when the petitioner shouted at the

Partner. According to the Written Statement, the workman came to the Officer thereafter and also abused the Peon for informing the Partner of respondent No. 1 and in the circumstances, the Company gave a show cause notice on 26th April 1986 which included the above misconduct. According to the Written Statement, the workman never reported for work after 18th April 1986. According to the Company, the workman was not interested in the employment. According to the Written Statement filed by the Company, Shri Panchal could not attend the Conciliation proceedings because his wife was sick at the relevant time. According to the Written Statement, the Company has never terminated the services of the workman, but the workman had voluntarily left the services on 18th April 1986. That the workman had expressed on several occasions to his co-workers as well as to Shri Panchal that he was not interested in the employment and in the circumstances, according to the Written Statement, this was a case of voluntary abandonment of service. On the above pleadings, matter came before the Labour Court in evidence. The workman filed an Affidavit in lieu of examination in-chief. In the said Affidavit, the workman averred that he was in the employment for last twenty years. That he has rendered twenty years continuous service. That his record was clean. That on 18th April 1986 when he reported he was not allowed to work. That on 18th April, 1986, his services were orally terminated by Shri Panchal, the Partner of the Company. That on such oral termination, he had told Shri Panchal that his services cannot be terminated without notice, giving reasons. However, Shri Panchal had told the workman to leave the premises immediately. That accordingly, the workman approached the Government Labour Officer vide Complaint Letter dated 23rd April 1986. A copy of the said letter was also sent to Shri Panchal, the Partner of the Company. That the Company did not participate in the Conciliation Proceedings and, therefore, the Reference came to be made to the Labour Court. That on receiving the Complaint letter dated 23rd April 1986 addressed to the Government Labour Officer, the Company realised that termination was not proper and in the circumstances, on 26th April 1986, the Company as an after-thought, have a show-cause notice containing reasons and alleged voluntary abandonment of service. That the said letter dated 26th April 1986 was received on 1st May 1986 and accordingly on 3rd May 1986, the workman demanded reinstatement. However, the Company did not reply to the workman's letter demanding reinstatement. In the circumstances, reference came to be made to the Labour Court. In his cross-examination, the petitioner has deposed that when his services were orally terminated there was no worker standing on his side on 18th April 1986. That on 18th April 1986, he had worked for the entire day upto 4.30 p. m. when his services were terminated orally. That on 18th April 1986 at 4.30 p. m., the workman was told orally not to come to duty. That the letter dated 26th April 1986 was received on 1st May 1986 and accordingly, the petitioner went to join his duty, but he was not allowed to join. That in his cross-examination, the workman conceded that he did not go to the Company after receipt of the Company's letter dated 26th April 1986. He has further deposed, however, that the watchman met him. There appears to be some contradiction in

the cross-examination/evidence of the workman. In his earlier statements, workman has stated that he went to join duties, but he was not allowed to join. However, in the latter part of the statement, he has stated that he did not go to the Company after receipt of the Company's letter. He has further stated that he has not abused the Partner Shri Jayant Panchal on 18th April 1986 and that he had not told Shri Panchal that he was not interested in employment. In the Company's evidence, which is in the nature of an Affidavit in lieu of examination-in-chief, Shri Jayant Panchal has deposed that he was looking after day-today working of the Company as well as the factory at Kandivali; that on 18th April 1986 a Peon had informed Shri Panchal that the petitioner was sitting idle and whistling during working hours without performing work; that thereafter Shri Panchal personally visited the Department in which the petitioner was working and found that he was sitting idle and whistling; that he had asked the petitioner as to why he was not doing his work and wasting time when the workman stated that he was not interested in employment and he could be removed. That thereafter, he also went to the Peon and abused him and threatened him with dire consequences. According to Shri Panchal after 18th April 1986, the workman never reported for work. Shri Panchal has further deposed that under the above circumstances, Company issued show-cause notice to the workman. According to Shri Panchal the workman had wrongly made a Complaint to the Government Labour Officer because the Company had not terminated the services of the workman, but had invited the workman to rejoin after forty eight hours from the receipt of the letter dated 26th April 1986. According to Shri Panchal, the Company did not take part in the Conciliation proceedings because his wife was admitted to hospital. According to the evidence of Shri Panchal, the workman was not interested at any time in his employment and, therefore, it was a case of voluntary abandonment of service. In his cross-examination Shri Panchal has further admitted that there were six Partners in the Company. However, Shri Panchal was the only Partner who was looking after the affairs of the Company and the factory. In his evidence Shri Panchal has further stated that on 18th April 1986, he was not sure whether other workmen were also present when the above incident took place. In his evidence he has further stated that one Dilip Mehta, who was a Partner of the Company, was looking after the Court work of the Company; that it is possible that the Company had received communication from the Government Labour Officer about the case of the petitioner, but the Company failed to attend the conciliation proceedings. In his evidence Shri Panchal has further admitted that he did receive letter by registered A/D regarding the Complaint filed by the petitioner before the Government Labour Officer, but the Company failed to take part in the Conciliation proceedings because he was sick and also because his wife was sick. In his cross-examination, however, Shri Panchal admitted that the letter received with regard to the Complaint filed before the Government Labour Officer came to be returned as refused. The said letter bears the signature of Shri Panchal. With this evidence on record, the matter came for final hearing before the Labour Court. The Labour Court, while rejecting the Reference, by the impugned Award has come to the

conclusion that there was nothing to indicate in the evidence of the workman that he had reported for work on 19th April 1986 and that the Company did not allow him to do the work. According to the Labour Court, there is ample evidence on record to indicate that some workers were present at the site when the petitioner told Shri Panchal that he was not interested in the employment. The Labour Court came to the conclusion that it is word against word. Shri Panchal has not produced any evidence to show that the workman has failed to attend to work. Similarly, the workman has failed to produce any evidence to show that he reported for work on 19th April 1986. The Labour Court also found that there was no evidence to show that Shri Panchal and/or his wife was sick when the matter was pending before the Conciliation Officer. The Labour Court came to the conclusion that in view of the letter dated 26th April 1986 asking the workman to rejoin within forty eight hours, it was clear that there was no case of termination of service and since the workman failed to rejoin, it was clear that this was a case of voluntary abandonment of service. In the above circumstances, the Labour Court rejected the Reference.

4. Before coming to the facts of the present case, it may be mentioned that in Industrial Jurisprudence, it is the duty of the employer to spell out clearly the charges against the workman. This proposition is very relevant because if there is ambiguity in the matter of formulation of charges then the workmen does not know the reason for termination of his service. In the present case, the Company has contended that the letter dated 26th April 1986 was in the nature of a show-cause. A bare reading of the said letter indicates that in one breath, the Company has alleged misconduct and simultaneously, the Company has stated that they have not terminated the service and that the workman was free to rejoin within forty eight hours, but subject to disciplinary proceedings being initiated for misconduct. The said show-cause notice dated 26th April 1986 does not indicate voluntary abandonment. The said letter is not clear. It alleges misconduct and at the same time, it states that the workman is not interested in the employment. If offers work to the workman and at the same time reserves right to take disciplinary action. Ultimately, the Company does not issue any chargesheet nor does the Company hold any domestic enquiry. It is from here that the entire confusion starts. In cases of voluntary abandonment of service, it is a matter of intention. It depends on facts of each case. It is a matter of inference being drawn on given set of facts. The employer unilaterally cannot say that the workman is not interested in employment. It is for this reason that a domestic enquiry is required to be held. Even before the Labour Court, the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service. If the Labour Court finds that there is no evidence led by the employer and if the Labour Court finds that it is word against word, then the benefit goes to the workman and not the employer. The primary onus to lead evidence to prove voluntary abandonment of service is on the employer.

5. Applying the above legal principles to the facts of this case, I find that in the

present case on 18th April 1986, services have been terminated orally. It is well settled principle of law that if misconduct is the foundation of dismissal then a domestic enquiry is warranted. In the present case, if letter dated 26th April 1986 is the show-cause notice, as deposed by Shri Panchal in his evidence, then an enquiry was certainly required to be conducted because a bare reading of the said show-cause notice indicates termination on the ground of misconduct. In such cases, the Court is required to lift the veil and find out the substance behind the termination. In the present case, the letter dated 26th April 1986 was written only after the workman approached the Government Labour Officer on 23rd April 1986. The workman is right in his contention that the letter dated 26th April 1986 was written as an after-thought because by 26th April 1986, the Company came to know that the workman had complained to the Government Labour Officer and because the Company had come to know that termination was without due process of law, therefore, as an after-thought, the Company alleged that the workman was not interested in his work. In the present case, the evidence of the Peon is not recorded. Further, the said letter/show-cause notice dated 26th April 1986 was received by the workman on 1st May 1986 and on 3rd May 1986, the workman denied the allegation of misconduct and also sought reinstatement. This letter was never replied to by the Company. In his letter dated 3rd May 1986, the workman clearly alleged that the show-cause notice dated 26th April 1986 was addressed as an after-thought. In his letter dated 3rd May 1986, the workman has clearly alleged that on receipt of the letter on 1st May 1986, the workman had reported on the next day for work, but he was not allowed to resume his duties. This letter has not been replied to by the Company, at any time. The Company failed to take part even in the Conciliation proceedings. Even the letter written by the workman making a Complaint to the Government Labour Officer came to be refused by Shri Panchal who has acknowledged the fact that the remark "refused" is under his signature. Ultimately, failure report came to be filed because the Company refused to take part in the Conciliation proceedings. Even before the Labour Court, no evidence was led by the Company in support of its case that on 18th April 1986, a Peon Shri Laxman Mhatre had informed Shri Panchal that the workman was not doing work and he was whistling and whiling away time. No evidence has been led to show that the workman had abused subsequently Shri Mhatre. No evidence has been led to show that the workman had abused Shri Panchal and told Shri Panchal that he was not interested in work. The workman had worked for twenty years. No evidence has been produced to show that his past record was bad. At the same time, according to the evidence of Shri Panchal, at a short distance away from the place of incidence some workers were working. This finding is also given by the Labour Court. But, the fact remains that none of the said workmen have deposed in favour of the Company that the petitioner had told Shri Panchal that he was not interested in employment. In the above circumstances, I find merit in the contentions advanced on behalf of the petitioner that the letter dated 26th April 1986 was an after-thought. It was addressed because the Company realised that they ought to have held an enquiry. It was addressed as a

show cause notice and as stated hereinabove, even the said show-cause notice is ambiguous. If one goes to the root of the matter, it is clear that the termination was based on misconduct and a cover was sought to be given by issuing show-cause notice stating that the workman was not interested in the employment. Further, it may be mentioned that the workman received the show-cause notice on 1st May 1986. He immediately denied the allegations and sought re-employment vide letter dated 3rd May 1986. He even asked the Government Labour Officer to intervene, but the Company refused to take part in Conciliation Proceeding. There were six Partners in the Company. The Labour Court has also found that there was no evidence to show that Shri Panchal was not well. The Labour Court has also found that there was no evidence to show that Mrs. Panchal was addressed to the Conciliation Officer asking for adjournment. In the circumstances it was clear that the workman has demanded employment in time, both by writing letter dated 3rd May 1986 which was never replied to and also by moving the Conciliation machinery under the Industrial Disputes Act, 1947. In the above circumstances, it is clear that the case of voluntary abandonment of service on the part of the workman has not been proved by the Company. The onus was on the company, in the above set of circumstances, to prove that the workman who has worked for twenty years, had suddenly decided to voluntarily abandon his service. There was no evidence whatsoever to show that the workman had refused to work. There is no evidence whatsoever to show that on 18th April 1986, the workman had told Shri Panchal that he was not interested in work, Even assuming that it was word against word, the benefit in such circumstance must go to the workman because the Company has to prove clearly the case of voluntary abandonment which the Company has failed to prove. Merely because Shri Panchal has orally stated that the petitioner had shown his disinclination to work does not mean that the case of voluntary abandonment of service is proved. No reason has been given for not giving any reply to the letter dated 3rd May 1986 written by the workman-petitioner. No reason has been given for refusing the letter/Complaint filed by the workman before the Government Labour Officer and a copy of which was sent to the Company. On the contrary, the above conduct of Shri Panchal makes this Court infer that the services of the workmen were terminated only on the ground of the above misconduct, and not on the ground of voluntary abandonment of service. Within a very short span of time, computed from 18th April 1986, the workman rushed to the Government Labour Officer on 23rd April 1986. Even after receipt of the letter dated 26th April 1986 the workman demanded reinstatement on 3rd May 1986. In the above circumstances, it is clear that the workman had not voluntarily abandoned the service as is sought to be argued on behalf of the Company Normally, this Court does not interfere with the finding of fact given by the Labour Court, but in the present case the finding of the Labour Court is perverse. If the Labour Court comes to the conclusion that it was a case of word against word, then services of the workman cannot be terminated and reinstatement cannot be refused primarily because the onus lies on the Company to prove that the workman had voluntarily abandoned his service. On the other

hand, in the present case, a bare reading of the show cause notice in the context of the facts clearly indicate that termination was based on misconduct and not on the basis of voluntary abandonment of service. There is nothing to indicate intention on the part of the workman to abandon his service voluntarily after twenty years of working, in the above Company. The refusal to reply to the letters; refusal to take part in the Conciliation proceedings and the totality of facts clearly indicate that case of voluntary abandonment of service is not made out by the Company. In the above circumstances, the Award of the Labour Court suffers from serious infirmities. Consequently, the Award dated 29th February 1992 in Reference (IDA) No. 985 of 1986 given by the Labour Court at Bombay is hereby set aside. Respondent-Company is directed to reinstate the petitioner with full back wages and continuity of service and all consequential benefits thereto.

6. Accordingly, Rule is made absolute with costs.

7. Certified copy expedited.