

(1987) 09 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 2904 of 1983

Gaurishankar Vishwakarma

APPELLANT

Vs

Eagle Spring Industries Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 03-09-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (1994) 3 LLJ 689

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Advocate : R.J. Kochar, for the Appellant; R.P. Gajjar, instructed by M.P. Savla and Co., for the Respondent

Final Decision : Allowed

Judgement

Sawant, J.—The decision under challenge is of the IVth Labour Court under the Industrial Disputes Act. Briefly stated the facts are that the petitioner-workman was working as a miller in the 1st respondent company's factory for about 6 to 7 years prior to the refusal of work to him on and from April 3rd, 1980. It appears that the workman worked upto April 2nd, 1980, and when he went to report for duty as usual on 3rd April 1980, he was asked not to resume the duties and was told that he would be intimated later as to when he should resume the duty. The workman approached for work on two or three occasions thereafter but having failed to get any response from the employer, ultimately, on May 8, 1980, approached the Government Labour Officer. The matter having not been settled at that stage, it was taken in conciliation. The conciliator made his failure report and hence there was a reference of the dispute to the Labour Court. The Labour Court, by its impugned Order, held that it was the workman who had abandoned the service and that it was not a case of termination of service as alleged by him. With this finding the Labour Court rejected the Reference by its impugned award. Hence the present petition.

2. Mr. Kochar, learned Counsel appearing for Petitioner-workman, pointed out

that the Labour Court had relied solely on the so called report of the Government Labour Officer (not the Conciliation Officer) in which it is stated by him that on May 27, 1980 the company had stated before him that as there was a quarrel of the petitioner- workman with his co-workman, the workman did not come for work. The company was ready to take him back on work without back wages. The Government Labour Officer has also stated that the workman was not ready to join the work and he was ready to accept his legal dues rather than join the work because he was apprehending that he would be "troubled". This report is signed by the petitioner-workman. Mr. Kochar attacked this finding, and according to us rightly, on the ground that these papers of the Government Labour Officer were called for by the company. The Government Labour Officer himself was not examined nor was the workman asked to explain as to in what circumstances the Government Labour Officer had mentioned in his report that he was not prepared to resume his duty although the company was ready to take him back without back wages. In fact, Mr. Kochar complained that this report was not even shown to the workman at any time. He also pointed out that the Labour Court had relied also on the evidence of two workmen examined by the company to show that it was the petitioner-workman who had abandoned his service which evidence is totally unreliable. It is the allegation of the workman that it was one Shri Anand, a partner of respondent No. 1 company, who had prevented the petitioner-workman from resuming the duty. Anand is not examined by the company. Instead, the workmen who had no connection with the stoppage of the work were examined to depose to the facts which were not to their knowledge.

3.The learned Counsel appearing for the respondent No. 1 company submitted to the orders of the court. Admittedly, the 1st respondent company has not given any notice to the workman either calling upon him to resume the duty or asking him to show cause as to why his services should not be terminated for his failure to resume his duties. No wonder, therefore, that there was no inquiry held before the termination of his service. In fact, according to respondent No. 1 company, there was no termination of service. Their case is that the petitioner-workman had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the workman had abandoned the service. To prove it, the employer relied solely on two pieces of evidence-one is the so-called report of the Government Labour Officer to which we have made a reference. The report is not proved by examining the Government Labour Officer. It was not even shown to the workman, much less, was he confronted with it. Thus, no explanation was called for from the workman with regard to the statements made by the Government Labour Officer in his so-called report. Secondly, the report itself is ambiguous with regard to what exactly transpired before the Government Labour Officer and in what circumstances the events

stated there took place, if at all they had occurred as stated therein. It appears from the judgment of the Labour Court that the report is of May 27, 1980 and it states that it was the company which had stated before him (i.e. the Government Labour Officer) that since there was a quarrel of the petitioner-workman with his co-workman, the workman did not want to join the duty. It is also stated there that the company was ready to take the workman back but without back wages. No statements of the workman, is recorded by the Government Labour Officer. It is on the basis of this so-called statement of the company, that the Government Labour Officer had noted that it was the petitioner who was not ready to come and join his duties. It may also be pointed out here that even according to the report the offer of the company was to take the workman back but without back wages. It must be noted that the petitioner-workman at the relevant time was drawing daily wages of about Rs. 33/-. It is admitted by the respondent company that nothing had happened before 3rd April 1980 to create any apprehension in the mind of the workman that he would be "troubled" or that he would be in danger if he joined duty from 3rd April 1980. It is therefore difficult to believe that the workman who had worked continuously for six 2 to seven years, would abandon his service for no rhyme or reason. It has also to be remembered that it was the workman who had approached the Government Labour Officer with a specific grievance that he was 31 not allowed to join his duty. It was also his grievance that although he had approached the company for work from time to time, and the company's partner Anand had kept on promising him that he would 3 be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. In the circumstances, it is difficult to believe that he would refuse the offer of work when it was given to him before the Labour Officer. What is further, the matter had gone in Conciliation and the 1st Respondent Company had not even cared to attend the conciliation proceedings. The failure report of the conciliation mentions the said absence. Even if we accept the Government Labour Officer's report, the workman was justified in refusing the offer of work since the offer was made without back wages, which were 51 legitimately his dues. It is unfortunate that the Labour Court which was expected to follow judicial procedure, chose to depend upon unverified statements made in the report and came to the conclusion that it was the workman who had refused to resume 5 the work. The Court also failed to grasp that the offer was conditional.

4. As regards the evidence of the two workmen who are even now supervisors in the company viz., Ramesh and Sunil, all that they have stated is that they were present at the time of the so-called incident of 2nd April 1980 in which the petitioner-workman's brother one Amoldhar Sharma was involved. The witness Ramesh had asked Amoldhar to repair a machine and according to him, although he had supplied oil to Amoldhar, Amoldhar had failed to repair it. It is also the case of these two witnesses that the petitioner-workman had asked his brother Amoldhar not to work at 5 p.m. and that both of them had gone away. It is further their case that on April 3, 1980 both of them i.e. Petitioner and his

brother Amoldhar had attended the factory but did not change their clothes and the petitioner-workman told Anand that he would not work. It was not only the petitioner-workman who had stopped attending work, it was also his brother Amoldhar who had similarly stopped attending the factory. These very witnesses were examined in the case involving Amoldhar. In that case, the very same judge of the Labour Court has come to the conclusion that it was not a case of abandonment of service but of the termination of service considering similar evidence of the two witnesses. On the same evidence, the Labour Court, has however, found no difficulty in the present case to come to the conclusion that the petitioner-workman had abandoned the service. Although, further, the case of the petitioner -workman was that it was Anand who had stopped him from coming to work and who had kept on promising him that he would be taken in service. Anand has not been examined by the company. Reliance is however placed on the evidence of these two witnesses to make out the case of the abandonment of service.

5. What strikes us more is the reasoning of the Labour Court. Since it is the case of the respondent No. 1 company that the workman had abandoned the service, it was for the company to prove that there was 5 such abandonment. However, the Labour Court has argued that since the workman had not given any notice to the company after his alleged removal, it should be held that it was he who had refused to join the service, and that he had no intention to work in the factory. We have therefore no hesitation in holding that the finding recorded by the Labour Court is prima-facie bad in law, and the order of the Labour Court should be set aside.

6. Accordingly, we allow the petition, set aside the impugned order of the Labour Court and direct the 1st Respondent company to reinstate the petitioner-workman in service with full back wages from April 3, 1980 till he is reinstated in service with continuity of service and all benefits accruing to him on that account. Rule is made absolute accordingly with costs.