

(2003) 09 MAD CK 0093
In the Madras High Court
Case No : Writ Appeal No: 107 of 2000

General Marketing and Manufacturing Co. Ltd.	APPELLANT
Vs	
R. Devaraj and The Principal Labour Court	RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2004) 1 LLJ 495 : (2003) 3 MLJ 816

Hon'ble Judges : R. Jayasimha Babu, J;C. Nagappan, J

Bench : Division Bench

Advocate : S. Sunder, for the Appellant; N.G.R. Prasad, for Row and Reddy for 1st respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—A workman, who had put in thirteen years of service and who according to the employer had stolen some pencils

and stationary worth Rs. 10/-, had allegedly submitted his resignation. The letter of resignation sets out that it was to have an immediate effect. That

letter is dated 8.12.1988. On the same day the employer sent a letter to the workman in these terms,

We refer to your letter dated 8.12.88 submitting your resignation from the service of this company with immediate effect. In terms of your

employment you are required to give one month's notice of resignation or pay one month's salary in lieu of notice. As you have not given one

month's notice, you will be required to pay one month's salary in lieu thereof. Your resignation is accepted subject to this with immediate effect.

As you have handed over charge we are advising the Accounts Department to settle your dues.

Although, it was stated that the dues are to be settled by the accounts department, those dues were not settled on that date.

2. The very next day on the 9th of December 1988 the workman sent a letter to the employer wherein he asserted that the letter of resignation dt.

8.12.1988 had been obtained by coercion; that he had been locked up in the room of a senior officer and he was made to sign that letter in the presence of two policemen; that he was later taken to the police station and thereafter let of. He asserted that he had no intention of resigning after having put in thirteen years of service.

3. The employer having declined to act on that letter of the 9th December 1988, the workman carried the matter to the Labour Court. In the

Labour Court the employer relied upon the fact that the employee had, on 8.12.98, besides giving the resignation letter, also given another letter

wherein he had accepted that he had stolen pencils and stationary worth Rs. 10/- some several weeks earlier on 22.10.1988. It was however not

the case of the employer that any charges were framed in respect of such misconduct or that any enquiry was held.

4. Before the Labour Court the management examined two witnesses and also produced certain documents. The management witnesses were

unable to throw any light on the the circumstances in which the resignation letter was received from the workman. One of the management

witnesses said that there was animosity between the then personnel officer and the workman but that the present personnel officer has no animosity towards the workman.

5. The Labour Court, having considered to the evidence concluded thus,

But, on closely examining the aforesaid depositions and exhibits, it could not be considered that the petitioner has resigned his job voluntarily.

Before reaching that conclusion the Court had noticed that,

The prime factor that warrants examination is whether the petitioner has given that letter Ex.W3 (the letter of resignation) on his own accord for

his own benefit or otherwise.

6. Besides holding that the letter of resignation was not voluntary, the Labour Court also held, on a construction of the letter issued by the

employer, that the acceptance of the resignation was conditional and, that condition not having been fulfilled, that acceptance did not have the

effect of terminating the employer-employee relationship between the employer and this workman.

7. The learned single Judge having upheld that order of the Labour Court, the employer is in appeal before us.

8. Before us, it was submitted that the learned single Judge was in error in upholding the construction of the letter of the employer wherein the employer had, it was pointed out, stated specifically that the acceptance was with immediate effect and that was stated in addition to the statement

that it was subject to the stipulation that he pay one month's salary in lieu of notice.

9. It was also the submission of the appellant that the conclusion reached by the labour court was not based on the evidence on record. However

the evidence that was considered by the Labour Court has not been placed before this Court and no argument was advanced to support any

possible view that the evidence has been misread or that there was no evidence to support the conclusion that was arrived at by the Labour Court.

The findings recorded by the labour Court being on question of facts, after considering the evidence before it, we see no warrant at all for

interfering with the findings recorded especially when the employer has not established his case that the findings is not based on evidence.

10. Once we uphold the conclusion of the labour Court that the letter of resignation had been obtained by coercion, the acceptance thereof

whether conditional or unconditional becomes immaterial. The modus operandi of the employer in this case is not one which we can approve of.

11. With regard to the second point on which the labour court rested its findings that there was no cessation of the employer-employee

relationship, it was submitted that the findings of the labour Court is in accordance with the law laid down by the Supreme Court. The decisions

cited are,

Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, , Shambhu Murari Sinha Vs. Project and Development India and Another, . A

review petition was taken out by Project and Development India Ltd., and that review petition having been allowed, the case of Shambu Murari

Sinha was taken up again and the judgment rendered in that is reported in Shambhu Murari Sinha Vs. Project and Development India Ltd. and

Another, . The more recent judgment was in the case of Bank of India and Others Vs. O.P. Swaranakar etc., .

12. Counsel submitted that the Courts have dealt with the contract of employment not merely by applying the provisions of the Contract Act to

judge as to when such a contract is terminated and ceases to be effective but also by examining the same in the context of the fundamental rights

and the larger social context where employment is scarce and where there are more number of persons seeking employment than those in

employment.

13. Attention was invited to the observation of the three Judge Bench of the Supreme Court in the case of Bank of India and Others Vs. O.P.

Swaranakar etc., , which observation was made in the context of a case concerning the employees of public sector banks, that if the action of the

employer is held to be arbitrary and unreasonable, it would attract the wrath of Article 14 of the Constitution and that the right of the employee to

continue in employment, which is a fundamental right guaranteed under Article 21 of the Constitution could not have been taken away except in

accordance with law.

14. Reliance was placed by counsel on the decision in review in the case of Shambu Murari Sinha v. Project and Development India Ltd., cited

supra, where the original decision was reaffirmed but on the ground that the employer-employee relationship in that case had not come to an end

not merely by reason of the employee having continued to work but more importantly by reason of the acceptance of the employee's offer being

conditional and the option having been withdrawn by the employee before the fulfilment of that condition.

15. Counsel for respondent submitted that in this case though the employer stated in his letter of acceptance that the resignation was accepted with

immediate effect, that statement was a qualified one as the relevant part of the letter reads thus,

your resignation is accepted subject to this with immediate effect.

The words "immediate effect", it was submitted, is qualified by the condition which preceded it and that condition was the payment of one month's

salary. The withdrawal of the resignation before the fulfilment of that condition, it was submitted, had the effect of disabling the employer from any

longer relying upon the earlier letter of resignation.

16. We see considerable merit in the submission so made. Even according to the employer, the employer-employee relationship was terminable

after giving notice of one month or payment of one month's salary in lieu of such notice. The employer here did not choose to waive either the

period of notice or the payment of a month's salary in lieu of notice. The employer having insisted upon the performance of that contract strictly in

accordance with its terms, must take the consequences. The implication of the employer's letter is that the employee must, in order to secure the

release from his employment, pay a month's salary. The employer not having settled the employees dues immediately and while doing so, recover

the month's salary, the employee was entitled to withdraw the resignation. Even according to the employer all the dues of the employee were sent

only long after the employee had withdrawn his resignation.

17. The writ appeal is dismissed with costs of Rs. 1, 500/-.