
(2014) 07 MAD CK 0175
In the Madras High Court
Case No : Writ Appeal No. 2631 of 2012

M. Abdul Salam

APPELLANT

Vs

Presiding Officer, II Addl. Labour Court

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 2A, 2A(2)

Citation : (2014) 4 LLJ 198

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

K. Ravichandrabaabu, J.—The appellant is the writ petitioner. He filed the writ petition in W.P. No. 26056 of 2007, challenging the award passed by the Labour Court in I.D. No. 230 of 1998, dated 23.02.2006 and consequently prayed for a direction to the second respondent Management to reinstate him in service with backwages, continuity of service and other attendant benefits. The learned Single Judge dismissed the said writ petition, by order dated 05.06.2012. Following is the case of the appellant before the learned Single Judge:

"(i) The appellant joined the second respondent Management as Typist-cum-Clerk during 1977 and he joined the Addison Employees Progressive Union in the year 1994 and took active part in the activities of the Union. The second respondent Management did not like the participation of the appellant in the Union. The Management started putting pressure on the appellant to disassociate himself from the activities of the association. A charge memo was issued on 02.08.1997 and the appellant gave an explanation on 07.08.1997 and denied the charge. The Management threatened the appellant and asked him to withdraw the explanation and to accept the charges. He refused to do so. Again on 23.08.1997, the appellant was asked to resign from the Union, otherwise threatened him of foisting false criminal case.

(ii) The Management usually supplies soaps to every employee to wash their face and hands after their work and the unused soaps will be taken by the workmen

normally. On 27.08.1997, while the appellant was coming out of the factory after the third shift, after washing his face and hands, he was stopped at the gate by the security staff and accused of stealing a Hamam soap belonging to the Management. Though the appellant explained that it was an used soap given to him for washing his face and hands, the Assistant Manager (Personal) called him on 03.09.1997 and told that he received a complaint from the security staff as if he had stolen the Hamam soap belonging to the Management. By threatening to give a Police complaint against the appellant, the second respondent Management forced him to put his signature in the blank paper.

(iii) Having left with no other option, the appellant put his signature in a blank paper. On the next day, the Assistant Manager (Personal) called the appellant and asked to resign from the Union. When he refused to do so, he was threatened that he would use the signed blank paper against him before the Police Station. Further, the appellant was informed that only if he retires from company services on medical grounds, the signed blank paper will be returned to him. Therefore, the appellant having no other option, wrote a letter dated 03.09.1997, as dictated by the Assistant Manager (Personal), stating that he wanted to retire from service on medical grounds. The said letter dated 03.09.1997, was not given by him voluntarily and on the other hand it was obtained under threat and coercion. Immediately on the next day i.e., on 04.09.1997, the appellant sent a letter expressing that he wanted to continue in the services and that the letter dated 03.09.1997, was not out of voluntary action and on the other hand, it was obtained under force. No reply was received from the second respondent Management. On 05.11.1997, the appellant received a letter calling upon him to appear before the Medical Officer, as he wanted to retire on medical grounds.

(iv) The appellant did not go to the Medical Officer for examination, since the letter dated 03.09.1997, was obtained under duress and coercion. The appellant also sent a legal notice on 11.11.1997, by registered post, stating that he had no intention to go on voluntary retirement on medical grounds. The said notice was received by the Management on the same day. However, the Management issued a letter dated 11.11.1997, served on the appellant on 19.11.1997, stating that the Management had accepted his resignation and that he was relieved from service. The said letter dated 11.11.1997, is an anti dated letter, since it was served on the appellant only on 19.11.1997. The letter was issued, as an after thought, only to get over the notice issued by the appellant on 11.11.1997, through his counsel. Therefore, the refusal of employment with effect from 19.11.1997, amounts to termination of service. Consequently, the appellant raised an Industrial Dispute under Section 2-A(2) of the Industrial Disputes Act (hereinafter referred to as the I.D. Act) before the Labour Officer, Chennai. As the said Officer could not bring about mediation, he sent a failure report on 16.05.1998. Therefore, the appellant filed a claim petition before the Labour Court and the same was registered as I.D. No. 230 of 1998.

(v) The Management opposed the said claim petition before the Labour Court mainly by contending that the dispute is not maintainable under Section 2-A(2) of the I.D. Act, as it is not a case of termination within the meaning of Section 2-A of the I.D. Act.

(vi) The Labour Court after hearing both sides and considering the materials placed before the Court by both parties, dismissed the claim petition by holding that the appellant has not proved that his resignation letter dated 03.09.1997, was obtained under duress and coercion and that the resignation was accepted by the respondent Management on 18.11.1997. It was also found by the Labour Court that the appellant has not retracted the resignation letter.

(vii) Aggrieved against the award of the Labour Court in dismissing the claim petition, the appellant filed the above writ petition. The learned Single Judge dismissed the writ petition, by holding that the appellant's claim that the resignation was not involuntary and subsequently, withdrawn cannot be believed in the absence of coercion or threat. Therefore, the learned Single Judge held that the dispute cannot be gone into under Section 2-A(2) of the I.D. Act, as the said dispute is not maintainable under the said provision."

2. Mr. N.G.R. Prasad, learned counsel appearing for the appellant would submit as follows:

"(i) The letter dated 03.09.1997, was obtained under threat and coercion and the same having been retracted and withdrawn by the appellant through his letter dated 04.09.1997, the respondent Management was not entitled to act upon the said letter dated 03.09.1997. Though the respondent Management called upon the appellant to appear before the Medical Officer, through their letter dated 05.11.1997, based on the so called voluntary retirement letter dated 03.09.1997, the very fact that the appellant did not appear before the Medical Board, would go to show that the letter dated 03.09.1997, was not voluntary and intended to be acted upon. Further, the Standing Order 21 of the respondent company specifically contemplates for sending the workmen to the company's Medical Officer for examination before accepting the resignation. In this case, no such examination had taken place. However, the respondent Management acted based on the appellant's letter dated 03.09.1997 and retired him on medical grounds in total violation of the said Standing Order. The letter of voluntary retirement on medical grounds cannot be unilaterally converted as letter of resignation. In this regard, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of M.S. Munivenkatappa Vs. State Bank of India, .

(ii) The letter dated 03.09.1997, cannot be treated as letter of resignation as well, since the Standing Order No. 20 contemplates giving of one month notice while making a request for resignation. Even otherwise, retiring the workman on medical grounds cannot be made at the instance of the workman and it could be done only at the instance of the company, as contemplated under Standing Order

No. 21.

(iii) Before the Labour Court, the appellant has clearly stated in a petition filed under Section 2-A of the I.D. Act, about the retraction of the voluntary retirement letter dated 03.09.1997. The letter posted through "certificate of posting" has a presumption that it was served on the addressee. In support of the said submission, reliance is placed on the decision of the Hon"ble Supreme Court in the case of Samittri Devi and Another Vs. Sampuran Singh and Another, .

(iv) In Lawyer notice dated 11.11.1997 also, the appellant has specifically referred about the retraction letter issued by the appellant on 04.09.1997. Unless conditions are satisfied as contemplated under the Standing Order of the respondent company, the resignation cannot be accepted. In this regard, reliance was placed on the decision of this Court in the case of General Marketing and Manufacturing Co. Ltd. Vs. R. Devaraj and The Principal Labour Court, . Further, the Labour Court has not gone into all these facts and therefore, the findings of the Labour Court are perverse. In support of the said submission, reliance is placed on the decisions of the Hon"ble Supreme Court in the cases of Vrijlal Manilal and Company v. Regional Provident Fund Commissioner 2013-II-LLN-289 (SC)."

3. Per contra, Mr. Sanjay Mohan, the learned counsel appearing for the second respondent Management submitted as follows:

"The Labour Court disbelieved the alleged letter dated 04.09.1997. The appellant has not proved before the Labour Court that letter dated 03.09.1997 was obtained under threat, force and coercion. In the absence of such proof, the industrial dispute raised under Section 2A of the I.D. Act, is not maintainable and the Labour Court as well as the learned Single Judge was right in rejecting the claim of the appellant. No doubt, the lawyer notice dated 11.11.1997 was received by the Management before issuing the order of acceptance, but it makes no difference, since the reasons stated in the Lawyer's notice has been disbelieved by the Labour Court. There is no scheme for voluntary retirement. If allegation of coercion fails, then the acceptance of resignation is valid. In support of the said submission, reliance is placed on the decision of the Hon"ble Supreme Court in the case of Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Cooperative Ltd. and Others, ."

4. We have heard the learned counsels appearing on either side and perused the materials placed on record.

5. The appellant is the workman and the second respondent is the Management. Even though the allegations and counter allegations were made in respect of the past conduct of the appellant and the Management against each other before 03.09.1997, the sequence of events relevant for consideration in this case started only on 03.09.1997. On the said day, a letter was issued by the appellant to the second respondent Management, stating that he has suffered a lot due to his ill-health and as a result of which, he was not able to concentrate in his work

and therefore, based on the health condition, he wanted to retire from service on medical grounds with medical certificate.

6. According to the Management, the said letter dated 03.09.1997, was issued by the appellant voluntarily. On the other hand the appellant contends that the same was obtained under threat, duress and coercion. Why the appellant was forced to give such letter, was also explained by him by narrating the past incidents said to have taken place between the appellant and the Management on several occasions. Based on the said letter dated 03.09.1997 only, the Management issued a letter dated 11.11.1997 and accepted the resignation of the appellant and relieved him from service with effect from 19.11.1997.

7. It is the case of the appellant that he had immediately retracted the said letter dated 03.09.1997 on the very next day by sending a letter dated 04.09.1997 under certificate of posting to the Management. In the said letter, the appellant has specifically stated that the letter dated 03.09.1997 was written by him as dictated by the Assistant Manager (Personal) and that he was forced to write such letter, since he was threatened to be handed over to Police, as if he had stolen the soap belonging to the respondent company. Therefore, the appellant by his letter dated 04.09.1997, requested the Management not to act on the resignation letter dated 03.09.1997 as he was withdrawing the said letter.

8. The appellant has also marked the certificate of posting receipt as Ex. W2 in support of his claim that the letter dated 04.09.1997, was sent by the appellant and received by the respondent Management. In this aspect, the learned counsel for the appellant placed reliance on the decision of the Hon''ble Supreme Court in the case of Samittri Devi and Another v. Sampuran Singh and Another (supra). In the above said decision, the Hon''ble Supreme Court has observed at paragraph 29 that the presumption of service of a notice sent under postal certificate will depend on the facts of each case. It was also found therein that when there was no allegation that the postal certificate was procured, it could certainly be presumed that the notice was duly served on the respondent therein.

9. No doubt, the retraction letter dated 04.09.1997 sent by the appellant by certificate of posting is disputed by the Management. It is not in dispute that the appellant has marked the postal receipt as Ex. W2. As pointed out by the Hon''ble Supreme Court in the case of Samittri Devi and Another v. Sampuran Singh and Another (supra), the Management has not made an allegation or proof that the said postal certificate was procured by the appellant.

10. In the case on hand, though the respondent Management disputed regarding the existence of the retraction letter dated 04.09.1997, the fact remains that subsequent communication issued by the Management on 05.11.1997, calling upon the appellant to appear before the Medical Board, has not been responded by him and on the other hand, he refused to go before the Medical Board. More over, the appellant has also subsequently sent a Lawyer''s notice on 11.11.1997, which was received by the Management admittedly before accepting the letter

dated 03.09.1997. In the said Lawyer notice dated 11.11.1997, it is clearly stated that the appellant has rescinded and retracted the letter dated 03.09.1997. No doubt, the said Lawyer notice has not specifically referred the date of the letter of retraction. However, as it is clearly stated that the appellant has rescinded and retracted the earlier letter dated 03.09.1997, the Management ought not to have proceeded to accept the letter of resignation, even after receipt of the Lawyer's notice dated 11.11.1997. This aspect has not been considered by the Labour Court as well as by the learned Single Judge.

11. Further, it is to be seen that even while filing the petition under Section 2A of the I.D. Act, before the Labour Officer, the appellant has categorically stated that the resignation letter dated 03.09.1997 has been rescinded by the appellant on 04.09.1997 itself. This is evident from the averments contained at paragraph 4 of the above said claim petition. In the absence of such allegation or proof, there is no reason to disbelieve the letter dated 04.09.1997. This aspect was also not considered by the Labour Court as well as by the learned Single Judge. Therefore, once the appellant was able to establish that there was no voluntary resignation and on the other hand, the said letter dated 03.09.1997 was an involuntary one, there cannot be any doubt that the dispute would certainly fall within the scope of Section 2A of the I.D. Act, since relieving of the appellant against his wish, would amount to termination of service.

12. The learned counsel for the second respondent Management relied on the decision of the Hon"ble Supreme Court in the case of Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. and Others (supra), to contend that if the allegation of coercion fails, the acceptance of resignation is valid. We have already found that the letter dated 04.09.1997, sent by the appellant was proved and that the acceptance of resignation even after receipt of the Lawyer's notice dated 11.11.1997, was invalid. In such circumstances, the above decision relied on by the learned counsel appearing for the second respondent Management is clearly distinguishable on facts, does not lend any support to the case of the respondent Management.

13. Further, as rightly pointed out by the learned counsel appearing for the appellant, the retirement on medical grounds as contemplated under Standing Order No. 21 of the second respondent Management states that such a retirement can be made only at the instance of the company, that too, after examination of the workman by the company's Medical Officer. In this case, admittedly, no such examination was done and the appellant had not submitted himself before the Medical Board, even though he was called upon to do so through letter dated 05.11.1997. Therefore, in the absence of strict compliance of Standing Order No. 21, the Management cannot relieve the appellant on voluntary retirement on medical grounds. Likewise, the Management is also not entitled to treat the letter dated 03.09.1997, as the one of resignation and relieve the appellant, especially when such disputed letter dated 03.09.1997 was subsequently retracted by him by letter dated 04.09.1997, followed by the

Lawyer's notice dated 11.11.1997 which, admittedly, was received before issuing the impugned communication. Therefore, the Management cannot relieve the appellant by treating the letter dated 03.09.1997, as letter of resignation, as well. At this juncture, it is useful to refer to the Division Bench decision of this Court (wherein one of us was a party N. Paul Vasantha Kumar, J.) reported in *Munivenkatappa M.S. v. State Bank of India (supra)*, wherein at paragraph No. 12, it has been observed as follows:

"12. As per the communication of the respondents, petitioner has applied only for voluntary retirement. It is for the respondents to accept or reject the said request and communicate the decision to the petitioner. Instead of doing so, respondents have chosen to treat the said application as that of resignation inspite of petitioner raising objection and the said objection was rejected by stating that already the appropriate authority has approved the resignation. When there is no request from the petitioner to treat his voluntary retirement application to that of resignation, the respondents have no jurisdiction to treat his application as one of resignation and proceed further. Even though the appropriate authority has unilaterally decided, before relieving the petitioner on September 30, 1999, the petitioner requested not to treat the application as one of resignation and review the decision. Hence it is clear that before relieving the petitioner on September 30, 1999, he has objected the unilateral decision of the respondents and not accepted for resignation. As it is found that the respondents have unilaterally treated the application of the petitioner for voluntary retirement to that of resignation, the said action of the respondents is not valid in the eye of law."

14. Even otherwise, the Standing Order No. 20 contemplates that one month notice should be given by the workmen, who desires of leaving the company. A perusal of the said letter dated 03.09.1997, does not indicate such compliance of the Standing Order No. 20. At this juncture, it is useful to refer to the Division Bench decision of this Court reported in *General Marketing & Manufacturing Company, Ltd. v. R. Devaraj and Another (supra)*, wherein at paragraph No. 19, it has been observed as follows:

"19. 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."

Therefore, we are of the firm view that the letter dated 03.09.1997 cannot be relied on, as the same cannot be treated either as request for voluntary retirement on medical grounds or as the letter of resignation. Consequently, the entire matter needs to be decided by the Labour Court afresh by treating the case as the one of "termination of service and decide the same on merits and in accordance with law.

15. Therefore, we are of the view that the Labour Court was not right in rejecting the claim petition by holding that the same was not maintainable. At this juncture, it is useful to refer to the judgment of the Hon''ble Supreme Court in the case of Vrijlal Manilal and Company v. Regional Provident Fund Commissioner (supra), wherein it has been held at paragraph 11 as follows: "It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ Court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari would not permit to assume the role of the appellate Court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ Court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of Certiorari."

Considering all the facts and circumstances of the case, the Writ Appeal is allowed and the award of the Labour Court in I.D. No. 230 of 1998, dated 23.02.2006, is set aside and the matter is remitted back to the Labour Court for fresh consideration by treating the claim petition filed by the appellant as maintainable under 2-A(2) of the ID Act. The Labour Court shall pass such award, within a period of three months from the date of receipt of a copy of this order. No costs.