
(2012) 08 AHC CK 0241

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8782 of 2012

M/s. India Yamaha Motors (Pvt.) Ltd.

APPELLANT

Vs

Labour Court (II) and another

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Evidence Act, 1872 — Section 114, 16

Citation : (2012) 9 ADJ 497 : (2013) 1 ALJ 628 : (2013) 2 AWC 1742 : (2012) 135 FLR 442 : (2013) 1 LLJ 271

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Advocate : M.K. Gupta, Sandeep Chaturvedi and Satish Chaturvedi, for the Appellant; N.K. Mishra and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Devendra Pratap Singh, J.—Heard Sri Satish Chaturvedi, learned counsel for the petitioner, Sri N.K. Mishra, learned counsel for the respondent workman, learned Standing counsel for the State and perused the record. This petition is directed against the labour Court award dated 2.6.2011 as published on 7.12.2011 (Annexure 1 to the petition).

2. The respondent workman caused a reference of an industrial dispute u/s 4K of the U.P. Industrial Disputes Act (herein after referred to as "the Act") to the Labour Court, Ghaziabad with regard to his alleged termination. The Labour Court registered it as Adjudication Case No. 455 of 1997 and the reference was (as loosely translated in English) to the following effect :

Whether the determination of the services of the workman w.e.f. 2.5.1990 by the employer was proper and legal ? If not, then to what relief the workman is entitled ?

3. Upon notice, both the parties filed their respective pleadings and adduced their evidence. The Labour Court by the impugned award held that the

termination of the services of the workman was in violation of the provisions of the Act and as such it was neither proper nor legal and therefore, the workman was entitled for reinstatement together with 50% back wages.

4. The case set up by the workman was that he was working as a confirmed employee in the operative category since 1st of October 1988. It was further pleaded that while he was working in the Establishment of the petitioner on 2nd of May 1990, certain anti social elements entered the factory premises and dragged him out without any resistance from the guards and confined him to an unknown place, where after severely beating him, got a forced resignation letter written by him. The further case was that as he was mentally disturbed after the incident, he took no immediate action and thereafter got himself medically examined on 3rd of May 1990 and sent a letter alongwith the medical certificate disclosing the entire incident to the employer on 5th of May 1990 seeking a month's medical leave w.e.f. 3rd of May 1990. This letter was followed by other letters seeking extension of the medical leave vide letter dated 2.6.1990, 5.10.1990, 6.12.1990 etc. All these letters were sent under certificate of posting. Upon recovery, he approached the factory premises for reporting on duty on 18.4.1991 together with a fitness certificate dated 17.4.1991, but was not allowed to enter the premises. Thereafter on 19th of April 1991, he sent a demand letter to the management through registered post, in vain, whereupon he approached the Labour Authorities and after a failure report, the reference was made.

5. The case set up by the petitioner was to the effect that the workman had tendered his voluntary resignation on 2.5.1990 and the same was accepted and he was relieved and thereafter he was paid the wages and his dues which he received. It was further pleaded that no such incident took place within the factory premises, the story of forced resignation was false and none of the letters dated 5.5.1990, 2.6.1990, 5.10.1990, 6.12.1990 etc., which were sent under postal certificate, was ever received and for the first time after about a year, a registered letter dated 19th of April 1991 was received disclosing the concocted story.

6. The Labour Court held that the workman had withdrawn his prospective resignation vide letter dated 5.5.1990 before the stipulated time and since he was not paid the dues and compensation u/s 6N of the Act, his disengagement was bad and, therefore, after finding that the workman was engaged in his own agricultural operations, granted reinstatement with 50% back wages.

7. It is urged that the workman kept silent for about a year and only thereafter he came up with a concocted story of forged resignation and of sending withdrawal letter dated 5.5.1990 under postal certificate and medical certificate. It is further urged that though there was complete denial of receipt of withdrawal letter and subsequent letter under certificate of posting, the Labour Court has assumed the receipt without recording even presumption of service. It is also urged that the falsity of the story is established by the fact that he neither

complained to the police about the incident by lodging an FIR nor brought it to the notice of the Labour authorities and never got his alleged injuries examined though his case was that he was severely beaten in the incident.

8. It is admitted to the workman that in regard to the incident of 2nd May, 1990 where he was severely beaten into forcing him to resign but he neither complained to the police or lodged any F.I.R. nor he approached the Labour authorities complaining about the incident and the explanation is that he was under depression. It is also admitted that though he was severely beaten and was examined by his doctor on 3.5.1990, he did not get his injuries examined. In this background, the withdrawal letter of 5th May, 1990 becomes crucial. This letter of withdrawal and disclosing the incident was allegedly sent to the Management under postal certificate and it forms the basis of the finding of the Labour Court that the workman had withdrawn his resignation prior to the date it became effective.

9. Learned counsel for the workman has failed to point out any finding of fact recorded by the Labour Court showing service upon the petitioner of the letter dated 5.5.1990 or subsequent letters sent under postal certificate. It would be relevant to note that it is admitted to the workman that after the alleged incident of 2nd of May 1990, he made no effort to lodge an FIR or get his injuries examined or approached the Labour Authorities and also did not produce any workman working on that day or any office bearers of the Union as a witness to prove the incident, yet, the Labour Court has proceeded on the assumption that the incident was true and the letter was received and the resignation was forced. There is no reasonable explanation for not sending the letters through registered post in the teeth of the fact that the letter dated 19.4.1991 was sent under registered cover. This approach of the Labour Court was totally unwarranted and the award can be set aside only on this ground and the matter can be remanded to it for decision afresh. However, considering the fact that the dispute relates to the year 1990 where the reference was made in 1997 and the award was rendered in 2011. After more than two decades, it would not be appropriate to remand it, specially when all the evidence which were filed by the parties, are available on record.

10. Before proceeding further, the Court may examine whether the presumption of service under postal certificate could have been made, specially in the aforesaid background facts.

11. According to Regulation 32 of the Post Office Guide Part-I, no such presumption of service could ever be raised and the only presumption would be that it was presented at the Post Office. When there was specific and clear denial, the burden fell upon the workman to prove service and this burden was never discharged, but the Court, without even recording any presumption of service, assumed service and proceeded further. The Apex Court in the case of Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, , while dealing with presumption of service under postal certificate, has held to the following effect :

6.....We are satisfied that the alleged letter of re-traction was only a myth. The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on 14.8.1980 and in due course reached the addressee. But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compel the Court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the Court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. After all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured. In the circumstances of the present case, circumstances to which we have already referred, we are satisfied that no such letter of retraction was posted as claimed by the detainee.

12. A learned Single Judge of this Court, while considering the term "service by post" has held to the following effect in the case of *M/s Jai Durga Enterprises v. State of U.P.*, 2006 (55) ACC 857 :

10. Therefore, it is essential that service upon registered notice should be affected in absence of registered post. It shall not be presumed that there is sufficient service regarding notice sent by U.P.C. and it cannot be taken into account u/s 27 of the Act that there was sufficient service upon the accused/applicants. Although, it has been denied by the applicant that no any notice was received by them in the affidavit and same has not been controverted by filing counter-affidavit. Therefore, it is liable to be deemed that there was no sufficient service of legal notice upon the applicants/accused. On this basis, the impugned order passed by the Court below is liable to be quashed.

13. Considering all the aforesaid facts including the fact that no attempt was made by the workman to prove the receipt of the withdrawal letter dated 5.5.1990 and no presumption of service of the said letter could be raised, the Labour Court grossly erred in law in relying upon it. Once it is found that the withdrawal letter was never ever served on the petitioner, the entire story of forged resignation vanishes especially when examined in the background of the fact that the workman never complained about the incident to anyone and did not muster enough courage to lead any evidence with regard to the incident and totally failed to prove the incident.

14. Considering all the aforesaid facts and the evidence led by the parties, the Court has no hesitation in holding that the entire story of the workman being dragged out from his work place in full public view of the employees and guards and being severely beaten and the story of forced resignation is concocted only to explain the inordinate delay in raising his claim after about a year.

15. It has also been urged that the resignation was not prospective and even if it

was, the management was within its jurisdiction to have accepted it before the appointed date in view of Clause 35 of the Certified Standing Order applicable in the establishment.

16. Since the story of the withdrawal letter has been disbelieved, it may not be necessary to examine this aspect, but both the parties have been heard at length on this issue, so it would be appropriate to examine it.

17. Assuming that the withdrawal letter dated 5.5.1990 was served on the petitioner, moot question would be whether the resignation letter was prospective in nature and if it was so, could the management accept it before that date.

18. The Labour Court has held that the resignation was prospective in nature and before expiry of the period mentioned therein, it was withdrawn, therefore, acceptance was illegal.

19. The resignation letter was to the following effect (as loosely translated in English):

Sir.

I am voluntary leaving service and all my dues be paid forthwith. This resignation may be treated as one month's notice.

20. A bare perusal of the notice, its tenor claiming wages to be paid forthwith, clearly indicates that it was not prospective and the notice period of a month was only to comply with the conditions of service, which the Court will presently examine.

21. There can be no doubt that a prospective resignation can always be withdrawn before it becomes effective, but it would always be subject to the service conditions of an employee. The Labour Court has relied upon the decision of the Apex Court rendered in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , and the later decision in Balram Gupta Vs. Union of India (UOI) and Anr, , to hold that prospective resignation can be withdrawn before it becomes effective. The facts in the case of Gopal Chand Misra (supra) was that a learned Judge of this Court had submitted his resignation to the President of India in May 1977 clearly mentioning that it would be effective from 1st of August 1977, but before that, he withdrew his resignation vide letter dated 15th of July 1977. On these facts, the question arose as to whether a prospective resignation can be withdrawn before it actually becomes effective. After considering several decisions, it held that generally, in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective. But it also went on to hold that in the case of an employee, who cannot, under the conditions of his service, resign by his own unilateral act of tendering resignation, it would become effective upon its acceptance, subject to the rules. Similar is the position in the case of Balram Gupta (supra).

22. The conditions of service of employees of such industrial establishments are governed by Standing Orders. It is not denied that the service condition of the workman was also covered by Certified Standing Orders. The petitioner had pressed into service Clause 35 of the Standing Orders which deals with resignation of employees, but the Labour Court had totally ignored it.

Clause 35 of the Certified Standing Orders runs as under:

35. Resignation.

35.1 Workman other than those who have executed bond to serve the company for specified period who wish to leave the Company's services would be required to give the company notice as per terms of appointment. The Management may at its discretion accept the resignation with immediate effect or from any time in respect of workman before expiry of the stipulated period, on payment of wages for the period of notice or part thereof.

35.2 If the workman leaves the services of the Company without giving notice under his contract of service, if any, the Management may deduct from unpaid wages/dues payable to him a sum equivalent to the period of notice which he is required to give under clause 35.1.

23. A perusal of the said Clause clearly stipulates that the management would be at liberty to accept the resignation with immediate effect even before expiry of the stipulated period, but on payment of wages for the period of notice or part thereof. Therefore, even assuming that it was a prospective notice, the management was within its jurisdiction to have accepted it and paid for the notice period. Admittedly the amounts were paid to the workman, who has accepted it.

24. Therefore, in the opinion of the Court, the argument of the learned counsel for the petitioner has to be accepted.

25. Lastly it is urged that the workman was gainfully employed and it was admitted that he was tending to his 40 bighas of agricultural land during the period he was not in the employment of the petitioner.

26. The Labour Court has held that since the management did not disclose the specific nature and place of employment, merely because he was carrying on agricultural operations of his own agricultural land, would not mean that he was gainfully employed. The Labour Court has failed to consider the demand of the workmen where in his deposition, he has admitted that he was wholesomely self employed with his agricultural operations looking after 40 bighas of agricultural land. This statement has to be read in context of the written statement of the workman where he did not plead that he was not gainfully employed, but set up the case only after the written statement of the management was filed and has gone on to rely upon the decision of the Apex Court in the case of *Niranjan Sinha v. Prakash Chand Dubey and others*, 2008 (116) FLR 172 and the decision of this Court in the case of *UPSRTC, Kanpur and others v. Balram Singh and others*,

2009(2) ADJ 672, to hold that such self employment would not be decisive. In the case of Niranjana Sinha (supra), the facts were that the workman was self employed as a Coolie. While in the case of Balram Singh (supra), the workman was employed in a betel shop. None of the two decisions apply to the present case.

27. The Apex Court in the case of Kendriya Vidhyalaya Sansthan v. S.C. Sharma, 2005 (1) FLR 863 and in the case of U.P. Brassware Corporation v. U.N. Pandey, 2006 (108) FLR 201, has held that the workman has to plead and prove that he was not gainfully employed. But, in the present case, he did not discharge his burden as there was no such pleading in the written statement and the Labour Court has erroneously thrown the burden upon the employer. Judicial notice of this fact may be taken that in normal circumstances, 40 bighas of agricultural land (which is about 15 acres) would yield more than the normal requirement of a large family. The Apex Court in the case of North East Karnataka Road Transport Corporation Vs. M. Nagangouda, , has held that self employment, even in agricultural work would be a case of gainful employment. Therefore, the present argument of the learned counsel for the petitioner is bound to be accepted. Accordingly, the writ petition succeeds and is allowed and the impugned award dated 2.6.2011 as published on 7.12.2011 (Annexure-1 to the writ petition) is hereby quashed. However, in the circumstances of the case, no order as to costs.