

(2018) 10 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 3932, 3942, 4361, 4364, 4367, 4383, 4389, 4390, 4467, 4469, 4470, 4472, 4473, 4518, 4595, 4596, 4600, 4601, 4794, 4795, 4819, 4821 & 4823 Of 2017

M/s S. Kumars Ltd & Anr

APPELLANT

Vs

Bherulal & Ors

RESPONDENT

Date of Decision : 25-10-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes (Central) Rules, 1957 — Rule 34
Madhya Pradesh Standard Standing Orders Rules, 1963 — Rule 11(c)
Industrial Disputes Act, 1947 — Section 9A, 10(1)

Citation : (2018) 10 MP CK 0017

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : S.C. Bagadia, Kuldeep Bhargav, Balkrishna Pradhan, Kamal Narayan Yadav

Final Decision : Dismissed

Judgement

Rohit Arya, J

This order shall govern disposal of aforesaid bunch of writ petitions, viz., W.P.Nos.3932, 3942, 4361, 4364, 4367, 4383, 4389, 4390, 4467, 4469, 4470, 4472, 4473, 4518, 4595, 4596, 4600, 4601, 4794, 4795, 4819, 4821 & 4823 of 2017. Regard being had to the similitude of the controversy involved in the aforesaid cases, they have been heard analogously and disposed of by this singular order.

Petitioner - M/s S. Kumars Limited (hereinafter referred to as the 'Management') has preferred this writ petition under Article 227 of the Constitution of India questioning the sustainability of the award dated 02/05/2017 passed in Reference case No.59/2012/IDR (Bherulal s/o Ramchandra Kumawat Vs. Factory Manager, M/s S.Kumars Limited) by the Labour Court, Dewas.

On an application preferred by the respondent - Bherulal (hereinafter referred to as the 'workman') under section 10(1) of the Industrial Disputes Act, the State Government vide its order dated 27/11/2012 has made a reference of the following dispute for adjudication before the Labour Court, Dewas consequent upon failure of conciliation proceedings. The terms of reference reads as under:

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D;k Jh Hks:yky firk jkepUnz dqekor] }kjk LosPNk ls R;kxi= fn;k x;k Fkk\ ;fn ugha rks fu;kstd }kjk fd;k x;k Isoki`Fkdhdj.k oS/k ,oa mfpr gS\ ;fn ugha rks os fdI lgk;rk ds ik= ,oa bl laca/k esa fu;ksDrk dks D;k funsZ'k fn;s tkuk pkfg,**

The following issues were framed:

****1- D;k izFkei{k us LosPNk ls R;kxi= fn;k gS**

2- D;k izFkei{k dk Isok i`Fkdhdj.k oS/k ,oa mfpr gS|

3- D;k izFkei{k iqu% Isok esa Lfkkfir gksus ds lkFk gh fiNy osru ikus dk vf/kdkjh gS

4- lgk;rk ,oa O;;**

Both the parties filed pleadings and led evidence.

2. The workman was a permanent employee working in the 'folding unit' since the year 1987 drawing monthly salary. According to him, he was given to understand by the President and Secretary of the Textile Mazdoor Union, Dewas that if the workmen of the said unit submit resignation from service, they shall be paid retrenchment compensation, gratuity, 18 months salary on the basis of last pay drawn and in addition payment of the difference of revision of pay underway through the agreement/settlement, as the Management intended to close down the 'folding unit' and if for any reason, the said unit is not closed, the workman shall be taken back in service. The workman under the circumstances signed on the supplied computerized letter of resignation with blank spaces prepared in the office of the Management. Neither the name of the applicant, father's name, card number and date were mentioned. On 28/04/2011, a cheque for Rs.1,26,132/- was handed over to the Workman. However, the workman was betrayed as neither 18 months pay was paid and the difference of revision of pay was paid nor the retrenchment compensation was paid. The 'folding unit' was also not closed instead contract labours have been engaged for carrying out the same work. Under the circumstances, the Workman never voluntarily tendered resignation nor the conditions stipulated were fulfilled. As such, the cessation of the employment was a result of retrenchment otherwise than by way of disciplinary action without payment of retrenchment compensation tantamounting to unfair labour practice. Hence, the action of the Management is illegal.

With the aforesaid facts, the Workman initially served a notice through advocate on 03/10/2011 (Annexure P/4). The Management replied the same on

16/10/2011 (Annexure P/5) wherein it is stated that no assurance was extended by the Management of any nature whatsoever as claimed by the Workman. In fact, the Workman had tendered resignation voluntarily having not opted to work in different unit. As a matter of fact, acceding to the demand of the workman, the gratuity amount was determined at the rate of 30 days of wages/month instead of 15 days wages/month. Under the circumstances, upon submission of resignation, there is no employee - employer relationship between the Workman and the Management.

During the course of conciliation proceedings, the Management appears to have improved its case inter alia contending that the Workman was extended the option either to work in the same unit on piece rate basis or on transfer to work in the 'dying unit'. The Workman did not avail the aforesaid option and thereafter, resigned from service.

3. Before the Labour Court, both the parties reiterated the aforesaid stand in the form of pleadings and led evidence.

4. While answering the issue Nos. 1 and 2 in the negative, the labour Court has critically evaluated the evidence on record.

5. Admittedly, no notice of change was given by the Management for bringing change in the service conditions of the Workman on the matter specified, particularly; item No.10 of Schedule IV of the Industrial Disputes Act, 1947 (for short, the Act) before making the alleged offer to the workmen of 'folding unit' to work on piece rate or being transferred to work in the 'dying unit' which is quoted below:

"Conditions of Service for change of which Notice is to be given Item 10 Rationalization, standardization, or improvement of plant or technique which is likely to lead to retrenchment of workmen;"

6. Section 9 A of the Act is quoted below:

"9A. Notice of change.- No employer, who purposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided"

Hence, section 9A of the Act, contemplates three stages in making provision for notice of change. The first stage is the proposal by the employer to effect a change; the second stage is the time when he gives a notice and the third stage when he effects the change on the expiry of twenty-one days from the date of issue of notice. The conditions of service do not stand changed, either when the

proposal is made or the notice is given but they are affected only when the change is actually made [Northbrook Jute Co., Ltd., Vs. Their Workmen, (1960) 1 LLJ 580 (SC) referred to].

The provisions of this section are mandatory and they are enacted for protecting the workmen likely to be affected by the proposed change and prohibit the employer giving a notice for change in the service conditions applicable to the workmen in respect of the matter specified in the Fourth Schedule.

It is also mandatory that notice of change either under the Central or State relevant rules depending upon the appropriate government in a given case shall be in the form 'E' referable to rule 34 of the Industrial Disputes (Central) Rules, 1957.

7. Turning to the factual matrix in hand, admittedly, the workman; a permanent employee had been working in the 'folding unit' for the last more than 24 years; a monthly rated employee till the time he is alleged to have tender the resignation on 28/03/2011. It is Management's case that that the workmen of this unit were required to consent for transfer to the 'dying unit' unless, they were prepared to work on piece rate basis in the 'folding unit'. It is pertinent to mention that there is no decision of the Management justifying change of working conditions of the workmen on record. In the considered opinion of this Court, such change by the Management does fall within item No.10 of the Schedule appended to the I.D.Act purportedly rationalization in a camouflaged manner.

The evidence on record suggest that the contract work force engaged through the contractor has substituted the regular employees like the Workman working in the 'folding unit' for regular nature of work.

As a matter of fact, the Management circumventing the provisions of section 9A of the Act has effected the change which led to involuntarily resignation tantamounting to retrenchment.

Law and logic in that behalf has been sacrificed for expediency and convenience.

8. As the factual controversy revolved around the alleged resignation letter (Anenxure P/2), it shall be appropriate to reproduce the resignation letter, as such to appreciate its veracity and authenticity qua the evidence on record as rightly and fully appreciated by the labour Court.

Admittedly, there is neither notice period nor the reasons stated in the alleged letter of resignation.

9. Rule 11 (c) of the Madhya Pradesh Standard Standing Orders Rules, 1963 reads as under:

"11. Termination of employment and the notice thereof to be given by employer and employee:

... ..

(c) Any permanent employee desirous of leaving the employment shall give one month's notice to his departmental officer stating the reason for which he is leaving but if he so requires he may be relieved earlier than the date on which the period of notice expires."

10. A bare perusal of the aforesaid document (D/1 = Annexure P/2) suggests that computer typed form with gaps (blanks) for name, father's name, card number and date are identical and common in case of all the workmen.

11. Fateh Singh Solanki (D.W.1); the Management witness has stated that the resignation letter (exhibit D/1) was typed on a computer in the office of the Management (para 15).

The resignation letter was not signed in his presence or before any witness (para 14).

He has no knowledge who has filled up the gaps (blanks) in the resignation letter, viz., name, father's name, card number and the date. The letter does not show any reason for resignation and there is also no mention of the date of acceptance. The document also does not suggest as to who has accepted and also its acknowledgment/receipt (para 11).

It is further stated that the resignation was not accepted with effect from 28/03/2011 (para 12).

There is no record maintained by the Management with details of the employees having tendered the resignation. He has expressed ignorance about the date on which the alleged resignation was tendered by employees (Para 18).

He states that the Management has taken a decision to pay gratuity to such workmen at the rate of 30 days/month instead of 15 days/month but, has expressed his ignorance as to who has taken decision in that behalf. He also admits that there is no such decision placed on record. (Para 19).

He further states that the workmen were given option either to work on piece rate basis in the 'folding unit' or get transferred to 'dying unit'. At the same time, the work of the folding unit is being taken through the contract work force (para 24).

He further states that in the presence of the President of the Management, Shri Dalmia, the workmen were given the option either to work in the 'folding unit' on piece rate basis else be transferred to work in the 'dying unit'. Neither such decision has not been placed on record before the labour Court nor Shri Dalmia has been examined (Para 17).

In para 21, he states that he does not know the reason why and on which date, month and year the workmen were given the option to work on piece rate basis.

He further states that under the aforesaid SSO, 1963 one month notice is

required to be given with the resignation letter but no such period is mentioned therein nor it is stated that the resignation shall be accepted after expiry of one month.

While confronted with exhibit D/2 dated 28/04/2011, the payment of gratuity sheet, he fairly accepts that on bare perusal of the same, it does not bear the reference of resignation of the workman (para 23).

While confronted with exhibit D/23 the reply of the Management dated 16/10/2011 to the notice of the Workman dated 03/10/2011, he states that it is nowhere stated that the workman shall be transferred to the 'dying unit' if he does not wish to work on piece rate basis in the 'folding unit'. For the first time, the aforesaid fact of piece rate was mentioned in the reply filed before the Conciliation Officer (Para 22).

In paras 24 and 25, he again states that the workman has not signed alleged resignation letter before him.

He admits that the contract employees are working in the 'folding unit' and are being paid through the contractor.

12. Upon due consideration of the aforesaid facts and circumstances, in the opinion of this Court, the labour Court has rightly drawn conclusion that the illegal change in service conditions of the Workman was sought to be thrust upon the workman in the manner prejudicial and detrimental to his rights and interest; tantamounting to unfair labour practice, on the part of the Management as detailed in item Nos.6 and 7 of Schedule V appended to the Act quoted below:

"Unfair Labour Practices

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman mala fide from one place to another, under the guise of following management policy." leaving the Workman with no option but to sign on dotted lines involuntarily on exhibit D/1 and at the same time, the work of the 'folding unit' is being taken through the contractor. On one hand, the Workman is said to have been given option either to work on piece rate basis in the 'folding unit' without any decision of the Management placed on record in that behalf that too without specifying the rate or wages and without assessing as to whether such change shall adversely effect the rights, interest and wages of the workmen and on the other hand, the work of the said unit of permanent nature is being carried out through the work force deployed by the contractor.

Under the circumstances, the workman was subjected to illegal conditional offer of change of service conditions and thereafter he was made to sign the alleged letter of resignation with blank spaces of name, father's name, card number, etc; ascribing no reasons for resignation with no period of notice as contemplated under rule 11(c) of the M.P.SSO quoted above. Hence, the alleged resignation

letter cannot be said to be bona fide and has been used against all the workmen to their prejudice resulting into discontinuance/termination of employment amounting to retrenchment without payment of compensation. The entire exercise appears to have been carried out by the Management with ulterior motive and collateral purpose to do away with the service of the Workmen and keep operational the 'folding unit' through the engagement of contract labours, a glaring example of unfair labour practice. Hence, the findings of the labour Court on issue Nos. 1 and 2 are found to be impeccable and impregnable in nature warranting no interference under Article 227 of the Constitution of India.

Further, the Workman has led evidence that he was not gainfully employed elsewhere. The labour Court in paragraphs 22 and 23 of the award has rightly dealt with the evidence and concluded that the Workman as stated was unemployed ever since the termination from the employment and there is no evidence placed by the Management to controvert the same.

13. Upshot of detailed discussion in the preceding paragraphs leads to irresistible conclusion that the award passed by the labour Court is impregnable in nature ordering reinstatement of the Workman with back wages and other service benefits.

14. All the writ petitions sans merit and are hereby dismissed.

15. Let, a copy of this order be placed on the record of the other connected matters.