

(2016) 08 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 13667 of 2008

Proto Pumps & Motors Pvt. Ltd.

APPELLANT

Vs

Subhashbhai Karsanbhai Barot

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Citation : (2016) 3 LLN 646

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Thakkar and Pahwa Advocates, Advocates, for the Petitioners No. 1; Mr. Hiren M. Modi, Advocate, for the Respondents No. 1; Rule served, for the Respondents No. 1

Final Decision : Partly Allowed

Judgement

Mr. K.M. Thaker, J.(Oral)—Heard Mr. Thakkar, learned advocate for the petitioner and Mr. Modi, learned advocate for the respondent.

2. In present petition, the petitioner has challenged award dated 24.10.2007 passed by the learned Labour Court at Navsari in Reference (LCN) No. 205 of 2002 (Old Reference No. 102 of 2000) whereby the learned Labour Court directed present petitioner to reinstate the respondent on his original post with full back wages.

3. So far as the factual background is concerned, it has emerged from the record that the respondent herein raised an industrial dispute with allegation that the petitioner company illegally terminated his service. The said dispute was referred for adjudication to the learned Labour Court vide order of reference dated 3.10.2000. The said dispute was registered as Reference (LCN) No. 102 of 2000 and subsequently renumbered as Reference (LCN) No. 205 of 2002.

4. Before the learned Labour Court, the claimant filed his statement of claim and alleged that he was working as turner with the opponent company since last 5 years and that his salary was Rs.70.20 paise per day. He also alleged that though

he was permanent workman and he had regularly and continuously worked with the petitioner company and despite the fact that his past service record was clean and blotless, his service was illegally terminated by oral order on 1.5.2000. He also alleged that when his service was terminated, he was not granted opportunity of hearing and notice pay or retrenchment compensation was not paid despite the fact that he had worked for 240 days in preceding 12 months. The claimant alleged that the opponent company committed breach of Section 25F. He also alleged that the opponent company had illegally deducted two days' wages from his salary for the month of March 2000 and three days' wages from his salary for the month of April 2000. With such allegations, the claimant demanded that he should be reinstated with consequential benefits.

5. The petitioner company herein filed written statement and opposed the reference and allegation by the claimant. In its written statement, the company also claimed that it had not terminated the service of the claimant and that his name continued on the rolls of the company and that if the claimant is ready to report for work, he may do so and the company will allow him to resume his duties. The company/employer claimed that the claimant had joined the service with effect from 1.2.1995 and that the claimant was very irregular in service and he was in habit of remaining absent without prior leave or permission. The company/employer also claimed that the claimant had last reported for work on 29.4.2000 and thereafter he stopped reporting for work without informing any reason or without seeking leave or permission. The company also claimed that since any information was not received from the claimant about his absence, the company had written a letter dated 4.5.2000 and asked the workman to report within two days, however, the claimant did not report for duty. According to the company, the claimant voluntarily abandoned his service with effect from 1.5.2000. The company also denied that the claimant had worked for 240 days in preceding 12 months. According to the company, the claimant had worked for 218-1/2 days during preceding 12 months. With such submission, the company opposed the reference.

6. After the stage of pleading was concluded, both sides placed oral as well as documentary evidence before the learned Labour Court. The workman placed on record demand notice which he had addressed on 17.5.2000 asking the company to reinstate him. He also placed on record certain correspondence exchanged between him/union and the company. On the other hand, the company placed on record letters which the company had allegedly addressed to the claimant asking him to report for work.

7. The deposition of the workman was recorded and on behalf of the petitioner company, deposition of one Mr. Bharatbhai Kansara was recorded. Upon conclusion of the stage of evidence, the learned Labour Court heard the submissions by learned advocates for the claimant and the company and after hearing the submissions and after considering the material on record, the learned Labour Court passed the award with the above mentioned directions.

8. At the time of hearing of this petition, Mr. Thakkar, learned advocate for the petitioner company repeatedly asserted that the company had never terminated claimant's service and that the company was and the company is ready and willing to allow the claimant to resume his duties if he is ready and willing to report for work. Mr. Thakkar, learned advocate for the petitioner company made reference of the letters said to have been written by the company to the claimant asking him to report for work (copies whereof are placed on record of this petition). Learned advocate for the petitioner company submitted that even in the written statement, the company had averred and stated that the claimant may resume his duty. He submitted that despite repeated requests by the company, the claimant never reported for work. He submitted that though the learned Labour Court has taken note of the averments and the statement in the written statement and the learned Labour Court has also taken into account the letters addressed by the company to the workman, the learned Court, without appreciating the said factual aspect and the fact that it is the workman who had voluntarily stopped reporting for work, passed the award and committed error by directing the company to reinstate the workman with back wages. Mr. Thakkar, learned advocate for the petitioner company as his last submission, relied on the order passed by this Court during pendency of the petition whereby this Court had, in view of the submission by the company, asked the workman to resume his duties. According to the learned advocate the claimant even after the order by the Court did not report for work.

9. Mr. Modi, learned advocate for the workman opposed the submissions by the learned advocate for the company. Mr. Modi, learned advocate for the workman submitted that the award does not suffer from any error. He submitted that on one hand the company addressed couple of letters to the workman to resume duties, however, when the workman reported for work he was not allowed to resume his duties and he was driven out from the factory. Mr. Modi, learned advocate for the workman submitted that the claimant had also filed applications and affidavits on the record before the learned Labour Court stating that though he had reported for work and tried to resume his duties, he was not allowed to resume his duties. Learned advocate for the workman submitted that the claimant's service was terminated by oral order and he was not granted any opportunity of hearing before terminating his service. Learned advocate for the workman also submitted that before terminating his service the company had not paid notice pay or retrenchment compensation though the claimant was permanent employee and despite the fact that he had worked continuously as permanent employee for more than 5 years in each year and he had worked for more than 240 days in preceding 12 months. According to the learned advocate for the workman, there is no error in the award.

10. I have considered the submissions by learned advocates for the contesting parties and also examined the material on record and the impugned award.

11. From the material on record as well as from the observations by the learned

Labour Court in the award which is impugned in present petition and from the submissions by learned advocates for the parties, it has emerged that present case is a bundle of allegations and counter allegations by the workman and the company.

12. It is pertinent that entire case is based on employer's words against the workman's words, inasmuch as the workman claimed that his service was orally terminated on 1.5.2000 whereas the company claimed that the workman voluntarily abandoned the service and he stopped reporting for work from 30.4.2000 without any reason or without seeking any leave or permission. According to the claimant, his service was orally terminated on 1.5.2000. He has also claimed that after his service was terminated, he had served a demand notice dated 15.5.2000, however, any reply was not received from the company and he was not allowed to resume duties and that therefore, he raised industrial dispute claiming reinstatement with consequential benefits. On the other hand, the company has claimed that it had never terminated the service of the workman and his name continued in the register of the company and that the company had written various letters to the workman asking him to report for duty.

13. It is pertinent to note that during his deposition, the claimant admitted that he had received the said letters dated 23.8.2003, 15.1.2004 and 11.2.2004. He would, however, make counter allegation and claim that though he had reported for duty after receiving the letters, he was not allowed to resume his duties and he was driven out by the officer/director of the company.

14. The company seems to have also placed on record notice dated 15.1.2004 and 11.2.2004 informing the respondent that if he did not report for work, then, it will be treated as misconduct and appropriate action in accordance with law will be taken.

14.1. The petitioner company has also placed heavy reliance on the statement made in the written statement wherein the company seems to have averred and stated that the service of the workman is not terminated by the company and if the workman is ready to report for duty and resume his work, the company has no objection in allowing him to resume his duties. The company has also placed reliance on the letter dated 4.5.2010. The company appears to have also placed reliance on the letters dated 4.5.200 and 8.5.2000 (Exh.42 and 44), however, the workman categorically stated before the learned Labour Court during his deposition that he had not received the said letters. It is pertinent that the letters said to have been written by the company were not forwarded to the respondent by registered post. All correspondence seems to have been done by U.P.C.

14.2. The workman admitted and accepted that he had received letters dated 23.8.2003, 15.1.2004 and 11.2.2004.

14.3. Thus, there is no dispute with regard to the said letters. However, so far as

the letters dated 4.5.2000 and 8.5.2000 are concerned, there is no evidence on record to establish that said letters were received by the workman.

14.4. Above mentioned details bring out that present case is built on allegations and counter allegations and company's words against workman's words.

15. It is pertinent to note that the company did not give any response to the workman in reply to his demand notice dated 15.5.2000.

15.1. When the company received the demand notice it could have replied the notice and asked the workman to resume his duty and it could have simultaneously denied the allegations. However, it maintained silence and after the said notice, it was for the first time in its written statement that the company claimed that it had not terminated the service of the workman and if the workman desired to report for work, he may do so. The same reply could and ought to have been given in response to the notice.

15.2. The company filed the said written statement with such averments and statement on the record of the learned Labour Court in or after January 2003 and the first letter which the company wrote to the workman is forwarded to the workman in August 2003.

15.3. Thus, any concrete action from the side of company after the workman allegedly stopped reporting for work from 1.5.2000 was taken in August 2003 vide letter dated 23.8.2003. Of course, in the written statement, above mentioned statement is made by the company. The said inaction and silence on the part of the company from 15.3.2000 to 20.8.2003 or (or 19.1.2003 i.e. the date of written statement) speaks volume about the company's intention.

15.4. Even according to the company's claim that it had addressed first letter to the workman (asking him to report for duty) on 23.8.2003 and when the said letter/date is taken into account, then also it brings out that the starting point of company's intimation to - communication with - the workman (besides the written statement) is the letter dated 23.8.2003.

16. The workman, according to the company, stopped reporting for work from 30.4.2000. Thus, for almost 3 years, the company did not take any action with regard to the alleged absence of the workman on and from 30.4.2000.

16.1. The said gap of three years, as mentioned above, speaks volume and indicates or signifies the company's intention and conduct.

16.2. Of course, after August 2003, the company appears to have addressed letters to the workman asking him to report for work.

16.3. It is also true that the company has claimed that after receiving the said notice, he had gone to report for work, but he was not allowed to resume his duties. The period after the date when the company filed the written statement, more particularly after 23.8.2003 is completely immersed in allegations and counter allegations by the workman and the company.

16.4. In that view of the matter, it is not possible to determine as to whose version is more reliable. The fact remains that the concerned workman has not worked with the company from 1.5.2000 and more particularly from 23.8.2003 despite the intimation by the company to resume duties.

17. In this view of the matter, more particularly when the company repeatedly and vehemently asserted and still asserts that it had not terminated the claimant's service and it always asked the workman to resume duty and having regard to the fact that even during admission/hearing of this petition the company invited the order that the workman should report for work, the company's objection against the direction to reinstate the workman cannot be sustained.

17.1. When the company itself consistently claimed that it had not terminated the service of the workman and always wanted that the workman should resume his duties and when the company has, even during hearing of this petition, reiterated his said stand, then, the company does not have any ground to oppose the direction to reinstate the workman.

17.2. Therefore, said objection is not accepted and is rejected.

17.3. Even otherwise, when the company did not take any action against the concerned workman for almost 3 years the direction to reinstate the workman cannot be interfered with and company's objection cannot be sustained.

18. Now, so far as the direction to pay full back wages is concerned, it is clear from above discussion that the said direction is not sustainable and is required to be modified.

18.1. The company's submission that any back wages should not be granted to the workman also cannot be accepted. At the same time, the direction to pay full back wages also cannot be upheld.

18.2. There is nothing on record to dislodge the company's claim that during preceding 12 months, the workman had worked for 218 and half days.

18.3. It is also not in dispute that the total length of the service of the workman was of 5 years. The workman is technically qualified and experienced turner. Thus, he would not have remained unemployed. The fact that even after the direction by this Court, the workman did not resume his duties cannot be ignored. Similarly, the fact, viz. that the first attempt by the company to intimate the concerned workman to resume duties was taken in 2003 and for almost 3 years the company had not taken any steps against the workman for his alleged absence or it had not even called for his explanation or it had not even warned him about disciplinary action, also cannot be ignored.

19. In this background, when overall view of the matter is taken and so as to balance the equity and to maintain overall interest of both sides, if the company is directed to pay back wages to the workman from 1.5.2000 to 20.8.2003 (i.e. when the company addressed the letters to the workman asking him to report

for duty) is passed, then, interest of justice would be served. Therefore, present petition is disposed of with following order:

(a) The impugned award is set aside and modified. The direction to reinstate the workman is not disturbed, however, so far as the order directing the company to pay 100% back wages is concerned, the said direction is set aside and modified by directing the company to pay back wages to the claimant from 1.5.2000 to 20.8.2003. The company will pay the said part of back wages to the claimant as expeditiously as possible and preferably within four weeks after receipt of certified copy of this order.

(b) The company will reinstate the workman and for that purpose it shall address a communication to the concerned workman and forward it to the concerned workman by registered post asking him to report for work and resume duties within one week.

The said letter shall be forwarded to the concerned workman at the address available on the record of the company and also at the address of the union which is mentioned in the cause title of the petition. Learned counsel for the workman shall also convey the decision to the workman and instruct him to report for duty, if the workman so desires.

20. With aforesaid clarifications and directions, the petition is partly allowed. Rule is made absolute to the aforesaid extent.

21. Application partly allowed with clarification and directions.