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In the Bombay High Court

Case No : Writ Petition No. 5087 of 1984

Rajan M. Nande — APPELLANT

Vs

Zell Ate Ltd. and others — RESPONDENT

Date of Decision : 23-07-1992

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (1993) 1 LLJ 329

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Advocate : G. Nabar, for the Appellant; P. Ramaswami, for the Respondent

Judgement

1. The petitioner-workman is a qualified mechanical draughtsman from Sir Cusrow Wadia Institute of Technology, Pune-1. He was earlier working with Antifriction Bearings Corporation Limited, Lonavala for about 7 1/2 years on permanent basis. However, he joined the first respondent company (herein-after referred to as ''the company'') as it had offered him better terms. Thus, he was appointed as a mechanical draughtsman by the company vide appointment letter dated July 14, 1980 in the first instance in probation for six months subject to extension, if necessary. Thereafter by a letter dated December 28, 1980 the company confirmed him with effect from January 1, 1981 along with five other employees. At that time the petitioner noticed that his monthly salary was reduced by Rs. 10/-. He, therefore, made a grievance about it to his immediate superior. It is the case of the petitioner that instead of rectifying the anomaly created by reducing his monthly salary by Rs. 10/-, the company called back the letter of confirmation and did not return it to him and thereafter issued a letter of termination on June 18, 1981 on the ground that his work was not upto the required standard. The petitioner, therefore, contended that termination of his service was a mala fide and illegal act indulged in by the company under colorable exercise of the employer''s right. Therefore, he raised an industrial dispute which came to be referred to the Second Labour Court at Pune, being

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reference (IDA) No. 256 of 1981 for his reinstatement with continuity of service and full back wages.

2. In the Labour Court, the workman examined himself in support of his claim and the company its Personnel Manager, Mukund S. Kurlekar. On appreciation of the evidence adduced before him, the learned Labour Judge came to the conclusion that the company had a right to terminate the service of the workman and it was justified in doing so during the probationary period of the workman. According to the learned labour Judge, therefore, the termination of the service of the workman was proper and legal as he was not a confirmed employee and as such he was not entitled to any relief. The learned Labour Judge accordingly by his Award dated July 11, 1984 rejected the reference with no order as to costs.

3. Being aggrieved, the petitioner-workman invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing the present writ petition.

4. Now the letter of appointment issued to the petitioner on July 14, 1980 (Exhibit-A to the petition) shows that he was appointed as a mechanical draughtsman at the Lonavala factory of the company on a consolidated salary of Rs. 850/- per month on probation for the first six months, subject to extension, if necessary and on satisfactory completion of the probation period he would be considered for confirmation and placement in suitable grade with permissible allowances, if any, applicable to his cadre and that the total emoluments would not be less than Rs. 850/- per month. Mr. Nabar appearing on behalf of the petitioner-workman first of all urged that the letter of appointment itself was in contravention of Model Standing Orders according to which a probationer means a workman who is provisionally employed to fill a permanent vacancy or post and who has not completed three months uninterrupted service in the aggregate in that post. The submission of the learned Advocate is that once a workman completes uninterrupted service of three months, he ceases to be probationer as can be seen from Clause 2(b) of Schedule 1 of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. Mr. Nabar then pointed out Clause 44 of the same Model Standing Order and submitted that every probationer who completes three months service uninterruptedly shall be made permanent in the post by the Manager by an order in writing within seven days from the date of completion of such service and submitted that after the petitioner completed three months of uninterrupted service he should have been confirmed which was an obligation cast on the employer here under this provision of law and, therefore, the term of service of appointing the petitioner on probation for six months by the appointment letter dated July 14, 1980 itself was contrary to law. There is lot of substance in the submission of Mr. Nabar. But assuming for the sake of argument that the parties are bound by the contract in which they entered and that the petitioner here was on probation for six months, at the end of six months probation period his services could have been either terminated or he should have been either terminated or he should have been

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confirmed. The record shows that he was within six months by a letter dated December 28, 1980 confirmed with effect form January 1, 1981. However, it is the case of the company that the said confirmation letter was issued by a mistake and, therefore, it was withdrawn and called back, whereas it is the case of the petitioner-workman that since he made a grievance that on confirmation his salary was reduced by Rs. 10/- per month, the confirmation letter was returned by him to the company at the instance of the company for rectifying the mistake of decrease in his salary by Rs. 10/- per month. The argument of Mr. Ramaswami appearing on behalf of the petitioner is that the probation period of the petitioner was extended by a further period of six months when the confirmation letter dated December 28, 1980 was taken back from the petitioner and, therefore, the company was entitled to terminate his services any time during the probation period. In support of his argument Mr. Ramaswami drew my attention to a Supreme Court Judgment in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, to urge that on completion of the probation period if no action was taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer. I am afraid, although there is not, and there cannot be, a dispute about the observations made by their Lordships of the Supreme Court in the case referred to above, the point is whether the probation period of the petitioner herein was extended by the company to further period of six months as submitted by Mr. Ramaswami. There is nothing on record to show that the Company had extended the probation period of the petitioner by six months when the letter of confirmation dated December 28, 1980 was withdrawn by the Company. Mr. Ramaswami submitted that there was an oral order extending the probation period of the petitioner. Since there is no record whatsoever whether the company had extended the period of probation of the petitioner by six months effective from January 1, 1981, I am inclined to believe and accept the submission of Mr. Nabar that the services of the petitioner were confirmed by letter dated December 28, 1980 which was to come into effect form January 1, 1981 but the the said letter was temporarily taken back by the company in order to rectify the anomaly created by the reduction of the monthly salary of the petitioner any Rs. 10/-. But assuming for the sake of argument that the submission of Mr. Ramaswami is correct to the effect that orally the probation period of the petitioner was extended by six months effective from January 1, 1981 then also the action of the company in terminating the services of the petitioner before the completion of six months after January 1, 1981 on June 18, 1981 was illegal inasmuch as the Supreme Court had held in the case of Express Newspaper Ltd., referred to above and relied upon by Mr. Ramaswami, that within the period of probation the services of a probationer could not be dispensed with except on the ground of misconduct or other sufficient reasons. In fact the Supreme Court therein observed that "it appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired except on the ground of misconduct or other sufficient reasons in which

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case even the services of a permanent employee could be terminated. At the end of the six months'' period the employer can either confirm him or terminate his services ..." (p. 11). Thus, in the present case the services of the petitioner could not have been terminated on June 18, 1981, that is, before he completed six months of extended probation period on June 30, 1981. Thus if the services of the petitioner were confirmed, as pointed out earlier, he could not have been terminated in the manner in which the company did here and if his services were not confirmed and extended by further period of six months he could not have been terminated on or before June 30, 1981. In either case the action of the company here in terminating the services of the petitioner with immediate effect from June 18, 1981 by a letter dated June 18, 1981 would be illegal.

5. Mr. Ramaswami pointed out material available on the record and submitted that the Production Manager of the company by name Chaudhary was against the confirmation of the petitioner because his work was not found satisfactory which fact Chaudhary pointed out to the management of the company on account of which the confirmation order was withdrawn and in the submission of Mr. Ramaswami there was nothing wrong if the petitioner was not confirmed on completion of six months of probation period and was given further extension of six months probation during which his services were terminated as his work was still not found satisfactory. Mr. Nabar replied to this contention raised by Mr. Ramaswami that there is absolutely no record to show that the work of the petitioner was not satisfactory either at the time when he completed six months of probation period or thereafter when his services were terminated. There is lot of substance in the submission on Mr. Nabar. It appears that there is a confidential letter (Art. A of the Labour Court''s proceedings) according to which the immediate superior of the petitioner by name Gujar had complained that the performance of the petitioner was not upto the standard required by the company which may be taken into consideration while taking a decision about his confirmation. Mr. Nabar urged that this is fabricated document on which the company relied. I have no doubt that there is truth and substance in the submission of Mr. Nabar as it appears to me that this document was brought into existence much after the termination letter was issued to the petitioner on June 18, 1981 and that its author and signatory are also doubtful. Thus, on the left side at the top of this document it was first dated "August 30, 1981" which I have read with a magnifying glass. The figure "8" showing he month of August was thereafter scored out and replaced by figure "1" indicating that this document was prepared much before the letter of termination on June 18, 1981. Against the Company''s witness Mukund S. Kurlekar stated in his evidence that this document was written by him but was signed by Gujar by putting his initials at the end of the document. I am more than satisfied that this evidence of Kurlekar is absolutely false inasmuch as the document is written and signed by one and the same person and not written by one and singed by another as deposed by Kurlekar. I have come to such unhesitant conclusion because on the left side top of the document there are words "UNG" indicating that the

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confidential letter was from "UNG" to Mr. "CDC" and at the end of the document it is purported to have been signed by a person whose initials are "UNG". A careful perusal of the words "UNG" at the top of the document and the same words at the bottom clearly shows that these words are written by one and the same person. These two circumstances make it crystal clear that the document which was brought into existence to show that the work of the petitioner was not satisfactory was a totally false and fabricated document on which the company relied.

6. In this view of the matter the findings of the learned Labour Judge that the company validly terminated the services of the workman and that the company was justified in extending the probationary period of the workman and that the workman was not a confirmed employee and that he was not entitled to any relief are totally perverse. The impugned award passed by the Labour Judge rejecting the reference disentitling the petitioner to the claim of reinstatement with continuity of services and full back wages was absolutely erroneous with lost of errors apparent on the face of record. The same is, therefore, quashed and set aside.

7. In the result, the writ petition succeeds and the same is allowed. The Award passed by the learned Labour Judge rejecting the reference is quashed and the same is substituted by the following Award - That the first respondent company shall reinstate the petitioner-workman in his original position forth with continuity of service and pay him full back wages with all consequential benefits effective from the day of termination of the services on June 18, 1981 till the day of his reinstatement. The petitioner-workman shall have continuity of service for all terminal benefits. The first respondent company is further directed to calculate the arrears of wages before the end of August, 1992 and pay up the same to the petitioner workman failing which the company shall be liable to pay interest at the rate of 18 per cent per annum on the accrued arrears due and payable to the workman effective from September, 1992.

8. Rule is accordingly made absolute with no order as to costs.

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