

(2003) 07 BOM CK 0114
In the Bombay High Court
Case No : Writ Petition No. 1716 of 2001

Raju Sankar Poojary

APPELLANT

Vs

Chembur Warehouse Company and Another

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 1 BomCR 160 : (2004) 1 MhLj 52

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : V.P. Vaidya, for the Appellant; Anjali N. Helekar, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the award dated 23-1-2001, passed by the Labour Court at Mumbai in Reference (IDA) No. 344 of 1997. The grievance of the petitioner is that in spite of illegal termination of his services being established, the Labour Court erred in not ordering reinstatement and awarding full back wages for the period from the date of termination till the date of closure of the undertaking and by restricting the relief only to the payment of closure compensation.

3. The petitioner joined the respondent-company as a clerk some time in the year 1985. On complaint that his services were illegally terminated from 16-11-1995 and pursuant to the conciliation proceedings having failed, the matter was referred for adjudication of the issue as to whether the petitioner should be ordered to be reinstated with full backwages and with continuity of service with effect from 16-11-1995 to the Labour Court. It is the case of the petitioner that his services were orally terminated without any justifiable reason. On the other hand, it was the case of the respondent-company that in spite of

repeated requests the petitioner did not resume his duties and that his services were not at all terminated and being so, there was no question of reinstatement as such and further that the respondent-company was always ready and willing to allow the petitioner to join to his duties. It was their case that since the petitioner had abandoned the services without any justification from 17-11-1995, he is not entitled for any relief in the matter. The Labour Court, after hearing the parties and considering the evidence led by both the parties, held that the petitioner did not respond positively to the offer made at various stages by the company to join to his duties and since the undertaking has been closed down, the petitioner would be entitled only to the relief u/s 25FFF of the Industrial Disputes Act, 1947 and therefore the company would be liable to pay the closure compensation to the petitioner. The relief of reinstatement and for backwages was not granted to the petitioner and hence the present petition.

4. While assailing the impugned order, the learned Advocate for the petitioner submitted that the materials on record clearly disclose that the petitioner's services were abruptly terminated without justifiable reason and the said fact was confirmed by the letter dated 17-1-1996, addressed to the petitioner by the company, wherein it was clearly disclosed that the petitioners name was removed from the muster-roll of the company. He has further submitted that the Labour Court erred in relying upon the letter dated 26-4-1996 as being the offer made by the respondent-company to the petitioner to join to his duties when, in fact, the said letter was not written by the respondent company but by one M/s Mangal Exports and being so, it was apparent that there was no offer from the respondent-company to the petitioner to join to his duties. He further submitted that the Labour Court erred in placing reliance upon the letter dated 10-7-1996, without considering the fact that the said letter was addressed to the conciliation officer after the failure report by the conciliation officer and that therefore there was no occasion for the petitioner to know about the said letter. Referring to the statement in the written statement by the respondent-company about their willingness to allow the petitioner to join to his duties, it was sought to be contended on behalf of the petitioner that assuming that there was sincere offer on the part of the employer to allow the workman to join to his duties, it can, at the most, be held to be from December, 1997 as the said written statement was filed in November, 1997. But the fact remains that that would not entitle the employer to deny the backwages to the employee for the period prior to December, 1997. In any case, the order of reinstatement was necessary as in the absence thereof the right of the workman in relation to the claim for gratuity as well as the quantum of closure-compensation would be affected. On the other hand, the learned Advocate appearing, for the respondent-company submitted that the records apparently disclose that there was no termination of services of the petitioner and it was a clear case of abandonment of the service by the petitioner and therefore no fault can be found with the findings arrived at by the Labour Court. She has further submitted that the testimony of the petitioner himself before the Labour Court clearly discloses that in spite of offer being made

to the petitioner to join to his duties, the petitioner failed to take any advantage of the said offer, without any justification, and further that it is the petitioner himself who did not join to his duties since 18-11-1995. According to the learned Advocate for the respondent, mere intimation of striking off his name from the muster-roll under the letter dated 17-1-1996 would not enure to the benefit of the petitioner to contend that the petitioner's service was terminated as much prior to the said letter the petitioner himself had failed to attend to his duties and there was a clear admission to that effect in his testimony. It was her further contention that disclosure in the written statement regarding the willingness of the company to allow the petitioner to join to his duties as well as intimation to that effect by the respondent-company to the conciliation officer in the letter dated 10-7-1996 apparently disclose that the respondent-company had never obstructed the petitioner from joining to his duties and therefore there was no case of termination of service but it was a case of abandonment of employment by the petitioner and hence there is no case for grant of order of reinstatement or the backwages. Reliance is sought to be placed in the decision of the learned single Judge of this Court in the matter of Sonal Garments v. Trimbak Shankar Karve, reported in 2002 3 CLR 488.

5. Upon hearing the learned Advocates for the parties and on perusal of the records, as already observed above, the clear finding of the Labour Court is to the effect that the company had not terminated the services of the petitioner at any point of time but he himself had left it by way of abandonment on or from 17-11-1995, and did not respond positively to the offer of employment by the respondent-company and further that there is admission on the part of the petitioner as regards the abandonment of his service from 18-11-1995. Perusal of the written statement of the respondent-company undoubtedly discloses the willingness expressed by the respondent-company to offer employment to the petitioner. Undoubtedly, the said written statement was filed in November, 1995. It, however, also discloses the fact that even prior to that, under the letter dated 10-7-1996, the said offer was also informed by the respondent-company to the conciliation officer. Being so, as far as the stand of the respondent-company in the course of the proceedings either before the conciliation officer or before the Labour Court is concerned, it had been consistently to the effect that there was no termination of services of the petitioner and the respondent-company had been willing to allow the petitioner to join to his duties but it was the petitioner himself who had kept himself away from the employment in the respondent-company. At the same time, it cannot be ignored, as rightly submitted by the learned Advocate for the petitioner, that the communication of willingness to allow the petitioner to join his services made by the respondent-company to the conciliation officer was after the conclusion of the conciliation proceedings and therefore the materials on record do not disclose any occasion for the petitioners to know about the said communication to the conciliation officer by the respondent-company. But this fact cannot assume much importance while analysing the entire materials on record as there is a clear admission on the part

of the petitioner himself in his testimony at two places, one of such admissions being reproduced by the Labour Court in the impugned judgment itself, which reads that "It is correct to say that though there was an offer for employment made through W.S. at Ex.C-3 through para-5 as well as para-13, I have not reported for duty to the said Co.", and the second admission which is revealed from the copy of the testimony placed on record by the petitioner himself, which reads that "On 18-11-1995 I reported for duties. It is correct to say that after 18-11-1995 I did not go to the employer for duty". These statements apparently disclose that the petitioner did not join to his duties from 19-11-1995 onwards. It is true that by letter dated 17-1-1996 the petitioner was informed by the respondent that on account of failure to join to his duties since 18-11-1995 onwards, his name was struck off from the muster-roll of the company. As rightly submitted by the learned Advocate for the respondent, mere intimation to that effect in January, 1996 cannot be construed against the respondent-company to mean that the respondent-company had not allowed the petitioner to join to the duties when it is the case of the petitioner himself that from 19-11-1995 he "did not go to the employer for duty". Being so, the materials on record apparently disclose that the petitioner himself had failed to join to his duties from 19-11-1995 and it was not a case of termination of the services or refusal on the part of the employer to allow the petitioner to join to his duties. Added to this, the fact that the respondent-company was willing to allow the petitioner to join to his duties, was reiterated by the respondent-company in the letter to the conciliation officer as well as in their written statement before the Labour Court and yet the petitioner did not avail any benefit of such offer by the respondent. Can the petitioner now blame the respondent-company for and reap the benefits of, his own fault of not responding positively to offer given by the respondent-company?

6. The learned single Judge in the case of *Sonal Garments v. Trimbak Shankar Karve* (supra), was dealing with a case wherein it was the contention of the employer that the services of the workman were never terminated by the employer and yet he remained absent unauthorisedly and that he was always welcome to join to his duties, and considering the facts of the said case held that the conduct of the workman was lending support to the version of the employer that the workman had abandoned the employment and that he never came back to report for duty and that it was not a case of termination by the employer. Having held so, it was observed by the learned single Judge as under:--

"Whenever the employer offers to reinstate the workman at any stage of the dispute or proceedings and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any backwages from the date of such offer, conditional or unconditional."

I am in respectful agreement with the proposition of law laid down by the learned single Judge in *Sonal Garments* case. An employee who has been repeatedly

offered opportunity to join the services by the employer, when fails to take benefit of such an offer, cannot thereafter insist for the relief of reinstatement or for backwages. It would amount to ordering grant of bonanza for the mischief played by the workman himself. Being so, once the materials on record clearly disclose that in spite of repeated offers by the respondent-company, the petitioner had failed to report to his duty, there was no fault on the part of the Labour Court in refusing the relief of backwages. Once it had been the consistent case of the respondent-company and having been established with the materials on record that there was no termination of services but it was a case of abandonment of services, by the employee, without any justifiable reason, the question of ordering reinstatement also cannot arise. Viewed from this angle, therefore, there is no case for interference in the impugned order by this Court in its writ jurisdiction.

7. Hence, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.