
(2012) 09 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 9362 of 2002

Ratilal Ambalal Makasana

APPELLANT

Vs

Klockner Windsor India Pvt. Ltd.

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 136 FLR 357

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; Nirav Joshi for Nanavati Associates, for the Respondent

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

The petitioner, second party workman in Reference (LCA) No. 100 of 1989 from the Labour Court, Ahmedabad has approached this Court under Articles 226 and 227 of the Constitution of India challenging the Award and order dated 9.11.2001 passed by the Presiding Officer, Labour Court, rejecting the Reference for the reasons stated thereunder.

The facts in short leading to filing this petition could be set out as under:

The petitioner-workman was constrained to raise industrial dispute as his forced resignation was forcefully obtained from him in dubious circumstances or rather in the police custody under the threat, was sought to be acted upon for illegally denying him his right to be continued in service in the respondent-employer. The competent authority refers the matter to the Competent Court, wherein, it was numbered as Reference (LCA) No. 100 of 1989. The workman contended that false police complaint of theft was filed against him and he was subjected to third decree treatment in the police custody and on account of undue influence on the part of respondent-Company, he was to write resignation on 2.10.1988 and on 2.10.1988 being Sunday, the said resignation was presented on 3.10.1988 and

after recovering from his shock, the workman addressed a withdrawal letter on 7.10.1988. The say of respondent-employer was that the resignation was voluntary resignation and acceptance was made right in front of the workman by the competent authority and letter of acceptance was sent on 4.10.1988 along with dues towards full and final settlement, which was returned with endorsement "refused". This fact would show that the workman was not correct in contending that resignation was forcefully obtained. The Court after recording its finding did not accept the contention of workman and held that the resignation was not forced resignation as alleged and thus, rejected the Reference vide order dated 9.11.2001, which is assailed in this petition by way of petition under Articles 226 and 227 of the Constitution of India.

2. Learned advocate for the petitioner invited this Court's attention to the contention of workman recorded by the Court in its order that the two letters of resignation available on the record and one letter containing the endorsement of acceptance has remained unanswered on the part of employer and the Labour Court has not adverted this aspect by merely recording its finding qua the two letters being copy of same resignation. In fact, both the letters were shown to the Court and it was contended that the said two letters cannot be said to be copy of each other in any manner, as could be seen from the tenor of the letter and writing etc.

3. Learned advocate appearing for respondent contended that finding of the Court may not be interfered with and the Court's observation and findings with regard to resignation in two copy need not be understood as both the letters being copy of each other. The resignation in two copy or two resignation letters cannot be permitted and the finding of the Court that the workman failed in establishing that the resignation was forced as alleged by him, had it been so, the workman has to give his evidence and give an explanation as to why he did not report to the authority or police or employer and for the first time on 7.10.1988 withdrew his so called forced resignation.

4. The Court is of the view that the learned advocate for the petitioner is justified in contending that the Labour Court has not recorded its finding qua the factum of two separate letters of resignation. The Labour Court has recorded that the two letters are copy of each other but plain reading of these two letters on the record, sufficiently indicate that two letters cannot be characterized as copy of each other or one is copy of other. The contention raised on behalf of the workman with regard to lack of explanation on the part of the company has in what circumstances the company accepted two resignation letters, would be required to be viewed in proper perspective. The witness of the company has stated that the workman had come with two letters of resignation and one was endorsed to be accepted though it appears that acceptance does not indicate that the acceptance was in presence of workman, as sought to be couched on behalf of witness of management or else nothing prevented the person concerned to obtain workman's counter signature, which would squarely go to

show that workman knew about the acceptance of resignation. Had it been the case of this nature, then the controversy would assume different picture altogether.

5. Looking to the observations made in the impugned order, the Court is inclined to quash and set aside the impugned order and remand the matter to the Labour Court to decide the matter on the ground of no findings qua two letters of resignation. Any observations made hereinabove shall not be considered while deciding the case by Labour Court and the Labour Court is to record its specific findings in respect of controversy on the basis of evidences already adduced and available on the record. The parties Counsel shall be given full opportunity of making out their case based upon the evidences available on record. No fresh evidence is required to be obtained or accepted and no parties are permitted to lead any further evidence, and the parties Counsel shall be given full opportunity of making out their case based upon the evidences on the record. No fresh evidence is required to be obtained or accepted and no parties are permitted to lead any further evidence. This Court would take task to dispose of the matter on merits here but as the question relating to fact is involved, the matter is required to be remanded back to the Labour Court with an observation that the same shall be decided after hearing both the sides on merits and on the basis of evidence already available on record and the matter be decided within three months from the date of receipt of writ of this order. In the result, the petition is partly allowed. Rule is made absolute to the aforesaid extent. No costs. Direct service permitted.