IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3765 OF 2015
WITH
CIVIL APPLICATION NO.15109/2015
IN
WRIT PETITION NO. 3765 OF 2015

Nanded District Central Cooperative
Bank Limited, Through its Deputy
General Manager, Maroti Mahajan Chavan,
Govind s/o Dattaram Munjal,
Age 49 years, Occ. General Manager,
R/o Head Office, Near Chat.Shivaji Statute,
Nanded. ..Petitioner

Versus

Kondiba Nilkanthrao Jadhav,
Age 45 years, Occ. Ex-employee,
R/o Nonwadaj, Tq. Kukhed,
District Nanded. ..Respondent

...
Advocate for Petitioners : Shri Suryawanshi K.J.
Advocate for Respondent : Smt. Agrawal Ujjwal C.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 21, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment of the Labour Court dated 26.5.2014, by which, Complaint (ULP) No. 72 of 2011, preferred by the respondent was allowed partly. The petitioner is also aggrieved by the judgment of the Industrial Court, dated 3.2.2015, by which Revision (ULP) No.50 of 2014, filed by the petitioner has been dismissed.

5. Considering THE submissions of the learned Advocates for the respective parties and the record available, the following two issues arise for my consideration:-

(i) Whether the resignation letter dated 19.12.2005 tendered by the respondent praying for being relieved on 6.1.2006, can be said to be obtained by the petitioner under force, duress or coercion?

(ii) Whether the petitioner can be faulted for having accepted the resignation tendered by the respondent within a period of one month from the date of resignation ?

6. Smt. Agrawal has strenuously supported both the impugned judgments. She submits that the respondent filed a complaint alleging forceful resignation amounting to termination in December 2010. An application for condonation of delay was filed. The petitioner consented for condonation of delay before the Lok-Adalat and that is how, the delay of about 5 years was condoned and the complaint was registered. This aspect has been suppressed by the petitioner in this petition.

7. It is further submitted that the Labour Court has considered the violation of the Standing Orders and hence has held that the termination without expiry of notice period was unsustainable.

8. It is further submitted that there were nine persons whose resignation was considered by the Governing Body in its meeting dated 28.12.2005. It was then resolved that the said resignations could be accepted. The respondent, therefore, submits that the management was determined to remove these nine persons from the employment and hence in one Resolution, the resignation of these nine persons were accepted.

9. It is contended that the respondent is in need of employment. He is willing to work. Backwages have been denied by the Labour Court since there was a delay in the filing of the Complaint. It is, hence, prayed that the impugned judgments are not perverse and do not call for any interference in this matter.

10. I have considered the submissions of the learned Advocates for the respective sides as recorded herein above.

11. The respondent has specifically averred in his Complaint that the resignation was accepted in undue haste. Though the resignation is submitted by the respondent, he did not have any intention to give up his

employment. His past service is clean and the employer compelled him to resign. The said resignation amounts to forceful termination as it has been obtained by force and hence the termination deserves to be set aside.

12. It cannot be ignored that the respondent has stated in the resignation dated 19.12.2005 that it would have effect from 6.1.2006. It is set out in the resignation that after it is accepted, all legal dues be paid to the respondent.

13. I have specifically posed a query to the respondent as to whether he has complained against the purported forced resignation, whether he has lodged any complaint with the superiors or the Labour office or in the Police Station and as to whether he has raised any grievance upon being relieved w.e.f. 1.1.2006. The answer on the basis of the record was that the respondent has neither lodged any complaint with any authority, nor did he raise any grievance about tendering of his resignation or upon being relieved on 1.1.2006. His retiral benefits as well as gratuity were adjusted against the outstanding loans and the respondent was cleared off the unpaid loan amounts. No grievance was voiced by him for 5 years.

14. Neither did the respondent object to the adjustment of gratuity against the loan amounts, nor did he raise any grievance about his retiral benefits being paid to him. From 1.1.2006 till the filing of the complaint in December 2010, the respondent has not even whispered a protest about his

resignation being an outcome of force, duress or coercion, allegedly exerted by the petitioner / employer.

15. So also, it appears from the evidence recorded before the Labour Court and the reasons assigned by it, that there was no evidence to indicate that the petitioner Bank exerted force upon the respondent and that the resignation was accepted hurriedly. The resignation dated 19.12.2005 was placed in the meeting dated 28.12.2005, after nine days. Thereafter, it was resolved to accept the resignation w.e.f. 1.1.2006. In this period of about twelve days, the respondent neither complained to the management nor did he withdraw his resignation.

16. In this backdrop, I am unable to concur with the conclusions drawn by the Labour Court that the resignation was obtained forcefully when the respondent has been totally silent from 19.12.2005 till December,2010 which is a period of five years. I do not find any circumstances to conclude that the resignation was obtained forcefully.

17. In so far as the second issue of violation of the Standing Orders is concerned, the Labour Court appreciated that Standing Order 13(c) and 13(d) are applicable to the case of the respondent. Standing Order 13(c) and 13(d) read as under:-

"13. Termination of employment:-

(a) .....

(b) .....

(c) Any permanent employee desirous of leaving service shall give one month's notice in writing tot he Manager. He shall or when he leaves the service, be given an order of relief signed by the Manager.

(d) If any permanent employee leaves the service without giving notice, he shall forfeit one month's wages to the Bank.

(e) .....”

18. From the plain reading of the Standing Orders reproduced above, it is apparent that the employee desirous of leaving service has to give one month's notice in writing. If no notice is given, the employer can forfeit one month's wages towards notice period while relieving the said employee. In the instant case, the respondent indicated to the petitioner that his resignation be accepted w.e.f. 6.1.2006. Instead, the petitioner accepted the resignation and relieved the respondent w.e.f. 1.1.2006 which is five days prior to the date indicated by the respondent. It is only in this context, that there appears to be an error or irregularity committed by the petitioner.

19. In the light of the above, I find that the Labour Court has erred in concluding that the petitioner has accepted the resignation on 1.1.2006

instead of from 6.1.2006 and hence, the respondent deserves to be reinstated in service. For a lapse committed by the employer in accepting resignation, five days prior to the date indicated by the employee, the backdrop of the employee having accepted the relieving order and having settled in retirement for five years, should have been considered by the Labour Court while deciding the complaint. As noted above, the respondent has not even whispered in any manner whatsoever against his resignation, the resolution of acceptance, he being relieved on 1.1.2006 and his legal dues being cleared along with the outstanding loan amounts. These are material factors which disprove the allegation of forceful resignation.

20. In the light of the above, the judgments delivered by the Labour Court as well as the Industrial Court are perverse and erroneous. The same deserve to be set aside. However, in so far as the irregularity committed by the petitioner in accepting the resignation five days prior to the date as indicated by the respondent employee is concerned, I am inclined to permit the respondent to withdraw the amount of Rs.1,00,000/- deposited by the petitioner in this Court with accrued interest, by way of compensation.

21. In the result, this petition is partly allowed. The impugned judgments and orders of the Labour Court dated 26.5.2014 and the Industrial Court dated 3.2.2015 are quashed and set aside. The respondent is at liberty to withdraw an amount of Rs.1,00,000/- with accrued interest, from this Court, without any conditions, on account of the petitioner having accepted

resignation of the respondent on 1.1.2006 instead of 6.1.2006 as was the desire of the respondent.

22. Rule is made partly absolute in the above terms.

23. Pending Civil Application, therefore, does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d