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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3039 OF 2006

M/s. Phulora Printers

...Petitioner

VS

Mr. Ankush Sitaram Sawant

...Respondent

.....

Mr. M.D. Nagle, for the Petitioner.

Ms. Neeta Karnik, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: APRIL 22, 2016

P.C. :

. This petition challenges an award dated 23 February 2006 passed by the Labour Court at Mumbai on a reference under the Industrial Disputes Act.

2. Since 1989, the Respondent was working for the Petitioner. In 1990, he was made permanent. In 1996, he started working as a printer on a monthly salary of Rs.3,000/-. It is his case that on 1 June 1996, whilst on duty, the Manager of the Petitioner, one Mr. Wadekar, called him to the office and asked him to tender his resignation. It is the Respondent's case that he was threatened with dire consequences if he did not resign. Accordingly, the Respondent claims to have had no alternative but to tender his resignation on 11 June 1996. The resignation was accepted by the Petitioner on 19 January 1997. On 25

August 1999, the Respondent approached the Petitioner with a demand for reinstatement. Since the demand was not accepted, the Respondent applied to the Deputy Commissioner of Labour (Conciliation) for adjudication of the industrial dispute, whereupon a reference was submitted to the Labour Court at Mumbai. Both parties led evidence before the Labour Court. By its impugned order dated 23 February 2006, the Labour Court accepted the Respondent's case that his resignation was obtained by the Petitioner under duress and without his volition. The Labour Court held that the Respondent was, in the premises, retrenched without following due process of law. The Labour Court held the Respondent to be entitled to the relief of full back wages and continuity of service. Accordingly, the reference was answered in the affirmative and the Petitioner was directed to reinstate the Respondent with continuity of service and full back wages. The award dated 23 February 2006 was duly published on 28 June 2006.

3. It is the case of the Petitioner that the impugned award is totally perverse and unsustainable. The Respondent has tendered his resignation on 1 June 1996 and never offered himself for service thereafter. It is submitted that the resignation was formally accepted on 19 January 1997. It is submitted that for the first time a demand was made for reinstatement on 25 August 1999. It is submitted that there is nothing on record to indicate by way of a contemporaneous piece of evidence to show that the Respondent either contended that his resignation was not voluntary or that he applied for reinstatement at any time prior to 25 August 1999. Learned Counsel for the Petitioner relies on a judgment of the Supreme Court in the case of **North Zone**

Cultural Centre vs. Vedpathi Dinesh Kumar¹. Based on this judgment, he submits that any resignation takes effect on its acceptance at any time before its withdrawal.

4. On the other hand, it is submitted by learned Counsel for the Respondent that the Respondent's case of a forcible resignation with administration of threats is borne out by his evidence. It is submitted that the Respondent has clearly stated in his evidence that he was threatened of dire consequences by the Petitioner. It is submitted that there is no cross-examination on these threats of dire consequences deposed to by the Respondent. It is submitted that the deposition of the Respondent together with the letter of resignation itself, which asserts that the resignation was being given at the bidding of the Manager of the Petitioner, Shri Wadekar, makes out the Respondent's case of the resignation being forcible and not voluntary. Learned Counsel relies on a judgment of the Supreme Court in the case of **Dr. Prabha Atri vs. State of U.P.**² to contend that only an unconditional letter of resignation intending to operate as such shall amount to a resignation. It is submitted that the tenor of language used, the purport of the letter as also the circumstances indicated therein, must be taken into account before construing the same as a letter of resignation.

5. It is an undisputed position that the Respondent tendered his resignation on 1 June 1996 and his resignation was accepted by the Petitioner on 19 January 1997. It is also an accepted position that the Respondent had not withdrawn his resignation at any time prior to 19

¹ 2003 II CLR 376

² (2003) 1 Supreme Court Cases 701

January 1997. In the ordinary course, the resignation letter, which is accepted at any time before the same is withdrawn, should take effect from the date of its acceptance. If it is the Respondent's case that the resignation is involuntary or that the Respondent's consent reflected therein is vitiated by any circumstance which renders the consent of a contracting party either void or voidable, he must appropriately plead, and discharge the burden to prove, such case. Learned Counsel for the Respondent submits that the Respondent did plead such case and deposed to it in evidence and there is no effective cross-examination on such deposition. No doubt the Respondent has stepped into the witness box and asserted his case that the Manager of the Respondent insisted on the Respondent tendering a resignation and threatened him that if he did not do so, he would be ousted from the premises and that he was also threatened of dire consequences by the Petitioner. Leaving aside the vagueness of these allegations, it cannot be said that there is no effective cross-examination on this aspect. The cross-examiner has elicited from the witness the facts that the resignation letter was handwritten; that it bore his signature; that he had not written any letter from 1 June 1996 till 25 August 1999 that the resignation was obtained forcibly by the Petitioner; and that he did not make any application to the Petitioner for withdrawal of his resignation letter. The cross-examiner also elicited from the witness that there was no complaint against the Manager of the Petitioner that he forced the Respondent to tender his resignation. The Labour Court, in its impugned order, firstly proceeded on the basis that there are two letters addressed by the Respondent to the Petitioner, one bearing the date of 1 June 1996 and the other an undated letter, both being letters of resignation. After

analyzing the evidence on record, the Labour Court has come to a conclusion that the typewritten letter bearing no date, was a fabricated letter. In the first place, a perusal of the two letters indicates that whereas the handwritten letter was a letter of resignation and accepted as such by the Respondent himself, the second letter (the typewritten letter bearing no date) demanded the provident fund and other dues of the Respondent consequent upon his resignation. The two letters, therefore, have different purports. Secondly, it is nobody's case that the typewritten letter, which was produced as **Exhibit-"B"** to the written statement of the Petitioner in the original reference, was a fabricated letter. Another circumstance considered by the Labour Court for coming to the conclusion about the involuntary character of the resignation letter is the fact that it was accepted more than six months after it was tendered. The Labour Court also relies on a statement made in the cross-examination by the Petitioner's witness that the resignation was accepted on the same date as it was tendered. From this the Labour Court comes to a conclusion that the employer had two different versions about the acceptance of the resignation letter. This circumstance is neither here nor there. After all it is the Respondent's own case that the resignation tendered by him on 1 June 1996 was accepted by the Petitioner on 19 January 1997. If that is so, there is nothing to question the acceptance. The resignation letter was admittedly accepted by the employer on 19 January 1997, before which date the resignation letter was admittedly not withdrawn. The Labour Court then proceeds to observe that the employer had taken almost six months to accept the resignation, which meant that the worker was kept without salary for six months in the interregnum. What is lost sight

of is that it is not even the workmen's case that he had offered himself for service at any time after 1 June 1996 and till 21 August 1999 when he raised the demand of reinstatement. On the other hand, material circumstances such as the workman not having addressed any communication to the employer of having been forced to submit his resignation letter at any time before he raised his demand and approached the Conciliation Officer, his not having made any complaint at any time to any authority about the threats administered, are not considered by the Industrial Court. It is submitted by learned Counsel for the Respondent that the Petitioner Company belongs to influential politicians and obviously the Respondent could not have made any such communication. There is no reason to believe that the Respondent could not have addressed a simple letter withdrawing his resignation or taking up a position that his resignation was forcible and involuntary, particularly when he was in a position to file a complaint before the Court concerning his grievance. The entire reading of the evidence by the Labour Court exhibits a perverse approach. It is such as no reasonable person properly instructed in law could have arrived at on the basis of the material before him.

6. The judgment of the Supreme Court in the case of **Dr. Prabha Atri** relied on by learned Counsel for the Respondent is of no help. In the case before the Supreme Court, the letter of resignation addressed by the employee was clearly conditional. The letter purported to submit an explanation for the employee's behaviour and ended with a statement that if such explanation was not acceptable to the employer, the employee would have no option but to tender his resignation with

immediate effect. On this communication, straightaway, an acceptance letter was addressed by the employer to the employee on the very day accepting her resignation with immediate effect. In these facts, the Supreme Court held in order to constitute resignation, the letter of resignation must be unconditional and intending to operate as such. While submitting an explanation, if the employee were to add that if the explanation was not found to be acceptable he would have no option left but to tender his resignation, that surely could not be termed an unconditional resignation with immediate effect as of the date of the letter. At best, it would amount to an offer to resign and not a resignation letter itself. These facts are clearly distinguishable from the facts of our case. In our case, there is an unequivocal resignation letter, which was accepted, the offer of resignation not being at any time withdrawn before acceptance. The dicta of the Supreme Court in the case of **Dr. Prabha Atri** are clearly inapplicable in our case.

7. In the premises, the impugned order of the Labour Court is clearly unsustainable. The rule is, accordingly, made absolute. There shall be in the facts of the case no order as to costs.

(S.C. GUPTE, J.)