

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.22325 of 2007

ORDER:

This Writ Petition is filed by the petitioner-company against the award passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad in I.D.No.51 of 2002 dated 02.05.2007. The 2nd respondent-workman herein raised an industrial dispute, under Section 2-A(2) of the Industrial Disputes Act, 1947 ("the Act" for short), seeking his reinstatement into the services of the petitioner herein as a Depot Clerk with continuity of service, all attendant benefits and full back wages.

Facts, to the extent necessary, are that the 2nd respondent-workman was appointed as a depot assistant, in the petitioner-company, on 01.03.1990. It is his case that he was kept under illegal custody in Bowenpally Police Station, Secunderabad from 9.30 A.M on 17.11.1999 to 7.30 P.M on 18.11.1999, at the instance of the petitioner-company, without valid reason and cause; during his illegal custody, the petitioner came to the police station and threatened him with dire-consequences; the petitioner obtained two letters forcibly from him, one making him accept the allegations of theft, and the other for his resignation; both these letters were obtained from him using illegal force, adopting coercive steps and third degree methods; and obtaining such forcible letters of resignation amounts to illegal termination, and is void *ab initio*.

The 2nd respondent-workman also filed a private complaint before the XI Additional Metropolitan Magistrate, Hyderabad in C.C.S.R. No.5323 of 2000 which was pending when the industrial dispute came to be heard and decided. He claimed that the Circle Inspector of Police was suspended in connection with his complaint.

In their counter, filed before the Tribunal, the petitioner herein contended that the 2nd respondent-workman was assigned administrative work at their branch office at Secunderabad; he did not, therefore, fall within the definition of a 'workman' under the Act; since the order of appointment was issued by the Head Office at Mumbai, it was only the Court at Mumbai which had jurisdiction; the 2nd respondent-workman submitted his letter of resignation to the branch office on 18.11.1999, as well as to the head office; his resignation was accepted with effect from 18.11.1999 by the letter of confirmation dated 17.12.1999, a copy of which the workman received on the same day; all his service benefits were settled; the amounts due were remitted to the workman through demand draft, but the same was returned by him to their office; the earlier appreciation letters are irrelevant; and the petition, under Section 2-A(2) of the Act, was filed only with a view to extract money from the petitioner-company.

In his rejoinder thereto, the 2nd respondent-workman contended that the petitioner-company did not conduct a domestic enquiry before removing him from service, despite his

specific request in this regard. The workman examined W.W.1 to W.W.5 and marked Ex.W.1 to Ex.W.38. The petitioner herein examined M.W.1 to M.W.3 and marked Exs.M.1 to Ex.M.20.

In the award, impugned in this Writ Petition, the Tribunal held that the evidence on record was not sufficient to show that the petitioner-company, with the help of police, had obtained the resignation of the 2nd respondent-workman by means of coercion, making him accept the allegations of theft; no document was placed before the Court except filing Ex.W.4; it was surprising that copies of these two letters i.e Exs.W.3 and W.4 were kept with the workman himself; that may be for the reason that the workman had written these letters keeping a copy with himself; however, the evidence showed that the 2nd respondent-workman was then in the police station in connection with the alleged theft of computers; it was during that time, that the 2nd respondent-workman had addressed these letters; under these circumstances, it could not be said that the workman had submitted his resignation voluntarily; this might be due to frustration, or lack of sufficient time to think over the same while deciding the matter, or at the coercion of the petitioner; there was insufficient evidence of the petitioner having resorted to this means to remove the 2nd respondent-workman from service with ulterior motives; the material on record showed that there was a complaint of missing computers, but it was not registered because of some adjustment between the parties; the evidence was not sufficient

to show that the resignation was obtained by coercion; but the circumstances showed that the resignation came into existence during that period; under these circumstances, it could not be said that there was a voluntary resignation; and it may be due to frustration of the workman or due to coercion of the petitioner.

The letter of resignation, marked as Ex.W.3, is dated 18.11.1999. The Industrial Dispute was raised, under Section 2-A(2) of the Act, three years thereafter in the year 2002. If, as is now contended before this Court by Sri C.Madhu Babu, Learned Counsel for the 2nd respondent-workman, the resignation letter was obtained by coercion or by force, there is no explanation for the inordinate delay in seeking redressal by way of an application under Section 2-A(2) of the Act, and in raising an industrial dispute, for a period of around three years thereafter till the year 2002. The Tribunal has held that the resignation was not obtained by coercion; but the letter of resignation came into existence during that period. It is not in dispute that the letter of resignation dated 18.11.1999 was submitted during the period when the 2nd respondent-workman was in custody. The Tribunal, having noted that a copy of the letter of resignation was marked by the 2nd respondent-workman himself, held that it was possible that he kept a copy thereof. The Tribunal failed to consider the submission of the petitioner that the very fact that the 2nd respondent-workman had a copy, of the letter of resignation, belied his contention

that the letter of resignation was obtained by coercion, and it is only because he had voluntarily submitted his resignation that he had kept a copy thereof with him. The dispute before the Industrial Tribunal was whether the letter of resignation, submitted by the 2nd respondent-workman, was obtained by coercion. The Tribunal held that it could not be said to be a voluntary resignation, but was either due to frustration or due to coercion. If, as has been held by the Tribunal in the earlier portion of the impugned award, the letter of resignation was not due to coercion, then, even if it was because of frustration, it would not amount to illegal termination of the services of the 2nd respondent-workman necessitating compliance with Section 25-F of the Act. It is only if the services of an employee are terminated, as a measure of punishment, is a domestic enquiry required to be held. If the termination of the services of a workman, is otherwise than as a punishment, Section 25-F of the Act necessitates compliance. By his voluntary act, of submitting his letter of resignation, the 2nd respondent-workman ceased to remain an employee of the petitioner-company and cannot, therefore, contend that his services were illegally termination.

While the 2nd respondent-workman is entitled to be granted the terminal benefits, due on his resignation from service, the mere fact that he refused to accept the said amount, sent to him by registered post, would not make his resignation involuntary. The fact that the resignation was submitted

around the time when the alleged theft of computers took place does not either mean that the letter of resignation was not voluntary, or that he was terminated from service without just cause. The Tribunal did not even consider why, if the resignation was not voluntary, the workman chose not to seek redressal, for his alleged termination from service, for around three years thereafter till the year 2002. As the Tribunal has itself held that the resignation was not obtained by coercion, its subsequent finding, that the services of the 2nd respondent-workman were terminated, is perverse. No reasons are assigned by the Tribunal in support of its conclusion that the letter of resignation, submitted by the 2nd respondent-workman, was not voluntary.

While this Court would not re-appreciate findings of fact recorded by the Tribunal, interference in certiorari proceedings, under Article 226 of the Constitution of India, is justified if such findings of fact are either perverse or are based on no evidence. The aforesaid findings recorded by the Tribunal, in the impugned award, are perverse and, consequently, the impugned award must be, and is accordingly, quashed.

Sri C.Madhu Babu, Learned Counsel for the 2nd respondent-workman, seeks indulgence of this Court for the 2nd respondent-workman to be paid some compensation. Sri A.K. Jayaprakash Rao, Learned Counsel for the petitioner, would fairly state that the petitioner would, as a matter of grace, pay Rs.1,25,000/- (Rupees One Lakh, twenty five thousand only) to

the 2nd respondent-workman as compensation, in addition to the terminal benefits which were hitherto paid to him, and which he failed to receive. The aforesaid amounts shall be paid by the petitioner to the 2nd respondent-workman within two months from today.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ.

Date:28.10.2016.

Note:
Issue C.C. within a week.
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