

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.3256 OF 2003

ORDER:

Heard Mr.D.Subbaramaiah for petitioner. No representation for respondents.

The petitioner prays for Certiorari to call for the records leading up to and inclusive of Award dated 20.12.2000 in I.D. No.239 of 1995 on the file of 1st respondent and to quash the same as illegal, and consequently prays for granting continuity of service together with back wages and attendant benefits.

The petitioner raised a dispute under Section 2 (A) (2) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act') praying for reinstatement etc. arrears of salary of Rs.35,062-77ps from respondents 2 to 4.

The case of petitioner is that he was appointed as Office Assistant in the 2nd respondent company. On 28.02.1993, the petitioner was informed by one Bhasker that his services are no more required and called upon the petitioner to resign as Office Assistant. The petitioner did not accept the command of said Bhasker, who later on, had taken petitioner to the chamber of Manager. It is stated that the 4th respondent used abusive, vulgar language and coerced the petitioner to resign lest be prepared to face severe consequences. In spite of coercion and pressure, it is alleged, the petitioner did not heed to the commands. It is further alleged that the petitioner was physically assaulted by 3rd

respondent and his subordinates compelling the petitioner to file FIR in Crime No.7/93 before Raptadu P.S. The 2nd and 3rd respondents, on the request of petitioner ordered enquiry against the 4th respondent. Notice of enquiry was issued and the place of enquiry was fixed at Eenadu Compound, Raptadu. The petitioner claims to have requested for change of venue but the request was not accepted by the enquiry officer. The petitioner was apprehending danger to his life and had chosen not to attend the enquiry. The enquiry was conducted *ex parte* and the resignation said to have been given on 06.04.1993 in the final analysis has been confirmed. It is against the confirmation of accepting the resignation the dispute is laid before the 1st respondent. Broadly stated, the grounds of challenge are that respondents 3 and 4 did not follow fair procedure and the procedure is against the principles of natural justice. The acceptance of resignation is in fact, removal and as the same is illegal, he prays for reinstatement.

The sheet anchor of petitioner's case is that the resignation was obtained by using force and coercion and the severance of relationship between petitioner and respondents 2 to 4 cannot be treated as voluntary.

The 2nd respondent filed counter affidavit in I.D. and contended that the dispute now raised under Section 2 (A) (2) of the I.D. Act is not maintainable. According to respondents, the case is one of a simple acceptance of resignation voluntarily given by the petitioner. The termination of employment referred by the

petitioner is not at all in existence. Therefore, the very basis for filing the I.D. complaining against termination is unsustainable. The respondents deny the qualitative service alleged by the petitioner while working as Office Assistant. According to 2nd respondent, the appointment order dated 07.08.1992 deals with probation, termination of employment etc. The petitioner submitted resignation when he was on probation. It is denied that force and coercion was used for securing resignation of petitioner. The respondents given further details as to the inapplicability of Bachawat Award and a few payments made on 'off and on' etc. The respondents pray for dismissing the claim petition.

The parties to the I.D. have let in oral and documentary evidence before the 1st respondent. On behalf of the petitioner, W.W.1 to W.W.3 were examined and Exs.W.1 to W.3 were marked. Respondents 2 and 3 were examined as M.Ws 1 and 2 and Exs.M.1 to M.24 were marked.

The 1st respondent framed the following points for consideration:

- i. Whether the resignation is voluntarily submitted by the petitioner?
- ii. Whether the petitioner is entitled to service as per Bachawat Award of a sum of Rs.35,062-77ps?
- iii. Whether the petitioner is entitled to get reinstate into service with continuity of service with full back wages and attendant benefits?
- iv. To what relief?

The 1st respondent ordered the I.D. by directing the 2nd respondent to pay a sum of Rs.25,000/- to petitioner/workman towards loss of future employment.

Hence the writ petition.

The learned counsel for petitioner has substantially reiterated the allegations raised before the 1st respondent. Briefly stated, he contends that the resignation dated 06.04.1993 was obtained by using force and exerting coercion. The report of enquiry officer ought not to have been appreciated, for according to petitioner, the enquiry was conducted *ex parte* and consequently the report is based on evidence recorded *ex parte*, ought not to weigh either 1st respondent or this Court for accepting the explanation offered by the respondents. He submits that the petitioner is a poor individual without employment and therefore prays for reinstatement with back wages.

I have taken note of the contentions of petitioner and perused the findings recorded by the 1st respondent. In the case on hand, the principal fact for consideration is whether the petitioner voluntarily submitted resignation which was accepted under Ex.M.17 or the severance of relationship is brought about on account of force or coercion used by respondents 2 to 4? The 1st respondent in exercise of its jurisdiction under Section 11 (A) of the I.D. Act has examined the averments set up by the parties and also the evidence brought on record. It is to be remembered that the petitioner is now assailing the legality or otherwise of the findings

recorded by the 1st respondent and the challenge to the Award must confine to the grounds available for judicial review against an Award of Labour Court. The gist of the findings recorded by the 1st respondent is that the petitioner failed to establish his eligibility for payment as per Bachawat Award. There is no documentary evidence supporting various claims raised by the petitioner in the I.D. It is further held that the petitioner failed to establish that the resignation was taken forcibly by the 2nd respondent and for supporting such conclusion the 1st respondent accepts the evidentiary value of the deposition of M.Ws 1 and 2. Therefore, the finding is that the petitioner himself submitted the resignation letter to management. The failure to attend the enquiry has been appreciated and found that the failure of petitioner to avail the opportunity has denied to him the first available platform to challenge the enquiry initiated by the respondents in this behalf. It is held that the resignation submitted by the petitioner is voluntary. The management has accepted the resignation letter under Ex.M.17. Therefore, it is held that severance of relationship is at the instance of petitioner and no exception to the same can be taken. I prefer to hasten up and add that the 1st respondent after recording the conclusions referred to above, has felt desirable to exercise its jurisdiction under Section 11 (A) of the I.D. Act and by exercising the discretion a sum of Rs.25,000/- is directed to be paid by respondents 2 to 4 to petitioner. On close scrutiny of pleadings and evidence brought on record by parties, this Court is of the view

that the findings recorded by the 1st respondent are based on material available on record and after fairly and properly applying to the facts in dispute between the parties. The findings recorded by the 1st respondent appear to be probable and tenable. The petitioner has not made out a ground within the scope of judicial review for considering the challenge to the Award impugned in the writ petition. I am satisfied that the petitioner has failed to make out a case for interference against the Award impugned in the writ petition. The writ petition fails and accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 04.04.2017
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S.V.BHATT,J