

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.592 OF 2013

Nanda Shirodkar,
65 years of age,
H. No.946-D, Bacbhat,
Gandhi Road, Raia-Goa.

... Petitioner

V e r s u s

M/s DCI Pharmaceuticals Pvt Ltd.
Kare House,
P. O. Box 732,
Near Nanutel,
Margao-Goa.

... Respondent

Shri Valmii Menezes, Advocate for the Petitioner.

Shri A. F. Diniz, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Judgment on : 5 July 2018
Judgment Pronounced on : 30 July 2018

JUDGMENT

1. This Petition under Article 227 of the Constitution of India takes exception to the impugned award dated 13.04.2012 passed by the learned Industrial Tribunal, Panaji, whereby she negated the claim of the petitioner on her plea that her termination was involuntary and it was not a case of

forceful resignation and besides she was not entitled to the relief of reinstatement and with back wages.

2. Heard Shri V. Menezes, learned Advocate for the petitioner who submitted that she was employed with the respondents from 1972 unlike their case that she was employed with them from 1985. She was forced to resign on 26.12.2002 and at which time she was still having around three years of service to her credit with the age of superannuation being 58 years. However, in case she was retrenched from service, then the respondents would be liable to pay her all the terminal benefits as provided under the Act. He next adverted to the resignation letter and submitted that she was not conversant in English and which was otherwise apparent from the fact that she had signed the letter in Devnagiri. He next adverted to her affidavit in which she had set out her case, the complaint lodged to the police as also the demand for reinstatement and submitted that the case of the respondents was unbelievable that she would submit her resignation when she had completed more than 30 years of service and still had another two to three years to attain the age of superannuation. The respondents had not examined any witness in defence and which also belied the case of her voluntary resignation. Even otherwise, the plea of voluntary

resignation was unbelievable when she had rendered more than 30 years of service and had barely two to three years available in balance to reach the age of superannuation. She had also not encashed the cheque nor was any suggestion put to her during her cross examination. The petition had therefore to be allowed and the petitioner entitled to the back wages after rendering a finding that the resignation was forceful and not voluntary.

3. Shri A. F. Diniz, learned Advocate for the respondents submitted at the outset that the Tribunal had held on facts that the petitioner's resignation was voluntary and not forceful. Therefore, in view of the judgment of the Apex Court in *Shalini Shyam Shetty & anr vs Rajendra Shankar Patil* [(2010) 8 SCC 329] this Court in exercise of its jurisdiction under Article 227 of the Constitution of India, would not interfere with the findings of fact rendered by the sub-ordinate Court. He placed reliance in the case of *K. V. S. Ram vs. Bangalore Metropolitan Transport Corporation* [2015(12) SCC 39] and submitted that the findings of facts were not at all perverse and therefore no interference was called for with the impugned award under challenge. Further reliance was placed by him in *K. Haridas I. Shenoy vs. Johnson & Johnson Ltd. & Ors.* [2005 (2) Bom.C.R. 59], *Laffans India Pvt. Ltd. vs.*

Pancham Singh Rawat & anr. [2002 (6) Bom.C.R. 462], Bayer Cropscience Limited vs. Sampada S. Shetye & anr. [2007 (1) Bom.C.R. 493] and Rachel Gunther Mathias vs. Mahadev R. Mishra [2006(4) Bom.C.R.168].

4. Shri A. F. Diniz, learned Advocate for the respondents next adverted to the claim statement and submitted that the petitioner was very much aware that resignations were taken in the respondents-company and that she was aware that she was signing the resignation letter. Her plea to the contrary that she was unaware of the contents of the letter and she was forcefully made to sign on some pre-typed documents did not stand the test of scrutiny. Besides, she had made her complaint to the police after thirty days of the so called forceful resignation and on that count alone her plea could not be believed. There was no material brought on record on the coercion exercised by the respondents' officers on the petitioner to obtain her forceful resignation. The petitioner had accepted the cheque towards the ex-gratia payment of ₹30,444/- and there was no evidence to show that all the cheques issued in her favour were not encashed by her. Last but not the least, he adverted to the findings rendered by the learned Tribunal and submitted that there was no case for interference with the impugned award.

5. I have heard Shri V. Menezes, learned Counsel appearing for the petitioner and Shri A. F. Diniz, learned Counsel appearing for the respondents and besides considered various judgments relied upon by him and the award under challenge. At the outset, a learned Single Judge of this Court (R. M. Savant,J), vide his order dated 18.10.2013 issued rule restricting the matter as to whether the resignation of the petitioner was a forceful resignation and found favour with the findings recorded by the learned Tribunal that she was not working from 1972 as was her plea. Therefore, the only point available in this petition for determination is whether the learned Tribunal had rightly held that the resignation was voluntary or not and whether any interference is called for with the impugned award under challenge.

6. Shalini Shyam Shetty (supra), on a consideration of various judgments including that in Surya Dev Rai vs Ram Chander Rai and others [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution :

“a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise

of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard

the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or

the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code ,(Amendment) Act 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the

same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered power of the High Court under Article 227 it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public

confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

7. In K.V.S Ram (supra), the Hon'ble Apex Court held that in exercise of the power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the Tribunal only when there is a patent perversity in the orders of the Tribunal and the courts subordinate to it and where there is a gross and manifest failure of justice or

the basic principles of natural justice have been flouted. It held in paras 11 and 12 as below :

"In the Writ Petition, while setting aside the award of the Labour Court, learned Single Judge placed reliance upon the judgment of this Court passed in the case of Punjab Water Supply Sewerage Board & Anr. vs. Ramsajivan & Anr., reported in 2007 (2) SCC (L&S) 668 = (2007) 9 SCC 86 and also another judgment of the High Court and observed that a person who practices fraud for securing employment cannot perpetuate on the ground of delay and the learned Single Judge faulted the Labour Court for exercising discretion under Section 11A of the Industrial Disputes Act and interfering with the punishment of dismissal from service. In our considered view, in exercise of its power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the Tribunal, only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the

case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court.

12. In *Syed Yakoob vs. K. S. Radhakrishnan*, AIR 1964 SC 477, the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479- 80, para 7)

"7. ...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that

the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the

Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

(Emphasis supplied)

8. In *K. Haridas Shenoy (supra)*, this Court held while considering the contention that the resignation was obtained by force and/or coercion which was raised twenty days after resignation was tendered that nothing prevented the workmen from raising a protest earlier. At least no explanation was offered as to why such a long time was allowed to lapse to raise the allegations and the courts below rightly rejected the case as put forward by the workman. While dealing with the contention whether the resignation was obtained by force and/or coercion, the learned Judge found that there were two concurrent findings of facts by the courts below. It would therefore not be possible for this court in the exercise of its ordinary jurisdiction to interfere with the said findings of fact. No perversity had been pointed out to show that the said findings could not have been so recorded based on the material available and in that view of the matter, discharged the rule as no merit was found in the petition.

9. In Laffans India Pvt. Ltd. (supra), the dispute between the parties was whether the workmen had tendered his resignation voluntarily and/or was forced to resign from the company by the petitioner. It was the case of the respondent that he had not voluntarily resigned from the employment, pleaded that his signatures were taken on some blank paper and it appeared in the branch office where he was employed, that the entire staff was involved in an en mass fraud committed by all of them collectively including the Manager of the Branch. The name of the respondent-workman was not included in the FIR who was otherwise working as a Peon in the Branch Office. It appeared that the respondent no.1 tendered his resignation on 17.12.1993 while the perpetrators of the collective fraud, all staff members, had resigned from the employment and refunded a part of the amount and some goods.

10. In Laffans India Pvt. Ltd. (supra), the company-petitioner accepted the resignation of the respondent alongwith the resignation letters of the others and he was informed by the letter dated 22nd December 1993 that his resignation was accepted. In April 1995, he for the first time, raised a demand for reinstatement with full backwages and continuity of service alleging that his services were terminated

orally by the petitioner on the premise that he had voluntarily resigned under his hand by a letter dated 17th December 1993 and which was accepted vide the letter dated 22nd December 1993. In the said facts, a learned Single Judge held that it was absolutely unbelievable that if workman was forced to resign, he would keep quiet for 15 months. The delay of 15 months was a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers were used as resignation letter. The finding of the Labour Court was totally baseless and perverse and the same deserved to be quashed and set aside. There was nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. In those circumstances, the award was quashed and set aside.

11. In Bayer Cropscience Limited (supra), the workmen took a plea that her resignation was obtained by force and was an illegal termination. The Labour Court directed reinstatement with full back wages. The contention on behalf of the petitioner was that she was in the habit of punching the card of her friend even when the latter was absent and this was caught

red handed. On this she tendered resignation which was accepted. It was handwritten which according to the worker was forced one else she being a steno typist could have offered a typed note. The order of the Tribunal was held to be totally perverse. Merely because a hand written resignation was obtained by the officer, it is not sufficient to hold that it was not voluntary. The details of force or duress ought to have been pleaded with particulars. The petition was accordingly allowed.

12. In Rachel Matias (*supra*), the averments were that he was asked to resign on the basis that he would be re-employed on restart of the factory which was admittedly not restarted. In any event, the bare averments made that the resignation was not bonafide and was obtained on some misrepresentation had not been proved. There was no evidence whatsoever on record. It reiterated the settled proposition that a person who is pleading misrepresentation or coercion in obtaining resignation letter was required to plead the case and thereafter prove the same in the evidence. In the absence of any evidence and pleadings, the Labour Court could not have gone into the case of the resignation being involuntary. A wrong proposition of law had been laid down in the impugned Order of the Labour Court that the petitioner-

company was required to prove that the resignation was voluntary when the law was otherway round that a person who is claiming that the resignation was by force or coercion or misrepresentation, it was for him to prove that the resignation was obtained in such a manner.

13. Since the issue is restricted to the forceful resignation and as reference was made to the evidence, the petitioner had broadly stated that the company was in the process of retrenching and taking resignations of many workmen and that she was called to the office of the Assistant Manager on 26.12.2002 and handed over two letters which were typed in advance and she was made to sign one of those letters under threat and coercion that her services would be terminated on disciplinary grounds if she did not sign and she had succumbed to the threats and signed the same alongwith some other documents which were typed in advance and that the contents of the same were not explained to her. She claimed that she was not conversant in English and learnt only on showing the letters to her family that one of the papers she was made to sign was of her resignation when she had no intention to resign having worked for more than thirty years and that she had still to attain the age of superannuation.

14. However, her claim statement broadly reveals that she was made to sign the letters under threat and coercion without any further pleading in that regard and which was re-produced in her affidavit evidence. It is another matter that she did not have any document to produce to substantiate her case nor were there any pleadings at her instance on the plea of coercion or force used on her by the respondent to obtain her forceful resignation. Besides, she had lodged a complaint only a month later that her resignation was obtained forcefully and on which no disclosure was made on the status of the proceedings or the outcome of the police complaint and/or if any action was taken thereon to prove the aspect of force and/or coercion.

15. The learned Tribunal on an examination of her evidence of her evidence did not find favour with the plea canvassed on her behalf. The learned Judge found that in case her resignation was forcibly obtained on 26.12.2002, nothing should have prevented her from lodging the complaint immediately and no reason had been spelt out why she had waited almost a month to file the complaint and which made her case unbelievable that her resignation was obtained by force. The learned Tribunal had also not found favour with the case of the petitioner that she was refused entry in the

respondents-factory on 01.01.2003 and there was no reference to it whatsoever in the complaint lodged almost a month later. As rightly submitted by Shri Diniz, learned Advocate for the respondents that the petitioner did not bring forth any material to show that force or coercion was used on her to tender her resignation. Quite on the contrary, it was shown by Shri A. F. Diniz, learned Advocate that she had accepted the ex gratia payment of ₹30,444/- apart from the other payments to her towards her statutory benefits including those towards gratuity, leave encashment and LTA. The learned Tribunal had properly construed the material before her and come to a clear finding that the resignation letter was not obtained under duress thereby not entitling her to any of the reliefs claimed in the proceedings filed before the Tribunal. This Court while exercising its writ jurisdiction under Article 227 of the Constitution, would not interfere with the findings rendered on facts by the Tribunal when it has not been shown that these findings are either perverse or against the principles of natural justice or in exercise of jurisdiction not vested in the learned Tribunal.

16. In view thereof, i do not find any merit in the petition and pass the following :

ORDER

Rule discharged. Petition is dismissed with
no order as to costs.

NUTAN D. SARDESSAI J.

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