

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION***

WRIT PETITION NO.4662 OF 2001

Vilas Ganpati Patil

.. Petitioner

vs

1. Suyog Backwell Vasantdada

Audyogik Vasahat, Sangli

2. L.M.Kawade

Presiding Officer,

Labour Court, Sangli

.. Respondents

Mr.K.R.Bapat with Mr.T.R.Yadav for Petitioner

Mr.Sandeep S.Mutalik for Respondent no.1.

Coram : S.C.GUPTE, J

Date : 15th JUNE, 2018

ORAL JUDGMENT

Heard learned counsel for the parties.

2. This petition challenges an award passed by the Labour Court, at Sangli, on a reference made to it under section 10 of the Industrial Disputes Act ('Act') by the appropriate government.

3. The petitioner was working with the first respondent as a scori operator since 1991. It is his case that he was orally terminated by the first respondent on 5.2.1997. The petitioner raised an industrial dispute in respect of the oral termination. It was his

case firstly before the conciliation officer and then before the Labour Court that his termination was illegal on account of breach of section 25(F) of the Act. After the matter was referred to the Labour Court, evidence was led before the Court by both parties. Based on the evidence led before it, the Labour Court held that the petitioner had failed to prove that his services were terminated by the respondent with effect from 5.2.1997 or that he was prohibited from joining duties any time thereafter. The Labour Court accepted the evidence of the respondent management that upon being asked about normal production, the petitioner was annoyed and left the job of his own accord voluntarily making it clear that he would not resume work. The Court, in the premises, held that there was no case of retrenchment and consequently, no case of breach of section 25 (F) of the Act. The Court in conclusion held that it was fairly established and proved by the respondent management that the petitioner had voluntarily left its services with effect from 5.2.1997.

4. The impugned order of the Labour Court is assailed by learned counsel for the petitioner chiefly on the ground that even if it was its case that the workman had left of his own accord and abandoned the services, it was incumbent on the management to hold a domestic inquiry and terminate his services only after finding a proven case of abandonment. Learned counsel relies on the judgment of our Court in the case of **Gaurishankar Vishwakarma vs**

Eagle Spring Industries (Private) Ltd & ors¹, Mahamadsha Ganishah Patel & anr vs Mastanbaug Consumers' Co-op Wholesale & Retail Stores Ltd & anr², Gangaram K.Medekar vs Zenith Safe Mfg.Co & ors³, in support of his submissions.

5. There is no law generally that in a case of voluntary abandonment of service, a domestic inquiry followed by an order of termination on account of such voluntary abandonment is a legal necessity. The cases cited by the learned counsel for the petitioner lay down that in a case of abandonment, whether the employee has abandoned the service voluntarily or not is always a question of fact, which has to be adjudicated on the basis of evidence and attending circumstances. In case of **Gaurishankar Vishwakarma** (supra), it was the case of the workman that when he reported to duty on a particular day, he was asked not to resume and was asked to await intimation from the employer regarding resumption of duties. The workman claimed to have approached the employer for work on two or three occasions thereafter and having failed to get any response from the employer, approached the conciliation officer. Upon a failure report, a reference was made to the Labour Court. Our Court after considering the rival evidence led by the parties in this behalf held that the factum of abandonment of service by the workman was not proved. The Court held that it was difficult to believe that a

1 (1987) FLR 689 (Bom)

2 1998 CLR 1205

3 1996 1 CLR 172

workman, who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. In the case of **Mahamadsha Ganishah Patel** (supra), the employee had applied for and was granted leave for one month. He did not report for duty after expiry of the leave. This was considered by the management as abandonment of service by the workman. That was clearly a case of unauthorized extension of leave and, in that context, the Court considered want of disciplinary proceedings or of even a notice to the workman calling upon him to resume duties as fatal. It is in that context that the Court observed that if an employee did not resume duties, before making out a case of abandonment of service, the employer had to give a notice to the employee calling upon him to resume the duties and if the employee did not turn up despite such notice, should hold an inquiry and pass a proper order of termination. The Court also held that where an employee had abandoned his service, which was a question of fact, the factum of abandonment was required to be adjudicated upon the evidence led and attending circumstances pointed out to the Court. In the case before the Court, the employer had failed to discharge that burden by leading evidence. The Court held that it was a clear case of termination and not abandonment of service. In **Gangaram Medekar**, show cause notice was issued to the workman alleging misconduct. One of the grounds was that the workman had not reported for work for sometime. According to employer, he was not

interested in employment. It was the case of the workman, on the other hand, that he was orally terminated on the day when he was said to have not reported for duty. Evidence was led on behalf of both sides. The Court found that there was no evidence to show that the workman had failed to attend the work. The Court, after an extensive analysis of the evidence led by the parties before it, held that it was a case of word against word and in that case, reinstatement could not be refused, primarily because the onus lies on the company to prove that the employee had voluntarily abandoned the service. Far from a case of abandonment, the case as indicated in the show cause notice issued, indicated that the termination was based on misconduct and not on the basis of voluntary abandonment of service. There was nothing to indicate any intention on the part of the workman to abandon the service after working for nearly 20 years. The Court considered the totality of circumstances including the employer's refusal to reply to the letters of the employee or to take part in conciliation proceedings and held that the totality of circumstances indicated that no case of voluntary abandonment of service was made out.

6. In the present case, the record bears out that after 5.2.1997, the petitioner did not, at any time, offer himself for services to the respondent employer. The petitioner claims to have addressed a letter on 28.3.1997 to the management offering to

resume duties. This letter is marked to the conciliation officer. In this letter, the petitioner does not offer himself for service but complains about oral termination. So also, as observed by the Labour Court in its impugned order, there is nothing to show that this letter was at any time actually sent to, or received by, the respondent management. In fact, through this letter, conciliation is requested for. The Labour Court observed that in the facts of the case, it being a positive case of the petitioner that he was illegally terminated with effect from 5.2.1997 as against the case of the respondent that he did not come to work after 5.2.1997 when he left the service declaring his resolve not to work in future for the respondent, it was for the petitioner to prove that his services were terminated by the respondent from the date alleged. The Court analysed the evidence before it and held that there was nothing to prove that his service was terminated with effect from 5.2.1997. The Court observed that it was the case of the petitioner that he was prohibited or restrained from joining duties because of his demand for statutory minimum wages. The Court observed that there was no evidence to show that the petitioner, at any time, had demanded wages as per the provisions of Minimum Wages Act and that was the reason why he was terminated. The Court noted that not only was there no complaint by the petitioner against the respondent before the date when he approached the conciliation officer, but the record showed that before he approached the conciliation officer, he never went to

the respondent to join duties. The Court observed that it was not the petitioner's case that when he went to join duties after 5.2.1997, he was not allowed to do so. In the premises, the Court held that there was no case of retrenchment as alleged by the petitioner in his statement of claim, but a case of voluntarily abandonment of service. The Court observed that it was obvious from the oral and documentary evidence led before it that the petitioner had voluntarily left work on 5.2.1997; that he failed to report for duty at any time after 5.2.1997; and that there was no occasion on the part of the employer to have denied work to the petitioner on 5.2.1997 or any time thereafter. In the premises, the Labour Court answered the reference in the negative.

7. No fault can be found either with the approach of the Labour Court in this behalf or conclusions arrived at by it. The question whether the petitioner left the service of his own accord declaring his resolve to do so or whether there was a case of oral termination was essentially a question of fact. The evidence has been duly analysed by the Court. The findings of the Court are supported by evidence. There is no case of consideration of any non-germane or irrelevant material or circumstance, or disregard of any relevant material or circumstance. The impugned award, accordingly, does not call for interference under Articles 226 or 227 of the Constitution of India.

8. In the premises, Rule is discharged and the petition is dismissed. No order as to costs.

(S.C.GUPTE, J)