

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

WRIT PETITION NO.1894 OF 2006

Mahanagar Telephone Nigam Ltd.

Through the Divisional Engineer

(Admn)

... Petitioner

Versus

Abdul Samad Memon

And Another

... Respondents

.....

Ms. Neeta Masurkar a/w Mr. S.G. Thakur & Ms. Nieyaati Masurkar I/b Mr. V.S. Masurkar for the Petitioner.

Mr. Jaiprakash Sawant for Respondent No.1.

.....

CORAM : S.C.GUPTE, J.

DATE : 27 JULY 2018

P.C. :

. Heard learned Counsel for the parties.

2 This petition challenges an award passed by the Central Government Industrial Tribunal in a reference made to it under Section 10 of the Industrial Disputes Act, 1947 by the Central Government.

3 Respondent No.1 was working with the Petitioner-establishment initially as a casual labourer and subsequently, granted temporary status as per Casual Labour (Grant of Temporary Status and Regularization) Scheme of the latter. He worked from 1 August 1983 to 13 February 1993. From 14 February 1993 onwards he did not report for duty. Straightway, after six years and ten days, i.e. on or about 11 February 1999, he all of a

sudden resurfaced and approached the Petitioner and sought permission to resume duties, claiming to have been sick for all these years. The Petitioner refused to allow him to resume duties. He, thereupon, raised an industrial dispute and after failure of conciliation, the matter was referred by the Central Government by its order dated 23 March 2003 for adjudication to the tribunal. The tribunal, vide its impugned order dated 19 October 2005, allowed the reference. That order is challenged in the present petition.

4 The evidence produced by Respondent No.1 before the Tribunal in support of his illness, was the following. He relied on a certificate issued by one Abdulhaq I. Laheri, who was said to be “Physician & Surgeon”. There is no reference to the qualifications of Laheri or his registration as a medical practitioner. The document purports to be a certificate of his treatment for “Acute on Chronic Anxiety Neurrsis”. The certificate is quoted below.

“This is to certify that Mr. Abdul Samed A. Moman Staff No.86939 Temp. Mazdoor was under treatment for Acute on Chronic Anxiety Neurrsis. He was advised that and treatment for the period starting from January' 93 till today. Now he is fit to resume his duties from 3/2/99.”

Apart from this certificate, there is nothing on record to account for the long absence of Respondent No.1 save and except a document generated under the signature of Y.S. Macheswalla, MD (Psy/MD Forensic) DPM, FIPS, Hon. Asst. Prof of Pscychiatry Grant Medical College, J.J. Govt. Hospital, certifying the admission of Respondent No.1 for hospitalization

on 10 December 1998 and his discharge on 9 February 1999 for ailment of Chronic Anxiety Neurosis. The certificate declares him to be fit to resume duties. Based on this certificate, another doctor, called “R.M. Haridas”, has also certified as follows :

“9/2/99 S/B Dr. Matcheswalla

Was suffering Acute Chronic Anxiety Neurosis since January' 93, under treatment of Family Physician. Also permission, fit to resume duties.”

In addition to these documents, Respondent No.1 relies on a certificate issued by Medical Board of J.J. Group of Hospitals on 15 September 2001, certifying as follows :

“Previous leave can be recommended on Medical grounds from 14/12/98 to 10/02/99.”

Learned Counsel for Respondent No.1 submits that the date mentioned in the certificate is not “14/12/98”, but it is “14/12/93”. That is not apparent from the court copy of the petition. The original is said to have been surrendered and is in possession of J.J. Group of Hospitals. There is a typed copy of a letter produced before the court, and which forms part of the record of the tribunal, claiming that the leave recommended by the Medical Board may be amended from “14/12/93 to 10/02/99”.

5 Since these documents did not inspire any confidence, this court, vide its order dated 22 June 2006, required, by consent of parties, Respondent No.1 to be examined by medical board constituted by

Superintendent of G.T. Hospital. The court allowed the medical board to review all medical case papers and submit a report to the court. The medical board of G.T. Hospital, after examining Respondent No.1 and medical papers produced by him, vide its communication addressed to Assistant General Manager of the Petitioner on 27 November 2006, communicated the board's inability to report about the illness of Respondent No.1 from 14 February 1993 to 10 February 1999. That is where the matter stands as of today.

6 In the premises, there was hardly any material before the tribunal to hold that the period of absence for over six years was justified due to illness. As noted above, even before this court, there is no definite material, despite the court having ordered a fresh examination of the issue of his illness and as a result, his absence for over six years is clearly without any justification.

7 The material on record by far indicates a case of unauthorized absence of over six years, suggesting deliberate abandonment on the part of the employee, who was a casual labour, upgraded to the status of a temporary employee. There is no justification produced before the Court concerning his long absence of over six years. The Petitioner's refusal, in the premises, of allowing Respondent No.1 to resume duties by condoning his long absence and granting him leave of absence, cannot be faulted.

8 The Industrial Tribunal in its impugned order has erred in law in observing that there is no provision of law under the Industrial Disputes Act that long absence of a workman amounted to automatic termination of

his service. Under Section 2(oo)(bb), retrenchment does not include termination of service of the workman as a result of non renewal of contract of employment. Such non-renewal is excluded from the definition of 'retrenchment'. The workman concerned in the present case was a temporary employee. His contract had to be renewed from time to time. If he remains absent for a long period of over six years without seeking leave of absence, the resultant situation can be termed as non renewal of the contract and cannot be termed as retrenchment. In any event, voluntary abandonment of service is well recognized as an act amounting to cessation of service. The employer is not expected then to conduct an enquiry and pass a formal order.

9 For all these reasons, the impugned order cannot be sustained. Rule is, accordingly, made absolute by quashing and setting aside the impugned order of the tribunal dated 19 October 2005 and rejecting the reference of the Petitioner. Considering, however, that under the orders passed by this Court, Respondent No.1 has received his wages during the intervening period based on his last drawn wages, which are even said to be less than the minimum wages payable, it may be inequitable to direct the workman to refund the wages received. Accordingly, Respondent No.1 shall be entitled to retain the wages drawn by him from the Petitioners under the interim orders passed by this court.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

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by Rajesh
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