

THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7590 OF 2019

Suraj Pressings Pvt.Limited,
Plot No.A-72, MIDC, Ahmednagar,
Through its Director Mr.R.N.Bhat

-- PETITIONER

VERSUS

Suresh Rabhaji Gaikwad,
Age-54 years, Occu-Service,
R/o At Post Shingave Tukai,
Taluka Newasa, Dist.Ahmednagar

-- RESPONDENT

Mr.V.N.Upadhye, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/06/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner/Management is aggrieved by the judgment of the Labour Court dated 04/01/2014, by which Complaint (ULP) No.50/2006 filed by the respondent/employee, has been allowed. ULP has been declared against the petitioner under Item 1 of Schedule IV of the MRTU and PULP Act, 1971 and by setting aside the oral termination of the respondent dated 10/08/2006, the

Management is directed to re-instate the complainant in service with continuity and 50% back wages.

3. The petitioner preferred Revision (ULP) no.17/2014 and the respondent/worker preferred Revision (ULP) No.52/2014. The petitioner challenged the order of reinstatement with continuity and 50% back wages and the respondent claimed 100% back wages. By the impugned judgment dated 22/02/2019, the Industrial Court has dismissed both the revision petitions.

4. The submissions of the petitioner/Management can be summarized as under :-

[a] The respondent was appointed as a "Helper" on 23/03/1995 and was made permanent w.e.f. 01/01/1998 as an unskilled workman.

[b] On 08/08/2006, the respondent approached the petitioner and orally expressed his desire of resigning from employment.

[c] The respondent stopped reporting for duties from 09/08/2006.

[d] He appeared before the Management on 19/09/2006 and sought a settlement of his legal dues which were immediately paid to him for an amount of Rs.14,385/-.

[e] He has been immediately relieved from employment on 19/09/2006 with retrospective effect from 08/08/2006 and he prayed for reinstatement in service.

[f] On 27/09/2006, the respondent communicated to the petitioner that he was paid an amount of Rs.14,385/- on 19/09/2006 and his signatures were obtained on blank vouchers. He has not resigned.

[g] The respondent filed Complaint (ULP) No.50/2006 before the Labour Court challenging his termination.

[h] On 22/09/2011, the complaint was dismissed by the Labour Court.

[i] The respondent approached the Industrial Court by filing Revision (ULP) No.84/2011 which was allowed by the judgment dated 28/10/2013 and the complaint was remitted to the Labour Court for fresh adjudication. The Labour Court then allowed the complaint.

[j] The respondent had actually resigned from employment and there was no question of the Management terminating his service.

[k] He himself approached the Management on 19/09/2006 and requested for payment of his full and final legal dues.

[l] The Management obliged him by instantly paying him the amount and his signature was obtained on a printed voucher.

[m] The Labour Court failed to realize that an act of resignation of the respondent was being projected as an act of termination.

[n] The Management had no reason to terminate his service.

[o] Reliance is placed upon the judgment of the Madhya Pradesh High Court in the matter of AVTEC Limited Vs. Naresh [2019 LLR 254].

5. The submissions of the learned Advocate for the respondent can be summarized as under :-

- [a] He had never met the Management on 08/08/2006.
- [b] He had no reason to resign as he desperately required an employment for his sustenance.
- [c] No resignation was tendered by the respondent.
- [d] The Management admits that there was no resignation filed and as such the Management could not claim to have accepted the resignation of the respondent.
- [e] There can be no oral resignation.
- [f] There is no communication of acceptance of resignation.
- [g] The Industrial Court had initially set aside the judgment of the Labour Court and remanded the matter for a re-hearing.
- [h] The Management has created a make believe picture of the respondent having orally resigned from employment.
- [i] Though the respondent had initially claimed that the Director of the Company Mr.Bhat had slapped him, he has withdrawn his complaint before the Labour Court by retracting his statement.
- [j] Being a permanent employee, the respondent could not have been terminated him from service and that too without any relieving letter being issued to the respondent.
- [k] Reliance is placed upon the following judgments :-
 - [1] *N.C.Chakraborti Vs.Union of India* [1992(65) FLR 424 = 1992(1) LLJ 48],
 - [2] *A.V.P.Enterprises, Pune Vs.Parvati Gaikwad* [2003(1) CLR 782 = 2003(97) FLR 733]

6. Considering the factual matrix of this matter in the light of the submissions of the learned Advocates for the respective sides, it is obvious that this case brings forth a situation of "word against word".

7. The Management claims that the respondent approached it on 08/08/2006 and volunteered to resign. The Management pointed out clause No.6 of his order of permanency by which one month's notice period or one month's salary in lieu of notice period has to be offered by the worker, who seeks to resign. The Management claims that the respondent appeared before it on 19/09/2006, he collected his legal dues, deposited the cheque in the bank and then issued a letter on 27/09/2006 stating therein that he has been illegally terminated.

8. The respondent/worker has categorically stated that he had never met the Management on 08/08/2006. He had never offered to resign even orally. He never had an intention to resign and there was no resignation filed before the Management. On 19/09/2006, the Management offered a cheque to him and obtained his signature on blank vouchers. He later on realized that the Management had played a trick upon him and he informed the Management on 29/09/2006 that he has been illegally terminated.

9. It appears from the record that there was neither a written resignation submitted by the worker, nor had the Management issued a letter of acceptance of oral resignation. In my view, the Law would rarely not recognize anything termed as an oral resignation, unless there are strong convincing attending circumstances. If such a theory put forth by the Management is accepted, it would have far reaching consequences and workers would be practically rendered defenceless and would be at the mercy of the Management. It would be a tool in the hands of the Management to allege oral termination on 'X' date and claim to have accepted the resignation so as to relieve a permanent employee from service. In such circumstances, the Law of Retrenchment would be rendered otiose. A Management would succeed in removing employees from its employment under this pretext.

10. The Hon'ble Apex Court has held in the case of Dr.Prabha Atri Vs. State of U.P. and others [(2003) 1 SCC 701], that a resignation letter must be unconditional and intending to operate as such. The true intention of resigning must be conveyed clearly to an employer. There cannot be a presumption about the intention of resigning from employment. The maxim '*Resignatio est juris proprii spontanea refutatio*' would apply in such cases. The observations of the Hon'ble

Apex Court as appearing in paragraph No.10 of the said judgment read as under :-

“10. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9.1.1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a ‘resignation’, it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer (supra) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the Hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9.1.99 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so-called resignation. The words ‘with immediate effect’ in

the said letter could not be given undue importance dehors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the Hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9.1.1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer (supra) the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9.1.1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the Writ Petition."

It is alien to the Law of resignation to accept a case of oral resignation and remove a permanent employee from service in the face of a denial by the workman.

11. The petitioner relies upon the judgment of the Madhya Pradesh High Court in the matter of AVTEC Limited (supra) to contend that after the full and final payment was received by an employee, without any protest, such an employee is estopped from retracting his resignation. I do not find that this judgment would assist the

petitioner since in the said case, the employee Naresh had tendered a written resignation on 28/06/2013, it was accepted immediately on the same date and he was also relieved on the same date. An amount of Rs.98,312/- towards full and final payment was offered and which was accepted by him. The Madhya Pradesh High Court also considered that the workman had tendered a written resignation with open eyes. He gleefully accepted the amount of Rs.98,312/- and happily encashed the cheque.

12. In the instant case, there is no resignation on record and no communication by the Management to the employee as regards acceptance of his purported oral resignation. I also find from the voucher that the said voucher is almost completely blank to the extent of the details. The said voucher appears as follows :-

SURAJ PRESSINGS PVT.LTD		C.B.F.
A-72 M.I.D.C., Ahmednagar-41411		
Voucher no.		
DEBIT		
CREDIT		
Rupees Fourteen Thousand Three Hundred Eighty Five Only		
Being the amount paid by cheque/cash on a/c of	Rs.	Ps.
paid to the MR. Suresh Garkwad towards full and final settlement as		
The left job w.a 108/08/2006		
Gratuity amount		
ENCL. Total Rs. 14385/-	14385/-	

13. The petitioner has heavily relied upon the respondent accepting the amount of Rs.14,385/- as being his full and final clearance of legal dues including gratuity. The case of the worker is that it was a blank voucher on which his signature was obtained.

14. It is obvious that an employee at times finds himself alone and without any support or protection before a Management. As the Management offered him a cheque, he has accepted the same and within 10 days, he has lodged a protest letter declaring that he was illegally terminated. A paltry amount of Rs.14,385/- was paid though his last drawn gross salary was Rs.4,000/- per month and he had put in an employment from 23/03/1995 till 19/09/2006 which is 11 and 1/2 years.

15. In the above backdrop, I find it to be extremely risky to believe the story put forth by the Management that the respondent had orally resigned. In the absence of any written resignation, the theory of oral resignation put forth by the Management, without convincing circumstances, can never be accepted. Notwithstanding this position, surprisingly, the Management has recorded that the respondent has left the job w.e.f. 08/08/2006, under the voucher, which is also undated. By the version of the Management, the voucher was

prepared on 19/09/2006, which would then mean that the respondent has been discontinued with retrospective effect from 08/08/2006 which is an anathema in view of the Law laid down by the learned Division Bench of this Court in the matter of Assaram Raibhah Dhage Vs. Executive Engineer [1989 (2) CLR 331]. The relevant observations in the said judgment in paragraph Nos. 1 to 4 read as under :-

"1. The services of an employee, be he permanent or temporary, cannot be terminated with retrospective effect. Such is the ratio of this judgment.

2. On June 7, 1980. The petitioner, a project displaced person was appointed as a Mustering Assistant in the Work Charge Establishment at a monthly salary of Rs. 200. Thereafter he worked continuously without break in service till March 1986, when by a letter of termination dated March 11, 1986 his services were retrospectively terminated with effect from March 1, 1986. Hence this writ petition.

3. The petitioner's learned Counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one month's salary or give one month's notice. It is therefore ironical that on the other hand, the petitioner's services

were terminated with retrospective effect.

4. However, the respondents' learned Counsel Mr. Bhatkar ventures that the date of termination, namely March 1, 1986 in the letter of termination must be typographical error. This is an ipse dixit it is purely conjecture and speculative reasoning. Significantly enough, in the affidavit-in-reply, no such case of a typographical error is even faintly suggested. For that matter, despite the fact that in the petition it has been categorically stated in no uncertain terms that by this letter of termination, the petitioner's the services were terminated with retrospective effect from March 1, 1986, not even the whisper of denial is to be found in the affidavit-in-reply. Thus the myth of a typographical error stated across the Bar can safely be ruled out."

16. I find from the judgment of the Labour Court that it has carefully analyzed the oral and documentary evidence adduced by the parties. It has considered the fact that there was no resignation on record.

17. Considering the above, I do not find that the impugned judgment of the Labour Court could be termed as being perverse or erroneous. For the same reasons, the judgment of the Industrial Court cannot be faulted. So also, the Labour Court has granted only

50% back wages and the claim of the respondent towards full back wages has been rejected by the Industrial Court.

18. Learned Advocate for the Management submits that the respondent does not deserve to be granted any back wages. In my view, if the removal from service is proved to be unlawful and high-handed, the relief of back wages can be claimed by a workman. The Hon'ble Apex Court has held in the case of Mackinnon Mackenzie and Company Ltd. Versus Mackinnon Employees Union [(2015)4 SCC 544] that 50% of the back wages can be granted. In Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others [(2013) 10 SCC 324], the Hon'ble Apex Court has held that 100% wages can be granted.

19. In Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) through LR's [AIR 2018 SC 4534], it has been held in paragraph Nos. 10 to 18 as under :-

“10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and while modifying the impugned order award 50% back wages to the deceased workman (his legal representatives) in place of full wages.

11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman

consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. *It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.*

13. *In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. State Electricity Board v. Jarina Bee (Smt.), (2003) 6 SCC 141, G.M. Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591, U.P. State Brassware Corporation v. Uday Narain Pandey, (2006) 1 SCC 479, J.K. Synthetics Ltd. v. K.P. Agrawal, (2007) 2 SCC 433, Metropolitan Transport Corporation v. V. Venkatesan, (2009) 9 SCC 601, Jagbir Singh v. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327 and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.), (2013) 10 SCC 324.*

14. *The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.*

15. *Coming now to the facts of the case at hand, we find that neither the Labour*

Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

16. *On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to the deceased workman while directing his reinstatement in service.*

17. *We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, in our opinion, has certainly caused prejudice to the appellant (employer).*

18. *However, having regard to all facts and circumstances of the case such as period and money spent in litigation by the deceased workman and on his death by his legal representatives coupled with the fact that the workman-Phool Chand has since expired, we consider it just and proper and in the interest of justice to award to the respondents (legal representatives of Late Phool Chand) 50% of the total back wages."*

20. Considering the above, this petition, being devoid of merit, is therefore dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)