

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.243 OF 2021

Team Lease Services Ltd. ... Petitioner
Versus
Dilip R. Naik & Ors. ... Respondents

Mr. J. J. Mulgaonkar, Advocate for the Petitioner.
Mr. P. Vengurlekar, Advocate for Respondent No.1.
Ms. Ankita Kamat, Additional Government Advocate for
Respondent No.3.

CORAM: M. S. SONAK, J
DATED: 27th August 2021

P.C.

1. Heard Mr. J.J. Mulgaonkar, for the petitioner, Mr. P. Vengurlekar for respondent no.1 and Ms. A. Kamat, Addl. Government Advocate for Respondent No.3.

2. The challenge in this petition is to the award dated 20.08.2019 made by the labor court in case No. REF. LC-II/IT/06-18, by which the labor court ordered the petitioner to reinstate respondent no.1 – workman along with 50% back wages, continuity in service, and other consequential reliefs. The petitioner has also challenged the recovery certificate dated 8.12.2020 issued by respondent no.3 and the subsequent notice of demand to a defaulter dated 2.3.2021 for attachment of the petitioner's immovable property. The recovery certificate and notice dated 2.3.2021 had to

be issued to respondent no.3 because of failure on the part of the petitioner herein to honor the award dated 20.8.2019 made by the labor court.

3. Mr. Mulgaonkar, the learned counsel for the petitioner submits that this is a case where additional opportunity was required to be granted to the petitioner/employer rather than proceeding against the petitioner- employer ex-parte. He submits that in the course of the conciliation proceedings itself the petitioner had made it clear that it is respondent no.1 who had abandoned the services by abruptly stopping to come to duties from 26.07.2017 onwards. He submits that respondent no.1 was not even a regular employee and was engaged only when the petitioner had any contract at specified sites. He submits that all these issues have not been considered by the labor court and it is only appropriate that further opportunity be granted to the petitioner by setting aside the ex-parte award.

4. Mr. Mulgaonkar submits that prejudice if any to respondent no.1 can always be compensated by an award of costs. He submits that the petitioner has already deposited the amount of Rs.2,85,324/-, which is the amount stated in the recovery certificate before this court. He submits that such deposit can continue and time-bound directions can be issued to the labor court to dispose of the reference on merits.

5. Mr. Mulgaonkar submits that since arguable defenses had already been raised by the petitioner during the conciliation proceedings, the ex-parte award made by the labor court may be set aside and yet another opportunity be granted to the petitioner to contest the matter on merits.

6. Mr. Vengurlekar learned counsel for respondent no.1-workman submits that on no less than 6 occasions the legal officer of the petitioner appeared before the labor court and sought time to file a written statement. Ultimately, neither any written statement was filed nor did the petitioner attend to the proceedings any further. He submits that even the award was not honored and the workman who was in dire need of money due to the pandemic had to take out proceedings for execution. He submits that the evidence on record clearly establishes that this is a case of unauthorized refusal of employment. He, therefore, submits that this petition may be dismissed.

7. Ms. A. Kamat points out that before the recovery certificate was issued at least two show-cause notices were issued to the petitioner. Since the petitioner failed to respond to the same the recovery certificate was issued followed by a notice of demand to the defaulter.

8. The rival contentions now fall for my determination.

9. The petitioner has placed on record the roznama before the labor court. The perusal of the roznama indicates that the legal officer of the petitioner appeared before the labor court on 6.6.2018, 20.06.2018, 23.7.2018, 7.9.2018, 3.10.2018, 22.10.2018. On some of the dates, the legal officer of the petitioner did not even choose to remain present. Out of the aforesaid dates on which the legal officer of the petitioner remained present, adjournments were sought to file a written statement on 7.9.2018, 3.10.2018, 22.10.2018. On 22.10.2018, time was granted and the matter was adjourned to file a written statement on 2.11.2018.

10. On 2.11.2018, the legal officer of the petitioner failed to remain present. However, the labor court did not make any order to proceed ex-parte but granted the petitioner yet another opportunity for filing a written statement on 15.11.2018.

11. On 15.11.2018, again, there was no appearance on behalf of the petitioner. Labour Court, therefore, recorded that despite grant of several opportunities, since no written statement was filed and there was no further appearance on behalf of the petitioner, the case was to proceed ex-parte against the petitioner herein.

12. From the aforesaid, it is very clear that more than ample opportunities were granted to the petitioner to present its case before the labor court. The mere raising of some defenses in the course of

the conciliation proceeding is never sufficient in such matters. The record indicates that the petitioner simply delayed the matter before the labor court and thereafter abandoned the proceedings thereby denying the workman early redressal post his unceremonious termination.

13. In this petition, there is no cause shown, let alone some sufficient cause shown for the failure to file a written statement or abandonment of the proceedings. The only explanation, if at all, is that the legal officer of the petitioner attended the matter on three dates “ *but thereafter failed to appear as he lost track of the case*”. This is no explanation at all particularly in a case where the workman is claiming for reinstatement and back wages. Based on this there is no case whatsoever to interfere with the impugned award.

14. Mr. Mulgaonkar did try to urge that the burden of proof was on the workman and he has not discharged the same. From the perusal of the impugned award that the burden was cast on the workman to prove whether his non-employment was on account of his unauthorized absence or whether this was a case of refusal of work by the employer.

15. The impugned award makes it clear that the workman examined himself and also produced documents on record. It is only

upon consideration of such oral and documentary evidence the labor court concluded that this was the case of refusal of employment without any regard to any position in law or without any other justification. Labor court then proceeded to award the workman reinstatement in service along with 50% back wages, continuity in service, etc. The reason why the impugned award is restricted only to 50% of wages is nowhere discernible. However, since the workman has not challenged the impugned award on this account, there is no point in addressing this issue in the present petition.

16. At this stage, if yet another opportunity is to be granted to the petitioner, the same would result in very serious prejudice to the workman who has diligently followed his matter before the conciliation officer, labor court, and finally with the executing authorities. At this point, setting the clock back would amount to awarding the petitioner a premium for having abandoned the proceedings before the labor court without any justification. Such a premium cannot be awarded to the petitioner at the cost of the workman.

17. As noted earlier, the defense that it is the workman who had abandoned the services cannot be considered even though, the same may have been raised before the conciliation officer in some vague

terms. Such defense was required to be raised by filing a written statement and thereafter leading evidence in support of the same. The defense hardly inspires any confidence. This is because the proceedings before the conciliation officer commenced with a communication dated 21.7.2017 addressed by the workman to the Asst. Labour Commissioner complaining that the manager of the petitioner was forcing him to resign from the job.

18. Mr. Mulgaonkar also submitted that the labor court failed to consider the nature of employment of the workman since it was the case of the petitioner that he was employed on a contract basis. This contention does not deserve any acceptance. Firstly, no such case was ever pleaded before the Labor Court by filing any written statement. Secondly, that the evidence on record indicated that the workman was in continuous employment from 23.6.2010 till 20.7.2017. Labour Court recorded a finding of fact that the workman went to report for work on 21.7.2017, but he was forcefully denied entry by the manager of the petitioner. Therefore there is no infirmity in the impugned award even if its merits are considered.

19. For all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed. The amount deposited by the petitioner in this court is to be paid to respondent no.1 after respondent no.1 is properly identified by his lawyer. The Registry in

a matter of this nature should obtain the bank details from respondent no. 1 and see that the amount together with interest if accrued is transferred to his bank account at the earliest.

20. Mr. Mulgonkar prayed for an extension of interim relief for six weeks. This is a case where the workman has been deprived of his dues right from the year 2017. The Petitioner firstly delayed and then abandoned the proceedings before the Labor Court. Secondly, the Petitioner neither honored the impugned award nor challenged the same within a reasonable time. Thirdly, the Petitioner did not even bother to respond to the two show-cause notices issued by the executing authorities. It was only when execution was levied at Mumbai that this Petition was filed and interim relief obtained. There is a complaint of non-payment of gratuity as well. This means that the attempt was to break the resistance of the workman and force him to settle the matter. In such circumstances, no extension of interim relief can be granted. Accordingly, the request is not entertained.

M. S. SONAK, J