

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.760 OF 2008

Ahuja Pen Mart
Through its proprietor
Bhandara Road, Itwari, Nagpur PETITIONER

// VERSUS //

Padmakar Santosh Bhoskar,
Aged - Major, Occu.: Nil,
R/o. Circle 9/14 Balaji Mandir Road,
Ganga Jamuna Road, Nagpur RESPONDENT

Mr. S. S. Ghate, Advocate for petitioner
Mr. Atul J. Pathak, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 26/08/2021

ORAL JUDGMENT :

Heard Mr Ghate, learned counsel for the petitioner and Mr. Pathak, learned counsel for the respondent.

2. The award dated 31.7.2007 passed by the learned Labour Court allowing the reference and directing the reinstatement of the respondent with back wages from 13.8.1999, has been questioned in the present petition. At the outset, it is necessary to note that while admitting the petition on 1.10.2008, an interim stay in terms of prayer

clause (iii) was granted, and therefore, the respondent is not in service with the petitioner as of date.

3. It is not disputed that the respondent was employed with the petitioner as a sales man. It is the contention of the petitioner, that the respondent and other employees were found stealing material from the godown of the petitioner and upon being confronted with the same had admitted their guilt and tendered their resignations on 13.8.1999, further promising to repay the amount by monthly installment of Rs.250/- each. The respondent does not dispute the resignation dated 13.8.1999, its contents, his signature there upon and that the same is in his handwriting. Such a position, is reflected from his admission during the course of his cross-examination.

4. It is also an admitted position, that from 30.12.1999, nothing was done by the respondent, if at all, it was his claim that the said resignation was forceful or under coercion. It is for the first time by notice dated 30.12.1999, this plea was taken which was refuted by the petitioner by its communication dated 7.1.2000. Before the learned Labour Court, a plea was raised, as was the case in the letter dated 30.12.1999, that under the guise of removing the other employees, the resignation was obtained by the employer and so also a plea was taken that it was under a threat of two Police Constables, who were called in the godown on 13.8.1999.

5. The learned Labour Court, came to a finding that the resignation was forcible and also relied upon the statement contained in the written statement of the petitioner, which is to the effect “he stated that the amount should be deducted from his salary every month,” to presume that recovery was possible only if the respondent continued in service and was paid salary, for which reason it is concluded that the removal of the respondent was illegal.

6. Mr. Ghate, learned counsel for the petitioner, places reliance upon the admission of the respondent in his cross-examination regarding the voluntarily writing and tendering of the resignation and submits that it was for the respondent to bring material on record to establish coercion or illegality in the matter of execution and tendering of the resignation, which according to him, is totally absent as except for the respondent, no one else has been examined. Even the respondent, according to him, failed to establish any coercion in the matter of tendering resignation. Learned counsel further contends that there is no reasoning given by the learned Labour Court, to discard the admission given by the respondent as to the resignation, nor any other reasoning has been given as to why the said finding has been arrived at. The learned counsel submits, that considering the language of section 25F of the Industrial Disputes Act, 1947, unless finding was rendered supported by reasons that the resignation was coercive, the same would not fall in

any of the categories therein, so as to raise a plea of victimization. He therefore, submits that the finding rendered by the learned Labour Court that there being a termination / retrenchment and the same is illegal, is clearly not supported by evidence or reasons and cannot be sustained. He further submits, that the order of grant of back wages in absence of anything on record to indicate that the employee was not gainfully employed was also not sustainable in law.

7. Mr. Pathak, learned counsel for the respondent submits that the resignation was forcible, under coercion, resulting in victimization. He relies upon the statement in the written statement quoted above to submit that there is an inference that the respondent is continued in service. He further submits that the endorsement below the resignation regarding its acceptance indicates dues being cleared, which itself creates doubt upon the bonafide and genuineness of the resignation. He submits that, the matter clearly falls in Scheduled V of the Industrial Disputes Act, and therefore, the finding rendered by the learned Labour Court is required to be maintained.

8. As indicated above, the resignation dated 13.8.1999, its execution, its contents, are not in dispute, the same having been admitted by the respondent, during the course of his cross-examination. That being the case, the theory put forth that the same was under duress

or coercion does not hold any water for the reason that once the respondent admitted the resignation to have been given in his handwriting and under his signature and so also that the contents were true and correct, the genuineness of what was written there, in law stands proved, in view of which, the burden naturally shifted upon the respondent to disprove the same and bring on record the facts and evidence to indicate coercion, which is totally absent in the matter. The plea raised that the resignation was tendered under the guise of terminating the other employees and the plea that on 13.8.1999, the same was tendered under the threat of the two Constables is self destructive of each other. In that view of the matter, the learned Labour Court could not have ignored the admission given by the respondent. A perusal of the impugned order indicates, that there are absolutely no reasons whatsoever given to arrive at a conclusion as to why the admission was not worthy of belief or reliance. The finding that the removal of the respondent was illegal, therefore cannot be sustained.

9. The further reliance by the learned Labour Court and Mr. Pathak, learned counsel for the respondent upon the statement “he stated that amount should be deducted from salary every month” as occurring in the written statement of the petitioner is clearly misplaced for the reason that the above statement is attributable to the respondent and not to the petitioner, and therefore, the presumption drawn on its

basis by the learned Labour Court is also not justified. In that view of the matter, the impugned order dated 31.7.2007 is clearly not sustainable in law, as it ignores the material admission and is devoid of any reasoning in that regard. The impugned order, therefore is hereby quashed and set aside. The petition is accordingly allowed in the above terms. Rule is made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J)

Sarkate.