

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5221 OF 2017

BHAUSAHEB ZUMBAR SHINDE

-VERSUS-

THE CHIEF EXECUTIVE OFFICER AHMEDNAGAR ZILLA DEKHREKH
SAHAKARI SANSTHA MARYADIT AHMEDNAGAR AND OTHER

...

Advocate for the Petitioner : Shri Shinde Chandrakant K.

Advocate for Respondent 1 : Shri Gulab B. Rajale

AGP for Respondents 2 and 3 : Ms.V.S. Chaudhari

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2022

Per Court:

1. By this Writ Petition, the petitioner seeks to challenge the judgment and award dated 04.07.2012 delivered by the Second Labour Court, Ahmednagar, vide which, Reference (IDA) No.24/2009 has been answered in the negative.

2. The strenuous submissions of the learned advocate for the petitioner can be summarized as under :-

(a) He has joined employment with respondent No.1/ Cooperative Society in September, 1974.

(b) He was forced to resign on 06.03.2002 and in the meeting dated 31.03.2002 the resignation was accepted and he was relieved from service.

(c) On 25.07.2008, he raised the demand notice and invoked

Section 2A of the Industrial Disputes Act, 1947.

(d) The Conciliation Officer submitted the failure report and referred the dispute to the appropriate government and on 09.06.2008, the said authority referred the dispute to the Labour Court.

(e) By the impugned award dated 04.07.2012, the reference has been answered in the negative.

(f) The District Deputy Registrar, Cooperative Societies, Ahmednagar was approached by the petitioner vide communication dated 16.03.2016.

(g) The District Deputy Registrar, vide letter dated 22.03.2016, appointed the Special Auditor, Class II, Cooperative Societies, to conduct an enquiry.

(h) The Special Auditor has submitted the report dated 10.06.2016 concluding that there appears to be some irregularity in the acceptance of the resignation of the petitioner.

(i) The Chairman of the Cooperative Society issued the letter dated 25.04.2016 that the petitioner is not at fault, he was willing to report for duties and that the Society did not permit him to join duties.

3. The learned advocate representing respondent No.1/ employer submits that once a judicial forum deals with the grievance of a person, the statutory authority or private individual cannot manufacture evidence in order to improvise the case of such litigant. Once the Labour

Court has delivered its judgment, the petitioner should have either challenged the said judgment or should have accepted it. Approaching the District Deputy Registrar and in turn, the District Deputy Registrar directing the Special Auditor to conduct an enquiry, amounts to extra judicial acts. Such records, manufactured subsequently, cannot be considered while challenging the impugned award.

4. It appears from the record that the petitioner was first terminated from service on 20.10.1997 after conducting an enquiry. He approached respondent No.1 and he was granted one more opportunity with a fresh appointment order on 17.08.1978. Again he committed certain misconducts and was terminated on 20.06.1983. Again his request was considered and he was given a fresh appointment on 01.02.1994. In March, 2002, since he again committed an act of misappropriation, the first party employer initiated the disciplinary proceedings against him. After realizing that his past service record is highly blemished, the petitioner tendered his resignation on 06.03.2002 to escape the disciplinary proceedings. Respondent No.1 did not show any undue haste and the said resignation was considered in the meeting of the competent authority, which took place on 31.03.2002, which is after 25 days and then, accepted the resignation. The petitioner was relieved from employment and paid his retiral benefits. He has raised an industrial dispute after six years.

5. It is well settled that in a case of forceful resignation, time is the essence. If an employee is forced to resign or coercion or duress is exerted and the resignation is extracted, the employee has to promptly approach the appropriate authority to voice his grievance. He could have approached his superior or could have raised an industrial dispute or could have approached the Court. He did nothing of this and waited for six years. Raising an industrial dispute after six years alleging forceful resignation, presupposes that there was nothing amiss in acceptance of the resignation by the employer. Moreover, the employer did not indicate any undue or mad haste in accepting the resignation. It was placed before the competent authority in the meeting convened after 25 days and then it was accepted.

6. I am not impressed by the District Deputy Registrar ordering an enquiry and that too after the Labour Court had delivered the judgment on the reference case. So also, the certificate recently issued by the Chairman of the Cooperative Society giving a clean chit to the petitioner, is inconsequential. Such certificate has no significance when the grievance of the petitioner has already been dealt with by a judicial forum.

7. In view of the above, this Writ Petition, being devoid of merit, is dismissed.