

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1290 OF 2020

Satej N. Malaw ... Petitioner
Versus
Frankfurt Trade Fair India Pvt. Ltd. ...Respondent

**WITH
WRIT PETITION (L) NO. 13779 OF 2022**

Messe Frankfurt Trade Fair India Pvt. Ltd. ... Petitioner
Versus
Satej N. Malaw ...Respondent

Mr. I.A. Saiyed for the petitioner in WP/1290/2020.
Mr. Mahesh Shukla a/w. Mr. Niraj Prajapati for the petitioner in
WP(L)/13779/2022.

CORAM: G. S. KULKARNI, J.
DATED: 30 January 2023

P.C.

1. Rule on both the petitions. Rule made returnable forthwith. Learned counsel for the respondent waives service. By consent of the parties, heard finally.
2. Writ Petition No. 1290 of 2020 is filed by the petitioner/employee, Writ Petition (St.) No. 13779 of 2022 has been filed by the employer. The challenge in both these petitions is to an award dated 30 July, 2019 passed by the 10th Labour Court at Mumbai, published on 1 November, 2019.

Facts:

3. Mr. Satej N. Malaw, the petitioner-employee was employed by Frankfurt Trade Fair India Pvt. Ltd. (for short “the employer”) on 24 November, 2014. The post as held by him was titled as “Manager”. He was required to work on the database along with Database Associates. It appears from the record that after a period of about one year and two months of his employment, certain disputes had arisen between the parties inasmuch as he was called by one Mr. Mahajan, Human Resource Head of the Company to tender resignation. It was Mr. Mahajan’s grievance that the petitioner-employee wrongfully used his password to access the data which was without authority. The case of the petitioner-employee was that he was threatened with termination notice. He hence resigned on 14 January, 2016. The resignation tendered by the petitioner-employee to the employer came to be accepted on the very same day. The case of the petitioner is that on 15 January, 2016, he addressed an email to his superior informing him of his forceful resignation. This mail, however, was not replied. He again addressed an email to the superior stating that he intends to withdraw the resignation, as it was forcefully obtained. It appears from the record and more particularly from the evidence of the petitioner that post the resignation, he applied to the employer for payment of Provident Fund dues. In the petitioner-employee’s deposition before the Labour Court, he stated as under:

“25. I have applied for my payments of provident fund after cessation of job with first party and I have received the same. I can file copy of letter issued to provident fund authority . It is not true to say that after cessation of my employment with first party I had received one month’s notice pay. It is true to say that I have not mentioned about receiving of provident fund amount in my statement of claim as well as in affidavit.”

4. The petitioner-employee felt aggrieved of his services being put to an end by the employer, which according to the petitioner amounted to termination of his employment. He accordingly approached the Deputy Commissioner of Labour under the provisions of the Industrial Disputes Act for a reference to be made to the Labour Court for adjudication of the disputes in regard to his termination wherein he prayed for a reference to be made for reinstatement with continuity of services with full backwages with effect from 14 January, 2016. The Deputy Commissioner of Labour in exercise of powers under section 12(5) of the Industrial Disputes Act made a reference to the Labour Court at Mumbai, which was received by the Labour Court on 1 December, 2016.

5. The learned Presiding Officer of the Labour Court after granting opportunity to the parties to lead evidence and after hearing the parties on their reference decided such Reference. The operative part of the order is required to be noted, which reads thus:

“ORDER

(i) The reference is answered partly affirmative.

- (ii) *Second party is entitled for Rs.1,50,000/- (Rs. One Lakh Fifty Thousand only) towards compensation.*
- (iii) *Copy of Award be sent to the Deputy Commissioner of Labour (Conciliation), Mumbai for information and necessary action.”*

6. Mr. Saiyed, learned counsel for the petitioner-employee has grievances against the impugned order. His contention is that the petitioner-employee was forced to resign and thus necessarily it was a case of illegal termination of the services of the petitioner. It is his submission that in this regard the Labour Court has appropriately appreciated the petitioner's contention, as issue no. 2, which was to the effect *“as to whether the petitioner proves that his services were illegally terminated by the employer on 14 January, 2016”*, was answered in affirmative. Mr. Saiyed would submit that once the Industrial Court has reached to a conclusion that the services of the petitioner were illegally terminated on 14 January, 2016, then necessarily the Labour Court ought to have awarded all the consequential benefits to the petitioner-employee, namely, the backwages and other permissible remedies. His contention is that the learned Labour Judge has erred in law when only a relief of entitlement to compensation of Rs. 1,50,000/- has been awarded. His contention is that in the facts of the present case, such an order could not have been passed more particularly when the Labour Court had opined that the services of the petitioner were illegally terminated.

7. On the other hand, Mr. Shukla, learned counsel for the employer would submit that the findings as rendered by the Labour Court on the issue that the petitioner was a workman under section 2(s) of the Industrial Disputes Act is an illegal conclusion and consequently the Labour Court had no jurisdiction to make the impugned award and that the reference ought to have been answered against the petitioner. According to Mr. Shukla, there was material on record which indicated that the petitioner is not a workman and in fact he was serving in the managerial capacity. It is his submission that even otherwise, the petitioner had voluntarily tendered his resignation on 14 January, 2016 and which was accepted on the very same day and hence the findings as rendered by the Labour Court in regard to issue no. 3, namely, “whether the first party proves that second party has resigned from the services”, ought to have been answered in the affirmative. Accordingly, his submission is that the Writ Petition filed by the petitioner-employee ought to be dismissed and the petition filed by the employer is required to be allowed.

8. Having heard learned counsel for the parties on both the proceedings and having perused the impugned judgment and order passed by the Labour Court and the record, there is no dispute in regard to the petitioner being in the employment of the respondent-employer with effect from 24 November, 2014. It also appears that there were certain circumstances whereby the petitioner submitted his resignation on 14 January, 2016 although it is the case

of the petitioner that such a resignation was forcefully obtained. However, there is no material to accept such contention that the resignation was obtained in such manner or forced by the employer. In paragraph 10 of the impugned order, the Labour Court has observed that the petitioner had not made any complaint to police regarding the forceful resignation. However, it is observed that it was not necessary for an employee to file police complaint against any such incident of obtaining resignation to prove that he was forced to do so. The Labour Court has observed that there is no dispute about the resignation but the question was whether the resignation was voluntary or forceful. It appears from the record that except the assertion that it was a forceful resignation as obtained by the employer, there is no material/evidence to support such contention of the petitioner. It appears to be clear from the two material circumstances as pointed out on behalf of the employer, firstly, that the resignation which was tendered by the petitioner on 14 January, 2016 was accepted on the very same day. Although the petitioner addressed an email on 15 January, 2016 to his superior regarding forceful resignation, however, the same was not replied. Certainly such email addressed to the superior complaining about forceful resignation could not be of any relevance, inasmuch as, the resignation was tendered to the employer, which was accepted by the employer and any complaint in that regard ought to have been made to the employer. Be that as it may, it also needs to be observed that it is a settled

principle of law that once a resignation is tendered and the same is accepted, there is certainly a severance of the relationship between the employer and employee, unless there are material circumstances which would give prudence to any assertion that resignation stood vitiated by any illegality or by fraud, coercion, undue influence etc. There does not appear to be such a strong case on record as put up by the petitioner so that the Labour Court could come to a conclusion that the resignation was not at all voluntary and in fact, was forced and foisted on the petitioner. The reasoning of the Labour Court in such context can be seen in paragraph 10 of the impugned order, which reads thus:

“10. It is also submitted that he has not made any complaint to police regarding the forceful resignation. It is not necessary for an employee to file police complaint against any such incident of obtaining resignation to prove that he was forced. It is also contended that, second party has withdrawn Provident Fund by giving reason to end of his service as resignation therefore he cannot allege it as forceful. The contention is not proper, because there is no dispute about resignation but it is the question whether it was voluntary or forceful. Second party has placed on record copies of letters issued by the company which provides that company had taken a decision to terminate his employment. It was possible for the company to issue a memo or show cause notice and conduct enquiry by suspending his service, which would allow second party to answer the alleged misconduct. Termination of service without notice is always stigmatic for an employee, therefore, such an action might be termed as threatening or applying force to resign.”

9. I am not in agreement with Mr. Saiyed, that on such reasoning in the impugned order, it could be held that the resignation was foisted by the employer. There could be circumstances which are not very favourable to the petitioner in regard to the allegations being made by the employer against him

that he has unauthorizedly accessed the database in respect of which documents were placed on record of the Labour Court (Exhibit C-21 to C-23). This made the petitioner tender resignation and the same was accepted by the employer. The sequel to such a position would be, as to whether, when a resignation itself being of such nature, whether the petitioner would be entitled for any consequential benefits of reinstatement etc. Thus, for the above reasons, the contentions as urged by Mr. Saiyed, learned counsel for the petitioner that as there was forceful resignation and for such reason, it was illegal, hence, necessarily the consequences of backwages and other monetary benefits were to follow, cannot be accepted. This, also considering the period of service of the petitioner with the respondent-employer which was merely of one year and two months. Thus, rightly the Labour Court had exercised its jurisdiction under section 12(5) of the Industrial Disputes Act, 1947 to consider such tenure of the petitioner-employee's service period and grant compensation to the petitioner of Rs.1,50,000/-. The reasoning as set out by the Labour Court in awarding such compensation is found in paragraph 14 of the impugned order, which reads thus:

"14. Therefore, now it is to be seen that for which he is entitled. According to second party, he should be reinstated along with full back wages and continuity of services. To entitle for the said relief the period of service of second party with first party is necessary factor to be seen. It is not disputed that he had joined first party on 24/11/2014 and served there till 14/01/2016. This period is hardly one year and two months. On the point of back wages both parties have relied on case laws at sr. (a) and (I). It has also come on record that second party is earning around Rs.10,000/- per month to satisfy his family expenses. So far as the period of employment of

second party with the company is not considerable, but it is a short one. Therefore, for such a shorter period of service an employee cannot be said to be entitled for reinstatement with back wages. Section 11-A of the Act provides powers to the Court to give any other relief in lieu of reinstatement. Hence, I am of the opinion that, compensation of Rs.1,50,000/- would be a reasonable and sufficient relief to meet the ends of justice. As per above discussions, I answer issue no. 4 accordingly and in answer to Issue no. 5 following order is passed:

ORDER

- (i) The reference is answered partly affirmative.*
- (ii) Second party is entitled for Rs.1,50,000/- (Rs. One Lakh Fifty Thousand only) towards compensation.*
- (iii) Copy of Award be sent to the Deputy Commissioner of Labour (Conciliation), Mumbai for information and necessary action.”*

10. In my opinion, the above reasoning cannot be said to be in any manner perverse in the facts and circumstances of the case so that the award of compensation needs to be interfered, taking an overall view of the matter.

11. At this stage, it is required to be observed that the employer has already paid an amount of Rs.1,50,000/- to the petitioner in compliance of the order passed by the Labour Court and thus, in regard to the compliance of clause (ii) of the operative directions (supra), on which there is no dispute whatsoever. Thus, in my opinion, in the aforesaid circumstances, the dispute between the parties insofar as the Writ Petition filed by the petitioner is concerned, is required to put to a quietus, as the impugned order itself has stood implemented.

12. There is a cross writ petition filed by the employer in which a very limited contention has been urged, which is in regard to the issue no. 1 as decided by the Labour Court, namely, as to whether the petitioner proves that he is a 'workman' as defined under section 2(s) of the Industrial Disputes Act, 1947, which has been answered in favour of the petitioner. Mr. Shukla, learned counsel for the respondent has submitted that the issue ought to have been decided against the petitioner-employee and in favour of the employer, as the petitioner was not a workman considering the post on which he was appointed as also the nature of work he was required to undertake. In support of such contention, Mr. Shukla has drawn the Court's attention to the relevant extract of the evidence of the petitioner, which according to Mr. Shukla would indicate that the nature of duties discharged by the petitioner was certainly of a employee as Manager and not as a workman.

13. The Labour Court has considered the evidence on record in answering the said issue in favour of the petitioner. The Labour Court has observed that the petitioner was having limited authority to access the database, although it was alleged that he was causing a breach of security by wrongfully accessing the data. It was also observed that there was no material to show that the petitioner had authority to make purchases for the company frequently. It is further observed that the policy manual (Exh. C-12) of the employer-company does not provide about work area of the petitioner and that the employer had

not placed on record the appointment letter to show duties and authorities possessed by the petitioner. On the analysis of the evidence including the cross-examination of the petitioner, it has been observed that the purported admission as claimed by the employer did not suggest about his working in a managerial cadre. It is further observed that the witness of the employer had also admitted that the petitioner was working under his supervision, instruction and guidance. It is well settled that the nomenclature and/or title of a post is not determinative of the status of an employee as to whether he is a workman or not, unless there is sufficient evidence to show that the duties being discharged are not that of a workman. The learned Labour Judge, on examining the evidence, has held that the petitioner was a workman within the definition as contained under section 2(s) of the Industrial Disputes Act. In my opinion, the findings as recorded by the Labour Court cannot be held to be in any manner perverse or contrary to the materials on record. As this is the only challenge as raised in the petition filed by the employer, in my opinion, the challenge needs to fail. The employer's Writ Petition is required to be dismissed.

14. Before parting, it needs to be observed that although this Court has held that the resignation as tendered by the petitioner needs to be accepted and it could be said that it was in any manner forced on the petitioner, the order passed by the Labour Court granting compensation to the petitioner in the

peculiar facts and circumstances of the case, taking an overall view of the matter, ought not to be faulted. The employer also has accepted such order and has already made a payment of compensation of Rs.1,50,000/- to the petitioner. Thus, insofar as the employer is concerned, as fairly submitted by Mr. Shukla, the payment of compensation ought not to be said to be any grievance and/or prejudice to the employer, merely because this Court has come to a conclusion that the resignation in question of the petitioner could not be said to be forceful.

15. In view of the above observations, the dispute between the parties in both these proceedings is required to be put to an end. The petitions are accordingly disposed of by putting a quietus to a matter on Rs.1,50,000/- being received by the petitioner, thereby closing all contentions of the petitioner as also the employer in terms of what has been observed above.

16. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J)