



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4892 OF 2006

Nishadevi Sadashiv Admane

VERSUS

Executive Engineer Pwd

- Mr. S. T. Shelke, Advocate for the Petitioner
- Ms. M. N. Ghanekar, AGP for the Respondent/State

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 28, 2024

PER COURT :

1. This Petition takes exception to the judgment and order dated 04.01.2003 passed by the learned Labour Court, Ahmednagar in Reference IDA No. 146/1992.

2. The parties are referred to as "workman" and "employer" for the sake of brevity.

3. It is the case of the workman that she was employed as a skilled labour with effect from 01.03.1985 at Kopargaon Sub-Division. She claims to have worked continuously from the said date till 05.09.1989. It is claim of the workman that due to unavoidable circumstance, she could not attend the

duties for some days and therefore, employer orally terminated her services with effect from 06.06.1989. It is claimed that before termination of her services, she was not issued notice or with any charge-sheet nor any enquiry was conducted against her prior to termination. It is her further claim that since she has completed continuous service of 240 days, it was obligatory on the part of the employer to issue notice before terminating her services.

4. Employer by filing written statement opposed the said claim of the workman. It is denied that the services of the workman were not terminated orally as claimed. It is the case of the employer that the workman had abandoned her services.

5. Workman raised dispute with regard to the illegal termination of her services and the Deputy Commissioner of Labour, Nashik referred the said reference under Section 10(1) of the Industrial Disputes Act, 1947 for adjudication to the Labour Court.

6. The parties were permitted to lead evidence. On the basis of the evidence on record, learned Labour Court has arrived at conclusion that the workman had abandoned the services and that this is not the case of oral termination of her services. In view of these observations, reference came to be rejected.

7. Learned Counsel for the Petitioner/Workman submits that the workman has worked with the employer since 1985 till 1989 and that there was no reason for her to abandon service. It is his submission that the workman had entered into communication with employer which can be seen from the evidence led before the Labour Court. It is his submission that learned Labour Court has erred in not considering these facts so also evidence led by the workman and has drawn erroneous findings about the abandonment of services by the workman herself.

8. Learned AGP appearing for the Employer supported the impugned order by contending that the evidence on record indicates about employer sending communication to the workman immediately after she

stopped attending the duties. The attention of the Court is drawn to the fact that after more than 1 ½ year of termination of service, the workman entered into first communication with the employer. Thus, it is her submission that no interference is called in the impugned judgment.

9. Since it is the case of the workman that she terminated orally and illegally with effect from 06.06.1989, the initial burden is on her to prove the same. It is only after the workman succeeds in discharging initial burden on her, the onus would shift upon the employer to prove otherwise.

10. In this regard if evidence on record is considered, the same shows that the workman though claims to have terminated with effect from 06.06.1989, there is no communication for a long period for about 1 ½ years in this regard. It is only after this period is over, first communication came to be entered by the workman with the employer. As against this, the employer had immediately sent communications and the same are proved by cross-examining witnesses.

Admittedly, letters issued to the workman indicate that she was not attending the work. Thus, there is more than sufficient evidence to come to the conclusion that this is not oral termination of workman of service but it is the case of the abandonment of the services by the workman.

11. Having regard to the pleadings and evidence led before the Reference Court, findings recorded by the Reference Court with regard to the abandonment of service cannot be called as perverse, since supported by due evidence on record. This Court finds no reason to cause interference therein for want of perversity therein. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)