

30 January 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12009 OF 2023

SOFT AID Computer Pvt. Ltd.

...Petitioner

V/s.

Amol Narayan Shinde

...Respondent

*Ms. Madhavi Tavanandi, for Petitioner.**None for Respondent.***CORAM : SANDEEP V. MARNE, J.****Judg.Resd. On : 19 January 2024.****Judg.Pron. On : 30 January 2024.****JUDGMENT :**

1. The Petitioner-Employer has filed this petition challenging the Judgment and Order dated 22 June 2023 passed by the Industrial Court, Pune reversing the decision of the Labour Court and allowing the complaint filed by the Respondent-employee. The Industrial Court has directed the Petitioner to pay lumpsum compensation of Rs.4,00,000/- to the Respondent in lieu of his reinstatement.

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2. Petitioner is engaged in the business of manufacture, service and maintenance of hardware and had employed 15 employees at the relevant time. Respondent was employed with the Petitioner-Company as Junior Engineer on 23 November 1995. Respondent tendered resignation on 4 September 2019 requesting that he be relieved after expiry of period of two months. However, since he was prevented from reporting to duties from next day, he lodged FIR with the police on 11 September 2019 about forcible resignation and also served a legal notice making various allegations against Petitioner. The Notice was replied by the Petitioner denying the allegations stating that the resignation tendered by Respondent was accepted and that he was to be relieved from his services on 30 September 2019. That he stopped attending Office after tendering resignation and on 17 September 2019 he visited the office and started shouting and yelling at other staff employees.

3. In the above factual background, Respondent filed Complaint (ULP) No. 100 of 2019 in the Labour Court at Pune on 19 October 2019 seeking his reinstatement in service with full backwages and other consequential benefits. The complaint was resisted by the Petitioner by filing Written Statement. Based on the pleadings, the Labour Court framed issues. Both the sides led evidence. The Labour Court delivered Judgment and Order dated 25 February 2022 and dismissed the complaint of the Respondent. Aggrieved by the decision of the Labour Court, the Respondent filed Revision Application (ULP) No. 14 of 2022 before the Industrial Court. The Revision has

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been allowed by the Industrial Court by Judgment and Order dated 22 June 2023 by setting aside the Labour Court's order. The Industrial Court has allowed Respondent's complaint and has directed the Petitioner to pay lumpsum compensation of Rs. 4,00,000/- in lieu of reinstatement with further direction that the compensation amount would be distinct from legal dues which Respondent is entitled otherwise. Aggrieved by the decision of the Industrial Court, the Petitioner-employer has filed the present petition.

4. This Court issued notice to the Respondent by Order dated 27 September 2023 and stayed the direction for payment of lumpsum compensation. The Notice issued by this Court has been duly served on the Respondent as per the Bailiff's Report. However, Respondent has failed to appear in the petition.

5. I have heard, Ms. Tavanandi, the learned counsel appearing for the Petitioner-Employer. She would submit that the Industrial Court has erred in reversing well-reasoned order of the Labour Court. That Respondent voluntarily resigned from service of the Petitioner-Company on 4 September 2019 and that his resignation was accepted on the same day. That the Industrial Court has erred in directing payment of lumpsum compensation to Respondent ignoring the fact that his resignation is duly accepted by the employer. Ms. Tavanandi would invite my attention to various complaints made by the lady staff of the Petitioner-Company about harassment meted out

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to them by the Respondent. She would submit that the Industrial Court has erred in not appreciating the fact that the Respondent failed to report to duty after 4 September 2019. She would invite my attention to the averments made in the complaint about acceptance of resignation. That therefore the Industrial Court has erred in holding that the resignation was not accepted. That in pursuance of his resignation, Respondent is entitled to amount of Rs.93,314/- towards gratuity, leave encashment and bonus which amount is deposited in the Labour Court. That beyond the said amount of Rs.93,314/-, no compensation could have been awarded by the Industrial Court. She would pray for setting aside the order of the Industrial Court.

6. I have considered the submissions canvassed by Ms. Tavanandi. Respondent has tendered resignation on 4 September 2019. The resignation letter reads thus :

Amol N. Shinde
78/A/5 Sasane Nagar,
Hingane Mala, Behind Kalubai Temple,
Sasane Nagar Road, Hadapsar
Pune- 411 028.
Date : 04/09/2019

Dear Sir,
I would like to inform you that I am resigning from my position as In-House Support Engineer for the SOFT-AID Computers Pvt. Ltd. I would be glad if you could relieve me within next two months.
Thank you for the opportunity for professional and personal development that you have provided me during last few years, I have enjoyed working for the SOFT-AID Computers Pvt. Ltd and appreciate the support provided during my tenure with the company.

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Request you to relieve me from my duties at the earliest.

Sincerely,
Amol Shinde.

7. On the resignation letter, there is endorsement of Ms. Hema N. Ahire, who is an employee of the Petitioner-Company. The endorsement reads thus :

Dear Sir,

Please find above resignation letter from Mr. Amol Shinde. As discussed with him, I have helped him in understanding it by reading out for him. After reading it with him, he signed it and handover to me. I have request you to complete other processes & release him as soon as possible.

Thanks

(Hema N. Ahire)

Date : 4/09/2019

8. The endorsement of Ms. Ahire would show that resignation was forwarded by her to some higher official in the company. She has requested the higher official to complete the other process and release him as soon as possible. Therefore though Ms. Tavanandi has attempted to canvass that the resignation was accepted on 4 September 2019, the endorsement of Ms. Ahire does not suggest so. Nothing is brought on record to show that Ms. Ahire was in a position to accept the decision about acceptance of Respondent's resignation. Therefore, based on the endorsement of Ms. Ahire, it cannot be concluded that the resignation was accepted on 4 September

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2019. Also, while tendering resignation, Respondent requested for relieving on expiry of period of two months. Thus resignation was not to come into effect immediately and could have come into effect by 3 November 2019.

9. Respondent served Notice through his advocate on 20 September 2019 to the Petitioner. In the Notice, he alleged forcible taking of his signatures on blank papers on 9 September 2019 and not permitting him to enter into the office on the next day. The Notice was replied by the Petitioner alleging that Respondent was completely non-productive for the last ten years and had expressed the desire to quit the job on multiple occasions. Various allegations were made about his behavior, attitude and work performance which is not really relevant to the issue in hand. What is relevant is contents of paras-7, 8 and 9 of the reply which reads thus :

7. Please note that invariably every time he used to pickup fights with someone or other in the office and it was getting dangerous for other employees and it was difficult to maintain good harmony among team members. As most of our technical employees are women it was even more difficult for the management as his language was also very foul and loud. If the management called him over to reprimand him he would threaten to resign and he would always boast as to how he does not need the job and how he does not care about money and about how he can find another job within an hour etc. During one such meeting with the management he expressed his desire to resign from the job to this the management asked him to give his resignation letter, this was accepted and he was to be relived from his services on the 30th Sept 2019. As this particular person did not know how to read or write English someone from our office typed and produced the resignation letter for him.

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8. He did not attend office for a lot of days and on the 17th September he visited the Soft-AID office at 12 noon and started shouting and yelling at everyone from staff members and also at Mr. John Thomas our Director. He was immediately warned by other staff members to cool down his temper as everybody thought that it should not cause any injury to himself. It definitely looked like he is suffering from some mental illness/stress and he needs some medical attention/medication and counselling. We asked him to seek medical attention and take rest and not attend office for the rest of his notice period. Some of us even felt that this person may turn suicidal or violent as it looked like he is losing his sense of balance.

9. Please note that he was under notice period and was to be relieved on 30th September. The Company's Administration Department were under the process of finalizing all his pending dues for his Full and Final settlement when we received your legal notice.

10. Thus, in the reply dated 27 September 2019, Petitioner took a stand that Respondent was to be relieved from services on 30 September 2019. It also took a stand that he failed to attend office for 'lot of days' and visited Petitioner's Office on 17 September 2019 at 12.00 noon and created a scene. Petitioner further stated in the reply that Respondent was under notice period and was to be relieved on 30 September 2019. That the office administration was under process of finalizing his pending dues for full and final settlement when Advocate notice was received.

11. Thus contents of Petitioner's reply dated 27 September 2019 belies the theory of acceptance of resignation on 4 September

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2019. On the contrary, Petitioner took a stand in the reply that Respondent was to be relieved from services from 30 September 2019. However, no communication is brought on record to demonstrate that Respondent was given intimation about acceptance of his resignation or about his proposed relieving from 30 September 2019. During the so-called notice period upto 30 September 2019, correspondence took place between the parties in the form of Respondent's Notice dated 20 September 2019 and Petitioner's reply dated 27 September 2019. Petitioner's reply undoubtedly shows that it was processing the pending dues of Respondent for relieving him on 30 September 2019. Therefore, the conclusion reached by the Industrial Court about non-acceptance of resignation on 4 September 2019 cannot be seriously flawed.

12. The next issue is about withdrawal of the resignation. The Industrial Court has arrived at a conclusion in para-16 of its Judgment that Respondent withdrew his resignation. The conclusion is drawn on the basis of the police complaint and legal notice. There is some inconsistency about the factual position in the notice addressed on 20 September 2019. Though the resignation letter bears the date 4 September 2019, Respondent contended in the notice that his signature on blank papers were obtained on 9 September 2019 and that he was prevented from entering the office on the following day. Be that as it may. There is nothing on record to indicate that the resignation was accepted on 4 September 2019. Even if the averments made in the Written statement filed by Petitioner before the

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Industrial Court are to be considered, it is pleaded therein that the resignation was accepted by higher authorities and complainant was informed that he would be relieved from services w.e.f. 30 September 2019. Before 30 September 2019, Respondent had expressed willingness to resume duties in the form of Notice dated 20 September 2019. It is settled law that an employee has right to withdraw resignation not only before its acceptance but also before the date of actual relieving. In the present case, Respondent has expressed willingness to resume duties by not only denying tendering of any resignation but also by stating that *“you may handover the signed blank papers to my client”*. Therefore, no serious error can be traced in the order of the Industrial Court in holding that the resignation was withdrawn.

13. In ordinary course, after holding that the resignation was partially withdrawn, the Industrial Court could have directed reinstatement with full backwages. However, considering the peculiar facts and circumstances of the case and particularly the unsavory relationship between the parties, the Industrial Court has directed payment of lumpsum compensation of Rs.4,00,000/- in lieu of reinstatement. If the relief of backwages was to be granted in favour of the Respondent, the same would have been much higher than the amount of compensation awarded by the Industrial Court. In that view of the matter, no case is made out for interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

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14. I therefore find the Judgment and Order passed by the Industrial Court to be unexceptionable. The Writ Petition is dismissed with no order as to costs.

SANDEEP V. MARNE, J.

15. After the pronouncement of the judgment, the learned counsel appearing for the Petitioner seeks stay of implementation of the Order of the Industrial Court for a period of eight weeks from today. Considering the nature of findings recorded in the judgment, the prayer for stay is rejected.

SANDEEP V. MARNE, J.

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2024.01.30
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