Ramakrishna Vs. Management of Bharat Electronics Ltd.

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Court : Karnataka

Decided On : Jan-19-1995

Reported in : ILR1995KAR742; 1995(2)KarLJ112; (1996)ILLJ592Kant

Judge : Tirath S. Thakur, J.

Appeal No. : W.P. No. 2047 of 1987

Appellant : Ramakrishna

Respondent : Management of Bharat Electronics Ltd.

Judgement :
ORDER

Tirath S. Thakur, J.

1. In this Petition, the petitioner calls in question the validity of an Award made by the Labour Court, on a Reference made to it by the Government of Karnataka under Section 10(1)(c) of I.D. Act. By the said Award the Reference has been rejected by the Labour Court and the resignation submitted by the petitioner held to have been validly accepted, by the respondent-Management.

A few facts necessary for disposal of the Petition may be stated immediately :

The petitioner was working as an 'A' Grade Mechanic with the first respondent, when on 18.3.1982 he submitted a letter of resignation; resigning from the position

held by him, for the reason that he was shifting to his native place along with his mother, to look after his property situated there. Two days later on 20.3.1982 he appears to have changed his mind and sought to withdraw his resignation. In the meantime the Competent Authority had on 19th March 1982 accepted the resignation after waiving the notice period and directed that the employee may be relieved. Aggrieved by the employer's action, in not allowing the petitioner to rejoin his duties, and in accepting the letter of resignation even after the same had been withdrawn by him, the petitioner raised an Industrial Dispute, which was eventually referred for adjudication by the State Government to the Labour Court. The Reference required the Labour Court to determine the following points of dispute :

'1. Whether the Management of M/s. Bharat Electronics Limited, Jalahalli, Bangalore-13, is justified in terminating the service of Sri M. Ramakrishna, St. No. 118036, HPE/FAB, Mechanic-A w.e.f. 18.3.1984

2. If not, to what relief he is entitled ?

3. Before the Labour Court, the parties led both oral and documentary evidence. While the petitioner examined Sri T. N. M. Nambiar and Sri S. Krishna Murthy besides himself, the respondent produced, Sri M. Karumbaiah, Engineer and Capt. S. Prabhala, Executive Director as its witnesses. Upon evaluation of the evidence led by the parties, the Labour Court came to the conclusion that the letter of resignation had been submitted by the petitioner employee on the 18th and not on the 19th of March 1982 as contended by him; and that the same had been accepted by the Competent Authority on the 19th March itself, by waiver of the notice period. It was further held that the resignation, having been accepted, the purported withdrawal of the same on 20.3.1982 was wholly inconsequential and ineffective as the employee's voluntary act had itself put an end to his service under the employer. The argument that the resignation could take effect only from the date the notice period would expire, the repelled by the Labour Court holding that the employer had the discretion to waive the service of the notice, and since the letter of resignation did not say that the same should be effective from a future date, the acceptance of the same put an immediate end to the relationship of employer and employee between the parties. The References, was accordingly

rejected by the Labour Court, by its award dated the 23rd of September 1986. Aggrieved, the petitioner has preferred the present Writ Petition in this Court, assailing the findings recorded by the Labour Court as legally bad and unsustainable.

4. I have heard the learned counsel for the parties and carefully and perused the record.

5. M/s. K. Subba Rao and Subramanya Bhat, Advocates appearing for the petitioner, contended that, the finding returned by the Labour Court, that the resignation, had been tendered on the 18th and not the 19th of March 1982, was erroneous and deserved to be set aside. They further urged that in the very nature of the things and given regard to the fact that things move at a snail's speed in this Country, the finding that a resignation tendered on 18.3.1982 was processed and even accepted the very next day, i.e., 19th March 1982 was wholly unsustainable and ought to be held to be perverse and quashed. They referred to the statements of the witnesses produced by the parties at the trial before the Labour Court and argued that the said Court had committed a serious error in the appreciation of the evidence adduced before it, and drawn conclusion which were not, sound or otherwise sustainable.

6. Learned Counsel appearing for the respondent Management on the other hand, contended that the findings returned by the Labour Court, were pure and simple findings of fact, no interference with which would be warranted on the tenuous plea that the findings were based on the misappreciation of the evidence, produce by the parties before it. He submitted that the Labour Court had rightly believed the version given by the Management and the witnesses produced by it, that the petitioner's resignation had been accepted on the 19th of March 1982 i.e., day earlier to the date of the letter by which the petitioner sought to withdraw the same. Since however, the resignation had already been accepted by the Competent Authority before the receipt of the withdrawal letter, the petitioner's employment stood validly terminated, by the petitioner's own voluntary act. The view taken by the Labour Court contended the learned counsel was legally unexceptionable and called for no interference with the same.

7. The nature and the scope of the jurisdiction exercised by the superior Courts in this Country under Article 226 of the Constitution, has been the subject matter of a long string of Judgments of these Courts and the Apex Court. The legal position as emerging from a conspectus of these judicial pronouncements, is so well established and well recognised, that, I consider it wholly unnecessary to refer in detail to these judgments or the factual backdrop in which the same were delivered. Suffice it to say that even though Article 226 of the Constitution was inspired by the Royal Writs prevalent in England yet the sweep and the scope of the Writs envisaged by Article 226, far exceeds the hide bound British process of yore. The framers of the Constitution, have through the medium of Article 226, recognised the need for the conferment of an all pervasive, reserve power on the Higher Judiciary, for corrections of errors and undoing wrongs wherever the Courts feel they should intervene. The width and the plenitude of the power that the High Courts enjoy under Article 226 has however itself resulted in the evolution of certain self imposed constraints on the exercise of the said power.

8. The first and the foremost of these constraints is that the power to interfere with a subordinate, Executive, Judicial or quasi judicial authority's order or proceeding is discretionary. This implies that the Court would not interfere in exercise of its Writ Jurisdiction simply because it is lawful to do so. Not only should the exercise of the Writ power be lawful but, the Court exercising that power must be of the opinion that it is necessary in the interest of justice, and fair-play to do so, to prevent either manifest injustice or perpetuation of a patent legality. Cases and instances are not wanting where the Courts have declined to interfere even when, it could have done so, for want of blemish-free conduct on the part of the person seeking to invoke the extra ordinary jurisdiction of the Court under Article 226 of the Constitution. Lack of bonafides, suppression of material facts, acquiescence, delay and laches are instances where the Courts would refuse to interfere in the exercise of their prerogative Writ Jurisdiction, even when, the petitioner's plea that orders impugned were illegal, or otherwise unsustainable is not without substance.

9. The other constraint, judicially evolved as a dissuading factor and equally well established and recognised as the one mentioned earlier, is that a Writ Court is not a Court of Appeal in disguise, and that in exercise of its supervisory jurisdiction

a Court under Article 226 of the Constitution, would not interfere with or re-open findings of fact recorded by the inferior Court or Tribunal even if upon a re-appraisal of the evidence considered by the said Tribunal, the Writ Court was to come to a different conclusion that the one arrived at by the Tribunal. That interference with the findings of fact recorded by a subordinate Court or Tribunal is limited to certain well recognised situation is also well settled. One of the situations where the Writ Court would interfere with the finding of fact is a finding which is based on no evidence whatsoever. Findings returned by a Court for Tribunal without any supporting evidence, will be deemed to be perverse and therefore vitiated by an error of law, which a Court exercising Writ Jurisdiction is entitled to correct. This, however, does not mean that finding of fact recorded by the inferior Tribunal can be challenged in the Writ Proceedings on the ground that the material or evidence produced before the Tribunal was insufficient or in any way inadequate for sustaining the finding in question. The sufficiency or the adequacy of evidence led on a point are matters within the jurisdiction of the Tribunal and cannot be agitated before a Writ Court. Courts exercising Writ Jurisdiction have however interfered with conclusions and findings of the Tribunals which no reasonable person could have possibly drawn.

10. Keeping in view the above constraints which have been recognised as self imposed restrictions the effort made by the learned Counsel for petitioners to assail the finding returned by the Labour Court appears to be destined to fail. I say so because, the learned Counsel appearing for the petitioner have not even themselves placed their case in the category of one where there is no evidence whatsoever to sustain the finding returned by the Labour Court. The effort made by the learned Counsel which I must in fairness to them acknowledge was very strenuous indeed, was meant only to show that the view taken by the Labour Court on the crucial question whether the resignation had been accepted by the Authority Competent on the 19th March, 1982, or on a subsequent date, was against the weight of evidence on record. I was taken through the statements recorded with a view to persuade me to hold that the version of the Management that the resignation of the petitioner had been accepted on the 19th March, 1982 itself was improbable and unacceptable in view of the state of evidence led on that point. This I am afraid, is not permissible for me to do for a finding other than the

one recorded by the Labour Court, would be possible only if I myself re-appreciate and evaluate the evidence led at the trial. Such a course, as already pointed out by me is legally impermissible for this Court to adopt, even if the Court adopts the most liberal approach towards this area of controversy between the parties.

11. Mr. Subramaniam, learned Counsel appearing for the petitioner, however, relied upon a judgment of the High Court of Punjab and Haryana, reported in FJR 1994 Vol. 85 page-349 Piara Singh v. Labour Court, Chandigarh in support of his submission that this Court can go through the evidence in a proper case and the present was according to him one of these cases where this Court should adopt that unusual course. I had the advantage of going-through the judgment relied upon by the learned Counsel, but, regret to say that the same does not in any manner advance the petitioner's case. In that case, the Court has in no uncertain terms recognised the well settled proposition of law that a finding of fact recorded by the Tribunal cannot normally be disturbed unless of course the same is perverse. That was a case where the Court had after scanning evidence come to the conclusion that the finding recorded by the Labour Court on one of the crucial questions involved in the case was not only against the record but was totally perverse as well. That is not so in the case before me. Even when I have at the insistence of the learned Counsel for the parties gone through the evidence adduced, yet I am in no position to hold that the finding recorded was unjustified. On the contrary, I tend to agree with the finding recorded by the Labour Court that the resignation of the petitioner had been accepted by the Competent Authority on 19th of March 1982, and not a subsequent date as asserted by the petitioner.

12. Learned Counsel for petitioner next relied upon the judgment of their Lordships of the Supreme Court in Gujarat Steels Tubes Limited v. Its Mazdoor Sabha : (1980)ILLJ137SC , in support of his submission that the power of the Court to interfere with the findings recorded by the Subordinate Courts and Tribunals was very wide though used very sparingly. The following passage from the said judgment, however, provides a complete answer to the submission of the learned Counsel.

'Broadly stated, the principle of law is that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding the judicial or quasi-judicial tribunals or administrative bodies exercising the quasi-judicial powers within the leading strings of legality and to see that they do not exceed their statutory jurisdiction and correctly administer the law laid down by the Statute which they act. So long as the hierarchy of Officers and appellate authorities created by the Statute function within their ambit the manner in which they do so can be no ground for interference. The powers of judicial supervision of the High Court under Article 227 of the Constitution (as it then stood) are not greater than those under Article 226 and it must be limited to seeing that a tribunal function within the limits of its authority (See Nagendra Nath Bora v. Commr. of Hills Division & Appeals, Assam, : [1958]1SCR1240). This led to a proposition that in exercising jurisdiction under Article 226 of High Court is not constituted a Court of appeal over the decision of authorities, administrative or quasi-judicial. Adequacy or sufficiency of evidence is not its meat. It is not the function of a High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence.'

13. M/s. Subbarao, and Subramanya Bhat, next contended on the authority of the Judgment of Their Lordships of the Supreme Court in Union of India v. Gopal Chandra Misra : (1978)ILLJ492SC and two Judgments of this Court in Management of M/s. Kushalnagar Works v. P. Nagaraju AIR 1988 Karnataka 989 and P. Nagaraju v. State of Karnataka 1985 II CLR 260 that if a resignation tendered by an employee is effective from a future date the employee can withdraw the same before it becomes effective.

14. In Union of India v. Gopal Chandra Misra and Ors. : (1978)ILLJ492SC a Judge of a Allahabad High Court had tendered his resignation on 7th May 1977, but made it effective only from a future date i.e. 1st of August, 1977. On 15th July 1977 this resignation was withdrawn. A Full Bench of the Allahabad High Court held that the resignation once tendered could not have been withdrawn by a Judge of the High Court keeping in view the provisions of Article 217(1) of the Constitution and the weighty considerations of Public Policy and disciplined behaviour in public life. The Supreme Court however upset this view and held that

the resignation tendered by the Judge was inchoate and ineffective till the date the same was to become operative i.e., on 1st of August 1977 and could therefore have been withdrawn by him any time before the said date. Similar is the case in the other two judgments relied upon by the learned Counsel, namely i) Nagaraju v. State of Karnataka. AIR 1988 Karnataka 989 and ii) Kushal Nagar Works v. P. Nagaraju 1985 (2) LLJ 96.

15. The proposition that a resignation meant to be effective from a future date can be withdrawn by the person submitting the same before it has become effective, cannot be disputed. The question however is whether the resignation in the instant case was meant to be effective from a future date or was to bring to an end the relationship of employer and employee in present. A plain reading of the letter of resignation submitted by the petitioner leaves no manner of doubt that the resignation was not meant to be effective from a future date as was the position in the Cases relied upon by the learned Counsel. It therefore became effective the moment the same was accepted by the Competent Authority. This acceptance it has been held by the Labour Court was recorded by the Authority concerned on the 19th March, 1982 i.e., before the date the petitioner purported to withdraw the same. In order words, as on the date, the resignation was purported to have been withdrawn the same had already been accepted thereby putting an end to the employment of the petitioner under the Respondent-Management.

16. It was already contended by the learned Counsel for the petitioner that the acceptance of the resignation of the petitioner, by the Management was offensive to Section 73 of the E. S. I. Act. Section 73 of the Act reads thus :-

'(1) No Employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (2) shall be valid or operative.'

17. A plain reading of the above provision makes it manifest that no action can be taken against an employee during the period he/she is in receipt of any sickness/or maternity benefit, nor can the employer except as otherwise provided by the Regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of a disablement benefit for temporary disablement or is under medical treatment for sickness etc. Sub-section (2) makes any notice or dismissal or discharge or reduction given to an employee during the period specified in sub-section (2) invalid and inoperative. It is therefore apparent that what is prohibited by Section 73(1) is the taking of any penal action against an employee during the period referred to in the Section. In the instant case however, all that the Management has done is that it has accepted the resignation tendered by the petitioner. The submission of a resignation by an employee is a voluntary act, the acceptance whereof by the Management cannot be deemed to be a penalty or other disciplinary action prohibited by Section 73. Reliance upon the said provision is therefore wholly futile as the same has no application to a case where the employee himself of his free will and volition puts an end to the contract of employment. In such a situation if the employer agrees to relieve the employee of his duties and obligations as an employee he commits no illegality, nor can the acceptance of the resignation by any stretch of reasoning be said to be a penalty, dismissal or discharge falling foul of section 73 of the E. S. I. Act. There is therefore no merit even in this ground urged by the petitioner which must fail.

18. In the result, this Writ Petition has no merit and is accordingly dismissed but in the peculiar facts and circumstances of the case, without any orders as to costs.