

Sri Krishna Vs. Prescribed Authority and ors.

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Court : Allahabad

Decided On : Aug-01-1994

Reported in : [1995(70)FLR53]; (1995)ILLJ1060All; (1995)1UPLBEC227

Judge : S.P. Srivastava, J.

Acts : Uttar Pradesh [Industrial Disputes Act, 1947](#) - Sections 2(1); [Industrial Disputes Act, 1947](#) - Sections 2

Appeal No. : C.M.W.P No. 784/1980

Appellant : Sri Krishna

Respondent : Prescribed Authority and ors.

Advocate for Def. : S.C. Tarun Agarwal, Adv.

Advocate for Pet/Ap. : Sudhir Chandra and ;U.S. Saxena, Adv.

Judgement :

S.P. Srivastava, J.

1. A suit being Original Suit No. 1003 of 1965 filed by Shri Krishana, the petitioner in Civil Misc. Writ Petition No. 784/1980 and Civil Misc. Writ Petition No. 8217 of 1984 against the defendant Kanpur Industrial Development Cooperative Estate Limited which is the petitioner in Civil Misc. Writ Petition No. 12284 of 1984

challenging the resignation tendered by him on March 5, 1965 which was accepted on March 9, 1965 by the General Manager of the defendant alleging that the alleged resignation had been obtained under duress and in any case had been withdrawn on March 6, 1965 before its acceptance rendering it to be inoperative and ineffective in law and claiming a decree of prohibitory injunction seeking to restrain the defendant from preventing the plaintiff from performing his duties until his services are terminated in accordance with law. This suit was decreed by the Additional Munsif, Kanpur on November 2, 1970. The trial court granted a decree in favour of the plaintiff Shri Krishna that the acceptance of his resignation in question was illegal and ineffective and the defendant was restrained by means of a permanent injunction from preventing the plaintiff from performing his duties until his services were terminated in accordance with law. The trial court granted a further decree in favour of the plaintiff entitling him to get payment of salary at the rate of Rs. 640A per month for the period March 1, 1965 to April 30, 1965.

2. Aggrieved by the aforesaid decree the Kanpur Industrial Development Co-operative Estate Limited filed an appeal which was registered as Civil Appeal No. 417/70 and was disposed of vide the judgment and order dated April 17, 1973 whereunder allowing the appeal the judgment and decree passed by the trial court was set aside and the suit of the plaintiff Sri Krishna was dismissed. The appellate court after considering the evidence and materials on record had arrived at the conclusion that the plaintiff who had been caught red handed accepting illegal gratification had tendered resignation in question of his own accord and free will. The claim of the plaintiff Shri Krishna that the resignation was obtained from him under duress and coercion was disbelieved. It was also held that the order of the District Magistrate dated March 7, 1965 accepting the resignation of the plaintiff was without jurisdiction. As the resignation could be accepted by the Board of Directors in any case, the resignation having been withdrawn on March 6, 1965 there was nothing to be accepted. The appellate court further came to the conclusion that the relief as claimed by the plaintiff could not be granted.

3. It appears that during the pendency of the appeal referred to herein before the employer had issued a letter dated November 30, 1970 to Shri Krishna the workman informing him that an appeal against the decree passed by the trial court

had been filed which had admitted and the operation of the decree passed by the trial court had been stayed until further orders but without prejudice to the result of the appeal and without prejudice to their contention that the services of Shri Krishna had already come to an end on March 5, 1965 by virtue of the resignation tendered by him the employer had decided to terminate the employment of the workman concerned by tendering one month's pay in lieu of notice to remove any controversy regarding his future employment. In this letter it was also mentioned that the letter was being sent reserving full rights of challenging the correctness of the decree passed by the trial court.

4. It was thereafter that the State Government made a reference requiring adjudication of the industrial dispute and determination of the question as to whether the termination of the services of the workman Shri Krishna under the order dated November 30, 1970 was justified and legal and if not to what relief, benefit, damages the workman was entitled.

5. The Labour Court vide its award dated February 20, 1984 held that the resignation in question appeared to have been forced upon Sri Krishna otherwise he would not have rescinded it the next day. It also found that the impugned termination of the service of Shri Krishna the workman constituted a 'retrenchment' for which he had been paid only one month's pay in lieu of notice and not compensation. It also came to the conclusion that a resignation forced upon a workman was no resignation in law and fact The Labour Court appears to have come to the conclusion that as the requisite conditions precedent for a valid retrenchment had not been satisfied the termination of service of the employee under the letter dated March 9, 1965 read with letter dated November 30, 1990 was void ab initio, invalid and inoperative. Consequently, the Labour Court held that the employee workman was deemed to be in continuous service. However, relying upon the letter of the workman dated April 18, 1972 wherein he had asserted that he would withdraw all his claim if he is paid an amount of Rs. 27,800/- in cash and further considering the fact that the workman had also started an Enterprise in 1974 and had been gainfully employed, the Labour Court gave an award of an amount of Rs. 34,020/- in favour of the workman which amount represented the wages for the period March 1965 to December 1970.

No relief regarding reinstatement or back wages was granted to the workman.

6. It may be noticed here that during the pendency of the appeal against the decree dated November 2, 1970 Shri Krishna had moved an application under Section 15 of the Payment of Wages Act for payment of wages from May 1, 1965 to September 30, 1971 to the tune of Rs. 31,265 and also for a compensation amount to Rs. 31,465/- for withholding the payment of the above amount of wages without any lawful excuse. This application was however, rejected by the Prescribed Authority on June 9, 1972. An appeal filed by Shri Krishna challenging the aforesaid order passed by the Prescribed Authority was also dismissed on September 12, 1979. The appellate court had held that the application of Shri Krishan moved under Section 15 of the Payment of Wages Act had not been filed within the prescribed period of limitation. It was also held that question as to whether the services of Shri Krishna had been terminated validly or not was still to be adjudicated upon by the competent authority and in the absence of any such finding no relief could be granted as claimed. The appellate court had affirmed the finding of the Prescribed Authority that the application under Section 15 of the Act was not maintainable without getting adjudication from the Competent Authority that the relationship of master and servant did subsist during the period for which wages had been claimed.

7. The workman Shri Krishna the petitioner in Civil Misc. Writ Petition No. 784 of 1980 has sought for quashing of the order dated September 12, 1979 passed by the appellate authority in the proceedings under the Payment of Wages Act. He has further challenged in Civil Mis. Writ Petition No. 8217 of 1984 the award of the Labour Court so far as the relief of reinstatement and back wages claimed by the petitioner had been refused by the Labour Court. The employer Kanpur Industrial Development Cooperative Estate Limited, the petitioner in Civil Misc. Writ Petition No. 12284 of 1984 has sought for the quashing of the award of the Labour Court dated February 20, 1984 so far as it went against it.

8. Considering the facts and circumstances of the present case all the three writ petitions referred to hereinbefore were heard together and are being disposed of by a common order.

9. I have heard Sri Tarun Agrawal for the employer petitioner and Ms. Bharati Sapru for the workman and have perused the record.

10. Learned counsel for the employer petitioner has urged that in the facts and circumstances of the present case the impugned termination of service of the workman could not be deemed to fall within the ambit of retrenchment as contemplated under Section 2(oo) of the [Industrial Disputes Act, 1947](#) or Section 2(s) of the U.P. [Industrial Disputes Act, 1947](#) and, therefore, the impugned award cannot be sustained under the law. The contention is that as held by the Civil Court of competent jurisdiction, the workman had tendered the resignation on March 5, 1965 of his own accord and free will. The Civil Court had rejected the claim of the workman that the resignation had been obtained from him under duress and coercion. Consequently, it is urged that the present case falls within the exception provided under Section 2(oo)(a) of the Industrial Disputes Act and Section 2(s)(i) of the U.P. [Industrial Disputes Act, 1947](#) which provides that a voluntary retirement of the workman could not be taken to result in a 'retrenchment' at all.

11. Learned counsel for the workman on the other hand has urged that the 'resignation' cannot be deemed to be at par with retirement contemplated under the aforesaid explanation. It is contended that since in the present case question of retirement did not arise and in any case the resignation had not been accepted, the exception provided under Section 2(oo) of the Industrial Disputes Act or Section 2(s) of the U.P. [Industrial Disputes Act, 1947](#) could not be deemed to have been attracted at all.

12. I have given my anxious consideration to the rival contentions of the counsel for the parties referred to hereinbefore.

13. The provisions contained in Section 2(oo) of the Industrial Disputes Act is to the following effect:

'Section 2(oo) - 'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or

(c) termination of the service of a workman on the ground of continued ill-health.'

14. The provisions contained in Section 2(a) of the U.P. [Industrial Disputes Act, 1947](#) is to the following effect-

'Section 2(s)- 'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include,

(i) voluntary retirement of the workman; or

(ii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf.'

15. There can be no manner of doubt that as the employer has the right to terminate the contract of service of the employee by retrenchment, discharge or dismissal, the employee has the right to terminate the contract by resigning his job. It is, therefore, obvious that where the employee voluntarily resigns his job the question of his reinstatement by industrial adjudication does not arise, but before a resignation can be effective it must terminate the contract of service in legally defined mode. The word 'voluntary retirement' as used in the aforesaid section, it seems to me, refers to a voluntary move on the part of the employee to cease from or give up office or employment. The expression 'voluntary retirement' includes within its ambit a voluntary move on the part of the employee to give up office or employment. The voluntary retirement is an act of the employee and if it is proved and established that the employee concerned had chosen to give up office or employment of his own accord and free will, the cessation of his employment and the breaking up of the relationship of master and servant is immediate without calling for an approval of the suo motu action of the employee to break the

relationship of master and servant unless of course, the service conditions required anything to the contrary. I am clearly of the opinion that the cases of resigning the job by an employee workman of his own accord and free will resulting in giving up of office or employment fall within the ambit of voluntary retirement as contemplated under the aforesaid provisions.

16. It may be noticed that termination of a service of workman on account of voluntary retirement has specifically been excluded from the definition of 'retrenchment' since retirement signifies giving up office or profession or employment, the cases of resigning the job which; is proved to be a voluntary move on the part of the employee has to be treated as falling within the exception.

17. In the present case a competent court of civil jurisdiction had already recorded a finding that the resignation tendered by the workman on March 5, 1965 was his voluntary move and it had been submitted of his own accord and free will and his claim that it had been obtained by coercion or duress had been found to be false. The finding of the civil court which had attained the finality was binding on the Labour Court. In face of the aforesaid finding the Labour Court had to proceed on the assumption that the workman. concerned had resigned the job of his own accord and free-will and this was a voluntary act on his part. Learned counsel for the workman had not been able to point out anything either in the standing orders or in the service conditions. requiring the acceptance of the resignation tendered voluntarily by a workman as a condition precedent for the breaking up of the relationship of master and servant. In the facts and circumstances of the case it was just like voluntarily abandoning the job. The employer in para 12 of his writ petition has referred to the admission of the workman from which it is apparent that he had been gainfully employed since 1970. In the counter-affidavit filed by Shri Krishna the correctness of this statement quoted in para 12 of the writ petition has not been disputed.

18. Considering the facts and circumstances of the case as brought on record, it is apparent that the impugned termination of service could not fall within the ambit of 'retrenchment' as contemplated under the Industrial Disputes Act. The workman had tendered the resignation on March 5, 1965 which resignation was found by

the court of competent jurisdiction to have been tendered on his own accord and free will without there being any duress or coercion. This voluntary act of the workman automatically resulted in the cessation of his employment with the tendering of the resignation and the relationship of master and servant stood disrupted and broken up which could not be revived later on, on account of the alleged withdrawal of the resignation specially when there is nothing on the record to indicate that there did exist any such service condition which necessitated the acceptance of the resignation or from which it could be inferred that unless accepted the resignation was not to result in the breaking up of the relationship of master and servant.

19. If the case is viewed from the angle indicated above which is the only view possible under the facts and circumstances of the present case there is no escape from the conclusion that the impugned award is not at all sustainable in law.

20. In view of my conclusions indicated hereinabove the Writ Petition No. 12284 of 1984 succeeds and allowing the same, the impugned award dated February 20, 1984 is quashed. Consequently, the Writ Petitions Nos. 8217/1984 and 754/1980 are dismissed.

There shall, however, be no order as to cost.

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