

Mhow Hosiery Pvt. Ltd. Vs. Jitendra

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Court : Madhya Pradesh

Decided On : May-11-2005

Reported in : [2005(106)FLR889]; 2005(3)MPHT279

Judge : S.K. Gangele, J.

Acts : Madhya Pradesh Industrial Relations Act, 1916 - Sections 31(3), 61, 62 and 86; Industrial Dispute Act; [Indian Contract Act, 1872](#) - Sections 16, 16(2), 13(3) and 19A; [Constitution of India](#) - Article 14

Appeal No. : Writ Petition (S) No. 277/2005

Appellant : Mhow Hosiery Pvt. Ltd.

Respondent : Jitendra

Advocate for Def. : S.H. Moyal, Adv.

Advocate for Pet/Ap. : J.P. Cama, Sr. Adv. and ;G.S. Patwardhan, Adv.

Judgement :

ORDER

S.K. Gangele, J.

1. These are the bunch of the petitions filed by the petitioner M/s. Mhow Hosiery Pvt. Ltd. against the common order passed by the Industrial Court allowing the

appeals of the respondents workers.

2. The facts of all the cases are similar and Industrial Court decided the appeals by a common order, hence all the petitions are being decided by this common order, for the purpose of facts of the case, facts of W.P. No. 277/2005 has been considered.

3. The respondent was working in the petitioner company, he was employed w.e.f. 1-10-1993 and his services have been discontinued w.e.f. 8-9-2001. On 8-8-2001 the respondent worker submitted an application of resignation mentioning that he was working in dispatch department and due to some personal problem he is, submitting his resignation. His resignation was accepted after a period of one month vide order dated 8-9-2001. On 11 -9-2001, he signed a printed receipt mentioning that he received an amount of Rs. 31,704/- with regard to arrears of salary, leave and there was no balance remained hereinafter. It has further been mentioned that 'I am withdrawing the application filed before Labour Court or any other authority and I am waiving my right to file any such proceedings and authorising the petitioner to decide the dispute'. On 11-9-2001 he submitted an application to the petitioner mentioning that his Provident Fund be withdrawn. Similarly he filed an application for withdrawal of his Provident Fund on the same day. He also received the Provident Fund and gratuity.

4. Thereafter he filed an application before the Labour Court, Indore under Section 31 (3), 61, 62 and 86 of the MPIR Act, 1916 mentioning that he was an employee of the petitioner and was getting monthly salary of Rs. 2,600/-. His work had been stopped w.e.f. 8-9-2001 and this would amount retrenchment. The provisions of the Chapter V of the Industrial Dispute Act have not been followed, it has further been submitted in the application that the petitioner management had not paid 8 months salary to near about 350 workers, when he alongwith other workers demanded from the management to pay the salary. The Manager forced him to submit the resignation letter mentioning that due to family problems I am tendering my resignation and told him that if he wants salary he had to submit the resignation, that is why the resignation was submitted. In such circumstances his termination of service was void.

5. In the reply of the application of the workman the petitioner submitted that alongwith the respondent, near about 150 workers submitted their resignations. The respondent himself submitted the resignation and that was accepted by the management. The resignation was voluntary, hence there is no Industrial dispute exists.

6. In support of his claim the respondent workman examined himself and deposed that he tendered his resignation that was accepted and thereafter he also received Provident Fund, gratuity, some ex-gratia amount and salary of 8 months by 2 cheques, the cheques were post dated. Before submitting resignation the petitioners had not paid the salary to him for the period of 8 months and because his family was dying due to hunger, he submitted resignation, he received total amount of Rs. 31,704/- on 12-9-2001 through two cheques. On behalf of the petitioner one Mr. A. Sharda deposed that he was working as a Manager, the respondent workman submitted his resignation which was accepted, he received Provident Fund, there was no force applied by the company for submitting the resignation. In his cross-examination, he admitted that before submitting resignation the salary of the workers including respondent for a period of 3 to 5 months had not been paid. Because financial condition of the company was bad and it had not received any supply orders, we gave two post dated cheques to the respondent, one was for gratuity and another was ex-gratia payment. After accepting the resignation, second day cheques were issued, near about 200 to 250 workers submitted their resignations. He also admitted that he had a talk with the workers about resignation and workers assured that if total payment would be given, then they would submit the resignation. Thereafter the resignations were submitted, at present 60 to 70 workers are working in the factory.

7. The Labour Court on appreciation of evidence held that the worker submitted his resignation and that was accepted, he also received an amount and submitted an application for withdrawal of Provident Fund, hence resignation was voluntary and the action of the management does not amount to retrenchment. Against the order of the Labour Court workman and other workers filed appeals before the Industrial Court. The Industrial Court held that, the resignation was not voluntary, there was undue pressure and influence exhorted by the petitioner on the workers

and due to aforesaid pressure and coercion the workers submitted their resignation, hence it can not said to be voluntary act and it was a design of the management to get rid off from the workers, hence the action amount to retrenchment and granted re- instatement with full back wages.

8. Assailing the aforesaid order of the Industrial Court the learned Senior Counsel for the petitioner submitted that the Labour Court has rightly appreciated findings of facts with regard to voluntary resignation and without any cosent reasons the aforesaid findings have been reversed by the Industrial Court. The Industrial Court has not given cosent reasons and evidence in reversing the findings of facts. The act of the worker of tendering resignation was voluntary, hence the impugned order of Industrial Court is bad in law. In alternative, he submitted that the company was running in losses and at present only 64 workers are working in the company and it is not in position to re-instate the workers, there is outstanding amount of Rs. 44.3 lacs against the company. Hence the re-instatement and awarding of back wages is not proper. In support of his contention the learned Counsel for the petitioner relied on the following judgments-

AIR 2001 SC 240, (1974) 2 LLJ Page 52 and 2004 Vol-II CLR 46, 2002 Vol-I CLR 214, : [1965]2SCR661 , : (1998)IILLJ 1008 SC , 1985 M.P.L.S.R. 219, AIR 2001 SC 2401.

9. The learned Counsel for the respondent worker has submitted that there is clear violation of Chapter V of the Industrial Disputes Act by the Company, the resignation was not voluntary, hence order of the Labour Court is as per law. In support of his contention the learned Counsel for the respondent has relied on the following judgments :-

2001 LLR Summary 6 - Bom. HC, 2000 II LLJ 343 Bom. HC, 1992 (64) FLR 248 SC, 1987 (55) FLR 498 SC, 2005 LLR 305 SC, 2001 I LLJ 559 SC, 2004 III LLJ 60 Uttaranchal HC, 2000 SCC [L & S] 362,1999 I MPLJ 437, 2005 LLR 275 SC, 2003 M.P.L.S.R. 245, 2004 SCC [L & S] 1081.

10. In the aforesaid facts and circumstances, main question for decision before this Court is whether the respondent and other workmen had submitted their

resignation voluntary or not, it is an admitted fact that the petitioner company has been covered by the provisions of M.P.I.R. Act and certified standing orders are applicable in the petitioner company as per 11-C of the certified standing order a permanent employee after one months service can end his employment which is as under :-

'(C) Any permanent employee desirous of leaving the employment shall give one month's notice to his departmental officer stating the reason for which he is leaving but if he so requires he may be relieved earlier than the date on which the period of notice expires.

11. It is an admitted fact of law the employment of service is a contract between employer and employee and the Section 19A of the Contract Act, 1872 gives power to set aside contract induced by undue influence which has been defined under Section 16 of the Contract Act which is as under :-

'16. 'Undue influence' defined

(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he hold a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to

dominate the will of the other.'

12. In the present case it is clear from the fact that the workers including the respondent had not been paid their wages by the petitioner for the last 8 months, even though the Manager of the petitioner in his evidence admitted that five months wages were not paid by the company due to financial crunch and company had not received supply orders in such circumstances it can easily be presumed that the company wanted to reduce the strength of the workers. Another important aspect of the case is that after submitting resignation on the next day the petitioner paid two post dated cheques including the salary and 15 days wages, which is said to be ex-gratia payment. If there was an acceptance of resignation, there was no question of payment of ex-gratia money. Another important aspect the execution by the respondent, receipt Ex. P-3 dated 12-9-2001. In the aforesaid receipt it is mentioned that I withdraw my application submitted before the Labour Court or Authorised Officers and I am waiving my right to institute any proceedings before the Court and petitioner company would be authorised to resolve the disputes of mine. It is clear that the petitioner company was exerting pressure on the workman because it can not be presumed that such receipt can be signed voluntarily. In the above background the version of the workman is reliable because his family had been facing starvation, hence he tendered resignation. The another important aspect is that resignations submitted by near about 250 workers out of 350 total work force and even after resignation the petitioner company has not appointed any new employee. From all the above facts, only one conclusion immerges that the petitioner company was in financial trouble, it wanted to reduce the work force, hence it used its financial power and forced the workers including the respondent to submit the resignation. The Labour Court completely ignored above aspects.

13. The Constitution Bench of Hon'ble Supreme Court in *Ladli Parshad Jaiswal v. The Karnal Distillery Co. Ltd. and Ors.*, reported in : [1964]1SCR270 , has considered the undue influence as per Section 16 of the Contract Act and common law of England and held as under :-

'The doctrine of undue influence under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual and temporal. The doctrine applied to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian Contract Act is founded substantially on the rules of English Common Law. The first Sub-section of Section 16 of the Contract Act lays down the principle in general terms. By Sub-section (2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled. Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is that a person who has obtained an advantage over another by dominating his will, may also remain in a position to suppress the requisite evidence in support of the plea of undue influence.' (Para 25)

14. Another Division Bench of the Hon'ble Supreme Court in *Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr.*, reported in : (1986)11LLJ171SC (landlord judgment with regard to service of contract) has held that unreasonable contract can be strike down by the Court, after analysing various provisions of contract act specially Sections 19 and 16 and also Article 14 of the Constitution. The Hon'ble Court has held as under :-

'This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No Court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms

imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form of rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The Court must judge each case on its own facts and circumstances.'

(Para 90)

15. The learned Author O.P. Malhotra in his book Law of Industrial Dispute Volume I, Sixth Edition, discussed the situation, when the resignation had been obtained under coercion-

'But cases do arise where employees allege that the resignation had been obtained under coercion, duress, misrepresentation or fraud or is a forged one. In such cases, what is normally in issue is the genuineness of the resignation. If the resignation has been procured by such methods or threats or intimidation, the consequential termination of service will be invalid, because such a resignation is no resignation in the eye of law.'

16. The Hon'ble Supreme Court further held in Chairman and M.D., NTPC LTD. v. Reshmi Constructions, Builders and Contractors, reported in 2004 Volume II SSC Page 663 as under about the principle of necessity knows no law as under :-

'Necessitas non habet legem is an age-old maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain, who is in a stronger position. Although it may not be strictly in place but the Court can not shut its eyes to the ground reality that in a case where a

contractor has made a huge investment, he can not afford not to take from the employer the amount due under the bills, for various reasons, which may include discharge of his liability towards banks, financial institutions and other persons. In such a situation, public sector undertakings would have an upper hand. They would not ordinarily release the money unless a 'no-Demand Certificate' is signed. Each case, therefore, is required to be considered on its own facts.'

17. The undue influenced has specifically been explained by Lord Denning MR in *Lloyds Bank v. Bundy*, reported in 1974 Vol. III ALL ER Page 757 as under :-

'Gathering all together, I would suggest that through all these instances there runs a single thread. They rest on 'inequality of bargaining power'. By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other. When I use the word 'undue' I do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulates for an unfair advantage may be moved solely by his own self-interest, unconscious of the distress he is bringing to the other. I have also avoided any reference to the will of the one being 'dominated' or 'overcome' by the other. One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds himself.'

18. From the above principle of law and facts and circumstances of the case it can be said that the resignation letter submitted by the workman respondent was not voluntary and the petitioner exercised undue influence and coercion and obtained same, hence the findings of the Industrial Court that there was no resignation at all are as per law.

19. The next question is that what relief the respondent worker and other workers are entitled. It is clear from the affidavit filed by the petitioner that at present only 64 employees have been working in the factory, it is running in losses, outstanding loan on the company is of Rs. 1.04 crore and the fixed assets position on 31-3-

2005 is Rs. 40.83 lacs, in such circumstances, I am of the opinion that it would not be proper to grant re-instatement. It would be just and proper to order of compensation in view of the re-instatement as ordered by Hon'ble Supreme Court in Hindustan Wire Product Ltd. v. Jaspal Singh, 2002 Vol. IX SC Page 758 : AIR 2001 SSC 2401. After acceptance of the resignation letter which would amount the termination of the services as per the order of the Industrial Tribunal the amount of back wages comes near about 1,20,000/- or more in each case. However, looking to the financial condition of the company it would not be able to bear such burden, hence in my opinion it would be just and proper to award a total compensation of Rs. 30,000/- to the each workman in lieu of re-instatement and back wages, excluding the amount which has already been paid by the petitioner company to the workman.

20. On the above facts and circumstances of the case the petition of the petitioner is partly allowed, the impugned order of Industrial Court is up held with a modification that workman would be entitled to receive Rs. 30,000/-[Rupees Thirty Thousand] as a total compensation from the petitioner.

21. It is further made clear that if the petitioner company will not pay the aforesaid amount within two months from the date of the receipt of the order, respondent workman will be entitled to get benefit as per the order of the Industrial Court and can execute the same as per provisions of law. The petition is hereby disposed of accordingly without any order as to cost.

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