(2013) 07 MAD CK 0411

Madras High Court

Case No: Writ Petition No. 2442 of 2008

L. Ravi		APPELLANT
	Vs	
The Presiding Officer in Additional Labour Court and The Management of Larson and Toubro Ltd.		RESPONDENT

Date of Decision: July 25, 2013

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2A(2)

Citation: (2013) 139 FLR 617 : (2013) 4 LLJ 15 : (2014) LLR 74

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: R. Rajaram, for the Appellant; Rita Chandrasekaran for Aiyar and Dolia for R2 and R1-Court, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.
This writ petition has been directed against the impugned award dated 31.10.2006 passed in I.D. No. 208 of 1998 by the First Additional Labour Court, Chennai, in and by which the Labour Court has held that the petitioner was not entitled to any relief from the second respondent, as the resignation letter dated 7.11.97 sent by the petitioner was accepted by the General Manager of the second respondent on the same day. Assailing the correctness of the award, Mr. R. Rajaram, learned counsel for the petitioner submitted that after the petitioner entered the service in the second respondent-Management in the year 1994 as Stores Assistant, his services were confirmed on 4.4.97 by the second respondent. As there was no complaint whatsoever against the petitioner, all of a sudden, the Store Officer called him on

30.9.97. When the petitioner, accordingly, met the Store Officer Mr. K.B. Lawrence, he informed the petitioner that he had received information to the effect that the petitioner along with Mr. Arulmoli and Mr. Anandan had received a sum of Rs. 5,000/- each as illegal gratification from one of the company''s client Jeethmull Jaichand Lal. Although the petitioner gave a statement in writing that he was not aware of any such incident, again, the petitioner was asked to meet the Deputy General Manager, on 7.11.97. After meeting the Deputy General Manager, the petitioner was informed to give a letter of resignation, failing which he would be handed over to the police for having received the illegal gratification from the customer. In view of the threat exerted on him to write the resignation letter as dictated by Mr. M.G. Narayanasamy, the petitioner, left with no other option, gave the said letter. Immediately, on 10.11.97, the petitioner posted his letter dated 8.11.97, withdrawing the resignation, followed by a lawyer''s notice dated 8.11.97, by registered post with acknowledgment due. Although the second respondent had received both the letters on 11.11.97, in law, the petitioner''s resignation letter dated 7.11.97 forcibly obtained by the Deputy General Manager stood withdrawn, for the reason that in the petitioner''s appointment order dated 3.2.97, the terms and conditions of employment are clearly given and one of the conditions shows that after confirmation in service, either party will be entitled to terminate the contract of employment by giving one month notice in writing to the other. Therefore, when one month notice in the case of employees who have been confirmed in service is mandatory for both the employee and employer to terminate the contract of employment, the letter of resignation dated 7.11.97 stood withdrawn, inasmuch as there is no provision for payment of one month pay in lieu of notice or power to waive the said notice period. When the one month notice period is mandatory, the alleged letter of resignation dated 7.11.97 received at threat by the second respondent would legally come into effect only on 7.12.97. As the second respondent gets the right either to accept or reject the petitioner''s offer of resignation only after 7.12.97, because, during the notice period of thirty days, the employee has got every right to withdraw his resignation, while so, when the petitioner had already withdrawn his resignation on 8.11.97, which was received by the second respondent on 11.11.97, the theory of acceptance of the petitioner''s resignation by the second respondent on 7.11.97 itself has no legal effect, for the simple reason that the second respondent has no right to accept the resignation before the expiry of thirty days mandatory notice period.

2. Adding further, Mr. Rajaram contended that it is a well settled legal position that the acceptance of resignation will come into effect only after it is communicated to the employee. Similarly, it is also well settled that the employee also has got the right to withdraw his resignation before the date of acceptance of the resignation being communicated to him. Therefore, even if the employer accepts the request for resignation, before the communication of the acceptance of resignation reached or was received by the employee, if the employee had already withdrawn his

resignation, the alleged acceptance of the resignation will have no legal effect, resultantly, the petitioner will be deemed to be in service. Therefore, by no stretch of imagination, it can be stated that the petitioner had left the service of the second respondent on the strength of settlement of the salary dues. Adding further, it was submitted that when the second respondent, after obtaining the alleged resignation letter by force, refused to allow him to perform his duty, the petitioner raised an industrial dispute u/s 2-A(2) of the Industrial Disputes Act. But, unfortunately, he pleaded, the first respondent-Labour Court dismissed the dispute raised by the petitioner, on the ground that he had failed to prove that the letter of resignation dated 7.11.97 was obtained under coercion and duress, by reaching a wrong conclusion that the resignation letter was accepted on 7.11.97 itself, although the letter withdrawing the resignation was received by the second respondent only on 11.11.97. Therefore, the Labour Court has wrongly concluded that the resignation came into effect on 7.11.97 itself. The said approach, he further pleaded, is legally defective.

3. Finally, it was submitted that the sequence of events and the circumstantial evidence would clearly go to prove that the resignation letter dated 7.11.97 was not a voluntary one, as it was obtained by the Deputy General Manager by threat, coercion and duress, for the reason that when the petitioner was asked to meet the Deputy General Manager on 7.11.97 and it has been the grievance of the petitioner that on the very same day, the Deputy General Manager obtained, by undue influence and threat, the resignation letter. Subsequently, the further event of posting his letter of withdrawal dated 8.11.97 on 10.11.97 by registered post with acknowledgment due goes to show that the petitioner had withdrawn his resignation within one month before the expiry of the notice period. All these vital aspects have been completely lost sight of by the first respondent-Labour Court, when it is an admitted fact that the said alleged letter accepting the resignation was posted only on 15.11.97 and it was also received only on 16.11.97 by the petitioner. But, much before 15.11.97, the petitioner had established the fact that he sent the withdrawal letter dated 8.11.97 on 10.11.97, which was admittedly received by the second respondent on 11.11.97. Pleading further, the learned counsel contended that when the law is well settled that every employee is entitled to withdraw the letter of resignation before the same was accepted by the employer and in the present case, as per the terms of the order of appointment, the petitioner is also legally entitled to withdraw the resignation, if made, within the expiry of one month notice period, the theory of acceptance of the resignation on 7.11.97 itself falls to the ground. Concluding his submission, it was also pleaded that even if it is presumed that the petitioner sent his resignation on 7.11.97, as he had already withdrawn his resignation on the very next day i.e., 8.11.97, it goes without saying that his resignation stood withdrawn, for the simple reason that after posting the letter on 10.11.97, the second respondent admittedly received the same on 11.11.97, therefore, the statutory obligation of one month notice having not

expired, before 6.12.97, the non-employment of the petitioner would amount to termination of his service. Therefore, he is entitled for reinstatement in service with back wages, continuity of service and all other attendant benefits, irrespective of the fact that the second respondent had settled the dues towards full and final settlement, as it was forcibly thrust upon him to give the colour of voluntary resignation.

4. In support of his submissions, he has also relied upon the Hon''ble Division Bench judgment of the Andhra Pradesh High Court in General Manager, BHEL Research and Development, Vikasnagar, Hyd. and others Vs. K. Rajita Suryakanta, for the proposition that the resignation can be withdrawn before it is accepted. In the said judgment, he pleaded, it has been held that a mere acceptance of resignation in the office before putting it into transmission could not be termed to be acceptance of resignation. One another judgment of the Kerala High Court in Johnson Vs. General Manager, Kerala State Road Transport Corporation, was cited for the proposition that a mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. Relying upon another judgment of the Hon''ble Supreme Court in Nar Singh Pal Vs. Union of India and Others, for yet another proposition that acceptance of retrenchment compensation cannot validate an invalid order of termination, for the reason that an order of dismissal having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained in law. In view of the above, he emphatically pleaded that the settlement of the petitioner''s salary dues on 7.11.97 would not put an end to his contract of employment. On this basis, he prayed for interference with the impugned award.

5. In reply, Mrs. Rita Chandrasekaran, learned counsel for the second respondent submitted that when the petitioner, on his own, gave the letter of resignation dated 7.11.97, which was marked as Ex.M4 before the First Additional Labour Court, and his dues were fully and finally settled by the management on the same day, it is not open to make a false case before the Labour Court that the said letter of resignation was obtained from him by threat, coercion and undue influence. Moreover, in such a situation, the burden of proof is heavily upon the petitioner to prove that the Deputy General Manager, applying heavy threat of police consequences, obtained the letter of resignation dated 7.11.97. But, unfortunately, the petitioner was not able to discharge his onus before the Labour Court. Therefore, when the Labour Court rightly reached its conclusion that the petitioner has miserably failed to establish his case that the letter of resignation was obtained by force, the contention made by the learned counsel for the petitioner that the petitioner rescinded his resignation before acceptance of the same is untenable. Moreover, when the Labour Court has accepted the case of the management that the resignation was rightly accepted by the General Manager, who only issued the order of appointment to the petitioner, the petitioner is not entitled for any relief, as the writ petition is bereft of any merits. Lastly, it was submitted that when the petitioner has made an unsuccessful attempt

before both the Labour Court and this Court that he had not voluntarily sent the resignation letter dated 7.11.97, he should not have accepted the final settlement of his dues on 7.11.97 without any protest. Having received the full and final settlement of his service dues from the second respondent on the date of submitting his resignation on 7.11.97, it goes to prove his case that the petitioner, on his own, took a decision to resign and, accordingly, received the full and final settlement, and there was no threat or force for obtaining the letter of resignation dated 7.11.97.

6. Heard the learned counsel for the parties.

7. The petitioner, having joined the services of the second respondent as Stores Assistant on 1.9.94, was confirmed in the said post on 4.4.97. After sometime, when the Store Officer Mr. K.B. Lawrence received information to the effect that the petitioner and two other employees had received a sum of Rs. 5,000/- each as illegal gratification from one of the company''s client Jeetmull Jaichand Lal, the petitioner was called upon by one of the officers of the Management for enquiry. In the said oral enquiry, it appears that a letter of resignation dated 7.11.97 was obtained by the Deputy General Manager (Material) Mr. M.G. Narayanasamy. On the said date, the entire service dues belonging to the petitioner was settled towards full and final settlement. On 10.11.97, the petitioner posted the letter dated 8.11.97 withdrawing his resignation and thereafter, he also sent a lawyer''s notice dated 8.11.97 by registered post with acknowledgment due, which were received by the second respondent on 11.11.97. Therefore, the question raised in the present writ petition is as to whether the resignation letter dated 7.11.97 given to the Deputy General Manager (Material) would stand withdrawn in view of the subsequent registered letter dated 10.11.97 sent to the second respondent, which was received by them on 11.11.97. The law is well settled today that before the resignation becomes effective, the employee can withdraw his resignation. In such an event, the resignation would stand withdrawn and the employee would be deemed to be continuing in service. In the case on hand, the terms and conditions of employment of the petitioner are governed by the contract of employment. The appointment order dated 3.2.97 also says that during the first three months of the period of probation, either party will be entitled to terminate the contract of employment by giving 24 hours notice and thereafter, for the remaining period of probation, by giving 14 days notice in writing to the other without assigning any reason. But, after confirmation in service, either party will be entitled to terminate the contract of employment, by giving one month''s notice in writing to the other. Therefore, for terminating the contract of employment, notice must be given by both parties as stated above. In view of the above position, when all is well as argued by the learned counsel for the petitioner, in the case on hand, when the petitioner is said to have tendered his resignation under force and threat, after submitting the letter of resignation dated 7.11.97, it was accepted by the General Manager, who issued the appointment order to the petitioner, admittedly, the petitioner also had received all the dues by way of full

and final settlement from the company on the same day, as a result, the relationship of master and servant came to an end. Thereafter, sending the letter of withdrawal of resignation dated 8.11.97, which was posted on 10.11.97, by taking a ground that as per the appointment order dated 3.2.97 in respect of a confirmed employee, either party will be entitled to terminate the contract of employment by giving one month notice to the other, hence, although the petitioner had submitted the letter of resignation on 7.11.97, he is entitled to withdraw it before the expiry of one month period, namely, 6.12.97, will be far from acceptance. As highlighted above, the petitioner having tendered his resignation on 7.11.97, the same was not only accepted by the General Manager, who issued the appointment order to the petitioner, but he also received all the dues by way of full and final settlement from the company on the same date, thereby bringing the relationship of master and servant to an abrupt end. Had the petitioner really been forced by threat to put up his paper, he would not have received the full dues on the same day without protest. Therefore, the judgment relied upon by the learned counsel for the petitioner i Nar Singh Pal Vs. Union of India and Others, holding that acceptance of retrenchment compensation by the employee cannot validate the order of termination, may not help the case of the petitioner, for the reason that it was a case of termination and for yet another reason that the first respondent-Labour Court also, after relying upon Ex.W4, the receipt evidencing the full and final settlement of the dues, came to the conclusion that the petitioner did not receive the dues towards final settlement under any protest. Therefore, looking at the case from any angle, the impugned award passed by the First Additional Labour Court, Chennai does not call for any interference. Accordingly, the writ petition fails and is dismissed. No costs.