(1987) 11 BOM CK 0048

Bombay High Court

Case No: L.P.A. No''s. 81 and 82 of 1987

Baba Saheb Devgonda Patil		APPELLANT
	Vs	
Managing Director, Shri Panchgonda Sahakari Sakhar Kharkhana Ltd., Ichalkaranji and another		RESPONDENT

Date of Decision: Nov. 10, 1987

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F, 25FF, 25FFF

Citation: (1988) 2 BomCR 235 : (1988) 90 BOMLR 131 : (1988) 2 LLJ 413

Hon'ble Judges: S.C. Pratap, J; B.G. Kolse Patil, J

Bench: Division Bench

Judgement

1. The appellant joined services of the first respondent-Karkhana (for short ''the Society'') as an accountant in November 1960. In April 1978 he was deputed to look after a pilot scheme sponsored by the Society. In March 1979 he returned from deputation. But from 1st July 1979 he absented from duty. This absence continued right upto June 1982. Noting this continuous absence, the Society removed his name from the roll of the employees with intimation thereof to him. He thereupon initiated proceedings u/s 78 of the Bombay Industrial Relations Act seeking reinstatement with back wages.

2. The Labour Court held that the appellant had neither been dismissed nor discharged and that the facts and circumstances clearly established voluntary abandonment of service. The appellant was, therefore, held not entitled to any relief. His application was consequently dismissed. In appeal therfrom, the Industrial Court confirmed the finding of abandonment of service. It, however, further held that the appellant was nevertheless entitled to the relief of reinstatement because the Society had failed to comply with Section 25F of the Industrial Disputes Act (hereafter ''the Act''). The appeal was consequently allowed,

the order of the Labour Court was set aside and the Society was directed to reinstate the appellant with continuity of service but without back wages.

3. Against the order of reinstatement, the Society preferred Writ petition No. 1399 of 1985 and against the order declining back wages, the appellant preferred Writ Petition No. 2969 of 1985. These petitions were heard by a learned Single Judge who held that Section 25F of the Act had no application to the facts concurrently found by the authorities below. The Society''s writ petition was consequently allowed and that of the appellant dismissed. Hence these appeals.

4. Short question for determination is whether Section 25F of the Act applies to the instant case ?

To this our answer, for reasons that follow, is in the negative.

5. Finding of fact concurrently recorded is that the appellant voluntarily abandoned service. The period of abandonment was almost three years with no material even remotely indicating any justification therefor. Case of the appellant that though reporting for duty of was not allowed to work was negatived. True it is, that length of absence from service, though relevant, is not the only factor. Nay, even long absence may, in a given case, be found to be for good and justifiable grounds. True it also is that the surrounding circumstances, though likewise relevant, are not conclusive of abandonment. Again, though every striking off the name from the roll would not amount to retrenchment, such striking off without anything more would constitute retrenchment. Intention to abandon is normally not to be easily attributed to an employee. In the end everything would ultimately depend on the established facts and circumstances of each case. It is just not possible to lay down a rigid proposition of universal application. It may, however, be generally observed that long and continuous absence for years together without any reason or justification whatever and without anything more can, as in the case of the appellant here, give rise to an inference of abandonment as drawn by the authorities below and accepted by the learned Single Judge. If so, removal of the appellant''s name from the roll of employees must, in the context, be then taken and considered to be only a formal recognition of a factual position pre-existing for a number of years. In such circumstances, deletion of name cannot be considered or held (by the mere and sole fact of such deletion) to attract Section 25F of the Act. To the facts here concurrently found and established, Section 25F of the Act would not, therefore, apply.

6. Learned Counsel Mr. Sakhare invited our attention to the Supreme Court ruling in L. Robert D''souza Vs. Executive Engineer, Southern Railway and Another, and submitted that the impugned judgment here fails to follow and apply the same. Now, on the legal position, this ruling does support the learned Counsel. Indeed, it needs to be stated that if the impugned judgment (under appeal herein) of the learned Single Judge is sought to be considered or interpreted contrary thereto i.e.

contrary to the Supreme Court ruling supra, that exercise must necessarily fair and Robert D''Souza''s ruling must prevail. To reiterate the law laid down by the Supreme Court in Robert D''Souza''s case (supra) :

"This Court has consistently held in The State Bank of India Vs. Shri N. Sundara Money, , Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, and Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, that the expression ''termination of service for any reason whatsoever'' now covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as Sections 25-FF and 25-FFF."

and further -

"Therefore, we adopt as binding the well-settled position in law that if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) 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; (iv) or termination of the service on the ground of continued ill-health (pages 333 and 334 respectively of the report).

What is held by the learned Single Judge in the judgment under the instant appeals must necessarily be restricted strictly and only to the facts concurrently found therein and established. It could not be the intention of the learned Single Judge to lay down any principle of law or any legal test contrary to or inconsistent with the legal position well expounded and firmly laid down by the Supreme Court in Robert D''Souza''s case (supra) as also consistently in a number of other rulings referred to therein. This should clear the doubts expressed by the learned Counsel Mr. Sakhare qua the judgment impugned in these appeals vis-a-vis the Supreme Court rulings including the one in Robert D''Souza''s case (supra).

7. These appeals are thus liable to be dismissed. With all this, however, justice and equity demand that the appellant-workman should not be left in the lurch. He should not be driven to go home empty handed. He was in service from November 1960. The abandonment took a formal shape finally in 1982. He had then as many as twenty-two years service to his credit and, but for the abandonment, he would have had the benefit of about thirteen years more service. He has been out of employment and his means of maintenance appear to be rather meagre. Considering these circumstances, we would direct the Society to give to the appellant an amount of rupees twenty thousand inclusive of gratuity as also ex gratia payment. In addition, the appellant would be entitled to the amount lying to his credit in the provident fund account.

8. Hence order :

(a) The first respondent-Society is directed to pay to the appellant-workman an amount of Rs. 20,000/- (twenty thousand) inclusive of gratuity as also ex gratia payment. This amount should be paid latest by 15th March 1988. In default, the Society shall pay the said amount or balance thereto with interest thereon at 15 per cent. per annum from 15th March 1988 till payment.

(b) The appellant will also be entitled to the amount lying to his credit in the provident fund account.

(c) The amount aforesaid would not be liable to Income Tax. The same constitutes only gratuity and ex gratia payment. The Society should, therefore, pay the said amount of Rs. 20,000/- without any deductions.

9. Subject to the aforesaid directions, these appeals fail and the same are dismissed but, in the circumstances, with no order as to costs.