

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.13067 OF 2007

Between:

VST Industries Limited

... **Petitioner**

And

The Presiding Officer & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P.No.13067 OF 2007**

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... **Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioner : Sri Challa Gunaranjan

^ Counsel for Respondents : GP for Labour for R1 & R3
Sri T.P.Acharya for R2

? Cases Referred:

- (i) 1994 (3) SCC Page 510
- (ii) W.P.No.17150/2006,dated 22.08.2008
- (iii) (2007) 1 SCC 610

HON'BLE MRS. JUSTICE SUREPALLI NANDA**WRIT PETITION No.13067OF 2007****ORDER:**

Heard learned Senior Designate Counsel Sri Challa Gunaranjan, appearing on behalf of the petitioner, learned Government Pleader for Labour, appearing for respondent Nos.1 & 3 and Sri T.P.Acharya, learned counsel appearing on behalf of the respondent No.2.

2. The petitioner approached the court seeking prayer as under:

"... pleased to:

(1) call for the records culminating in the Impugned Award dated 20/01/2007 passed in I.D. No. 116 of 2003 by the Learned 1st Respondent viz., the Presiding Officer, Labour Court, Hyderabad, as published by the Respondent No.3 on 19/06/2007 vide G.O. Rt. No.982 dated 26/04/2007;

(ii) and quash the same by issuance of a Writ, more particularly one in the nature of a Writ of Certiorari or any other appropriate Writ, Order or Direction, while declaring it as totally arbitrary, nonest and without jurisdiction; and

(iii) pass such further order or orders..."

3. PERUSED THE RECORD :

A) Counter affidavit on behalf of respondent No.2, in particular paragraph Nos. 12, 13 and 14, read as under:

12. The statements made in para 10 are totally false and misleading. In this regard I submit that after receipt of the legal notice dated: 16-7-2003 issued by me on 19-7-2003, the petitioner had in a hurry accepted the resignation and prepared a letter dated: 21-7-2003 and sent to my residence address through courier though I was very much in the office just to make the false claim which is being put up now. If the acceptance was on 10-7-2003 and the same was shown to me on 12-7-2003 and I had refused to receive the same, the same would have been incorporated in the said letter of 21-7-2003. But in a hurry they have dispatched the said letter on 22-7-2003 through courier after receipt of my notice dated: 16-7-2003 on 19-7-2003 and therefore the statement that the letter dated: 21-7-2003 was dispatched in the early hours of morning on Monday, 21-7-2003 is totally false and misleading.

13. In reply to paras 11 to 14, I submit that I issued a legal notice dated: 16-7-2003 to the petitioner and also to others including Mr. Milan Wahi by name and the same was received on 19-7-2003 by them. In the said legal notice, I had categorically mentioned that the resignation was obtained by force and thus demanded them not to act upon it and return the same to me. Without referring to it, a letter dated: 21-7-2003 was issued. For the legal notice issued by me reply dated: 24-7-2003 was given. In the

said reply the petitioner had categorically stated that the resignation was accepted in terms of letter dated: 21.7.2003 and there is no reference of 10-7-2003 and also 12.7.2003 incidents. This makes it very clear that after receipt of my legal notice dated: 16.7.2003, the petitioner had sent reply dated: 24.7.2003 and prevented me from entering into the office from 24.7.2003. This action of the petitioner is nothing but termination of my services.

14. I submit that according to petitioner's letter dated: 21-7-2003 and the counter in I.D. there were certain financial irregularities on my part and when I had categorically stated in my legal notice dated: 16.7.2003 that the resignation was obtained by force and demanded them not to act upon it, issuing the letter dated: 21.7.2003 amounts to terminating my services without conducting an enquiry into the alleged irregularities and without giving me an opportunity in that regard. Hence, the Hon'ble Labour Court rightly allowed my I.D.

4. The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, is as under:

a) The petitioner is a registered company and is engaged in the business of manufacture and sale of cigarettes. The 2nd respondent herein was one of the employees employed as a

member of Sales Administrative Staff – Grade-II in the petitioner company.

b) Subsequently, the Petitioner came to know about certain irregularities pertaining to the 2nd respondent's work and his conduct and the 2nd respondent resigned from the post and requested the Mr. Milan Vahi, the then Trade, Marketing and Distribution Manager in the petitioner company and requested him to settle the accounts.

c) The Resignation of the 2nd respondent was accepted, and the 2nd respondent requested Mr. Milan Vahi, to convert his resignation letter into an application under V.R.Scheme. Mr. Milan Vahi informed the 2nd respondent that there was no V.R. Scheme in vogue, at the time and since the 2nd respondent's resignation was already accepted such a request cannot be considered.

d) That the petitioner was issued a legal notice dated 16.07.2003 by the 2nd respondent's counsel which contained several contradictory statements and the resignation of 2nd respondent was obtained under force and coercion and was concluded demanding return of the resignation letter.

e) Subsequently, the petitioner replied to the legal notice by denying all the allegations and stated that the resignation had already been accepted and the 2nd respondent would be relieved from duty on 08.08.2003 and that he cannot be considered as an employee thereafter and was advised to withdraw the notice.

f) However, the Petitioner was served with summons from the Labour Court, under the petition filed under section 2-A(2) of the Industrial Disputes Act, 1947 and an interim order dated 06.08.2003 was passed by the 1st respondent in the Interim Application filed by the 2nd respondent, directing the petitioner to continue the 2nd respondent in service by suspending the letter dated 21.07.2003 till the disposal of the main case.

g) Further it is the case of the petitioner that Respondent No.1 vide order dated 15.09.2003 dismissed the I.A. and the interim order granted earlier stood vacated. Consequently, the 1st respondent dismissed the I.D. vide order dated 01.10.2003 filed by respondent No. 2. Aggrieved by the same, the 2nd respondent filed W.P. No.1374 of 2004 and this Court by its judgment dated 17.02.2005 allowed the same by setting aside the impugned award and remitting the matter back to Labour Court (1st Respondent herein) for fresh disposal.

h) The 1st respondent after hearing both the parties and reserving the I.D. for Award passed an award dated 20.01.2007, in the I.D. No. 116 of 2003 directing the petitioner herein to reinstate the 2nd respondent into service with continuity of service and all other attendant benefits including back wages and to implement the award within a month. Aggrieved by the said award passed by the 1st respondent, the present Writ Petition is filed.

DISCUSSION AND CONCLUSION:

5. On perusal of the record, it is evident that the impugned award, dated 20.01.2007 passed in I.D.No.116 of 2003 by the Presiding Officer, Labour Court-I-A.P.Hyderabad, dealt with two issues in the present case, which are listed hereunder:

- (i) Whether the petitioner is a worker within the meaning of Section 2 (s) of the I.D.Act ?**
- (ii) Whether the letter of resignation obtained by respondent No.II is under coercion and threat or voluntary?**

6. In so far as the first issue is concerned:

- (i) Whether the petitioner is a worker within the meaning of Section 2 (s) of the I.D.Act ?**

This issue is dealt with at paragraphs 9 to 14 of the impugned award, dated 20.01.2007, passed in I.D.No.116 of 2003 by the 1st respondent, in particular, at para No.10, and the same is extracted hereunder:

10. On behalf of the management one Y.B.Reddy is examined as MW-1 and he deposed that petitioner worked as Sales Administrative staff grade-I and the said post is managerial and supervisory post and the petitioner discharged duties in the respondent no.1 company in supervisory cadre. He submits that the petitioner is directly in-charge of budget expenses to a tune of Rs.1.00 lakh per annum and he maintains records and he is responsible for revenue administration of expenses of Rs. 10.00 lakhs per month. He workout Rs:20.00 lakhs towards advertisement expenses. He was also authorized to bypass credit controls customers of respondent no. 1 company and he authorized to pass 75 claims into SAP and follow his reimbursement regularly. He has 100 sales orders and two purchase orders regularly and he is having power to go late the sales data of 7 members and 17 main dealers in every week. **It is therefore according to MW-1 that the nature of job carried by the petitioner is only that of supervisory in nature and he is having independent power while performing his duties.** Petitioner is also further accountable for execution of customers orders depending upon availability of funds and ensure confidence with credit limits. He is responsible for maintaining and monitoring to update information on

repayments/collections/claims SAP and to provide financial formation to the customers. He was also acting as liaison to the entire down and in-charge of receiving internal orders for expenditure and SAP and remitting the same. He is also placed in-charge to ensure office administration and smooth running of the office by coordinating Area Sales officers and Circle marketing officers to ensure smooth functions, stocks and information. Participating and preparation of industry statistics and other sales matters etc. It is therefore according to MW-1 that the petitioner is engaged with numbers of accountabilities and involved in the management activity. All these duties are performed by the petitioner in accordance with his job profile Ex.M-4 which is a part and parcel of his service agreement dt.21-5-2001. (Ex.M-4). He was also drawing a salary of Rs. 16000/- per month. Therefore MW-1 submitted that the petitioner is not a worker and as such he cannot maintain this petition Under Sec.2-A(2) of the I.D.Act. 1947. The designation of the petitioner as per appointment letter Ex.M-1 is only Sales Administrative Staff Grade-II later on he was promoted as Grade-1. The nomenclature of the post does not disclose to be that of a managerial or supervisory cadre. It is specifically sales administrative staff. It is a fact that the petitioner is drawing a salary of Rs.16000/- when he had been discharged from service for the alleged submission of resignation, though his salary is more than Rs. 16000/- to determine whether he has performed a job of manager or of a clerical job. It is to be seen from the nature of duties he had carried out in the

respondent no. 1 company all along his services. The functions discharged by the petitioner as stated by MW-1 do not show that certain number of employees are working under him and he was heading those employees and giving suitable directions for fulfilment of the task and report to him. **The evidence of WW-1 categorically disclose that he is working under Area Sales Officer, Circle Manager and Regional Managers. There are no employees under him. The various jobs he mentioned numbering 10 are clearly indicates that the job performed by the petitioner is only of clerical nature.**

7. It is observed in the conclusion arrived at para No.10 by the 1st respondent that the 1st respondent rejected entire material on record, in particular, the specific uncontroverted evidence on oath given by MW1 which had been referred to in the beginning at para No.10 and the 1st respondent ignoring all the evidence on record held that various jobs mentioned 10 in number clearly indicate that the job performed by the petitioner is only of clerical nature. But in fact, according to MW1 the petitioner is engaged with number of accountabilities and involved in the management activity.

8. The Apex Court in the judgment reported in 1994(3) SCC page 510 in S.K.Maini v CaronaSahu Co. Ltd. and others vide its judgment dated 8th March, 1994 at para Nos. 3 and 6 observed as under:

3. The appellant Shri S.K. Maini was working as the Shop Manager/ In-charge of the respondent-Company M/s CaronaSahu Company Limited. On an allegation of misconduct against the appellant, a domestic enquiry was caused by the respondent-Company and by order dated March 12, 1981 the service of the appellant was terminated. On September 28, 1981, Government of Punjab referred the following dispute for adjudication to the Labour Court, Jalandhar: "Whether the termination of service of Shri S.K. Maini is justified and in order? If not, to what relief and amount of compensation is he entitled?"

6. The learned Judge was of the view that although some of the duties like maintaining accounts, filling certain pro formas were clerical in nature, but the major job of the employee concerned was administrative or managerial. Accordingly, the employee was not workman under Section 2(s) of the Industrial Disputes Act.

The Supreme Court in the said Judgment at para No.9 also observed that if the main work is of manual,

clerical, or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of workman as defined in Sec.2(s) of the Industrial Disputes Act.

9. A bare perusal of the impugned Award para No. 10 clearly indicates that the various jobs performed by the Petitioner are Supervisory/Managerial in nature and therefore the finding recorded by the 1st Respondent at para No.10 of the impugned Award dated 20.01.2007, ignoring the categorical evidence on oath given by MW-1, which had remained uncontroverted absolutely is erroneous. This Court opines that the findings recorded and the conclusion arrived at para No. 10 pertaining to the issue referred to above had been predetermined by the 1st Respondent, since the 1st Respondent has to examine carefully the nature of work whether the same is supervisory/ managerial or clerical but the 1st Respondent failed to do so.

10. High Court of Andhra Pradesh at Hyderabad in its judgment dt. 22.08.2008 passed in W.P.No.17150/2006 in H.Rama Murthy vs. KRD Technologies Ltd., & Others, at para No.10 observed as under :

10. The remedy, under various provisions of the Act such as 2-A(2), 10 and 33-(C)(2), is available, if only the individual, in whose favour the remedy is claimed, is a workman. The word 'workman' is defined under Section 2(s) of the Act, as under:

2(s). 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or, as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an Officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions, mainly of a managerial nature.

11. In so far as the 2nd issue is concerned

i) Whether the letter of resignation obtained by respondent No.2 is under coercion and threat or voluntary?

This issue is dealt with at paragraph Nos. 15 to 23 of the impugned award, dated 20.01.2007, passed in I.D.No.116 of 2003 by the 1st respondent.

12. Cross Examination of Respondent No.2 dated 23.01.2006

32)I am a graduate in commerce. I can read and understand English.....It is true that I was promoted from Grade-II to Grade - I with effect from 1/10/1990....It is true that I never worked under Mr. Milan Vahi at any time. I never worked with Mr. Milan Vahi at any time and there is no privity of contract of service between me and him. I was drawing salary Rs.16,000/- at the time of my resignation....

33)Ex. W-5 is received by me by post. I have read Ex.W-5 on 22/7/2003. Ex.W-5 they have mentioned that my resignation is accepted I would be relieved on 8thAugust, 2003.....I am not a member of any workers Union....

34) Ex.M-3 resignation letter is in my hand writing.....I am no enmity with the management till 9/7/2003.....I have not lodged any complaint against the respondent in support of my allegation that I was called inside the room, confine and was forced to resign from the job. I have not sent any rejoinder to Ex.W-6 denying the contents therein.....It is true that the job profile determines my duties.

35) It is true that I have not disputed about the Resignation letter though the resignation was on 09/07/2003....I have not submitted any letter withdrawing my resignation.....I have not produced any Medical Certificate in support of my allegation that I was subjected to mental shock....

36) ...I attended to duty till 23/07/2003...

37) My native is Karimnagar, but I am residing in Hyderabad and as well as in Karimnagar. I am not working at anywhere. There is no such necessity for me to put any efforts to secure employment...

13. A bare perusal of the unequivocal answers of the Respondent No.2 during his cross examination (referred to above) clearly indicates clear and unequivocal admission on the part Respondent No.2 and hence no inference of the resignation having been obtained by force as done in the Award could be drawn.

14. Cross Examination of WW-2 dated 18.04.2006, in particular, Para No. 5 as observed under:

5). "It is not true to say that I was never employed by the 1st Respondent at any time and that there is no privity of contract of service between me and the 1st respondent company. The contents of the affidavit in lieu of Chief examination is read over to me. It is not true to say that the petitioner is a friend of mine..... I do not have any proof to prove my contention in my affidavit in lieu of Chief examination that I was employed by the 1st respondent and I am also not having any proof that I was in the marketing office of the 1st respondent Company on 09/07/2003.....It is true that the contents/pleadings in lieu of my chief examination are explained to me by the Petitioner and the petitioner also stated the same to me,

and the Petitioner asked me to depose the evidence on his behalf as mentioned in his affidavit....."

15. A bare perusal of the evidence of WW-2 Office boy clearly indicates that MW-2 Mr. Milan Bahi had forced him to submit a resignation vide Exhibit M3 and the same got accepted by the Vice-President – Marketing and Distribution in a most hasty manner and such behaviour is intolerable and the discharge of the petitioner from service on the basis of Ex-M3 is not correct. This Court opines that strong and reckless allegations have been made by MW-2 having forced and forged the respondent No.2 to tender resignation, but however, the record indicates that there was not even a suggestion of the various aspects/events that had supposedly taken place as stated by respondent No.2 in his evidence and on this kind of evidence when the entire burden in such cases lay upon the respondent No.2 to prove with cogent evidence the allegations of threat, force and coercion, the same however, had not been followed and an inference had been drawn by the 1st respondent in the absence of any suggestion to the very person who is supposed to have indulged in such force, threat or coercion. This Court

opines that the two issues framed by the Court by the 1st Respondent had been dealt without application of mind and by giving credence to the deposition of WW-2 who admittedly was not an eye witness.

16. Relevant extracts of Paragraph No.21 of the impugned Award of the 1st Respondent dated 20.01.2007,reads as under:

21. The fact remains that the petitioner had submitted his resignation vide Ex.M-3. The wording in Ex.M-3 do not disclose any specific reason for submission of resignation. The petitioner having worked for more than 7 years and his services are also confirmed in the respondent company, he is drawing a salary of Rs.16500/- made the petitioner to submit resignation all of a sudden when the respondent No.2 took over the charge of Circle Regional Manager as a Additional in-charge he appears to be very monstrous.

MW-2 instead of following legal procedure for taking disciplinary action against the petitioner in accordance with law,he behaved himself as a over powered, has falsely obtained a resignation from the petitioner, put him in dire consequences which according to him is in gross violation of principles of natural justice and a vindictive attitude of the respondent management.

17. A bare perusal of the above referred paragraphs clearly indicates no justification or reasoning in arriving at the said conclusion by the 1st Respondent.

18. Para No.23 of the impugned Award of the 1st Respondent dated 20.01.2007 passed in I.D.No.116/2003 is extracted hereunder :

23. The facts and circumstances of the case in hand are similar to that the case relied upon. The petitioner issued a legal notice vide Ex.W-1 informed the respondent management that he did not submit the resignation voluntarily inspite of that the respondent have taken a drastic step of accepting the resignation without verifying that whether the submission of the resignation is voluntarily. No opportunity was given to the petitioner to reconsider his view and think about once again before resignation is accepted. According to the respondent the petitioner had felt guilty of the irregularities committed by him and submitted his resignation and the same is not supported with any material evidence. **The evidence of WW-2 office boy purely supports that MW-2 Mr. Milan vahi has forced him to submit a resignation vide Ex.M-3 and got accepted by the Vice President-Marketing & Distribution in a most hasty manner. Such behavior of MW-2 is intolerable and the discharge of petitioner from service on the basis of Ex.M-3 resignation is not correct.**

19. A bare perusal of the contents of the above para indicates that the Respondent No.2 had issued a legal notice vide Ex.W-1 informing the Petitioner Management that he did not submit his resignation voluntarily and inspite of that Petitioner had taken a drastic step of accepting the resignation without verifying whether the submission of resignation is voluntary. This Court opines that the issue all through had been with regard to resignation, its acceptance and it being not voluntary.

20. Section 2-A(2) of the Industrial Disputes Act, 1947 reads as under :

2A. [Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. [*Inserted by Act 35 of 1965, Section 3 (w.e.f. 1.12.1965).*]

2. Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act

and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

21. A bare perusal of the judgment of the Apex Court dated 07.11.2006 passed in Bharat Heavy Electricals Ltd., Vs. Anil & Others reported in (2007) 1 SCC 610 in particular para No. 18 reads as under :

18. There is one more reason for coming to the above conclusion. There is a difference between an individual dispute which is deemed to be an industrial dispute under Section 2-A of the said 1947 Act on one hand and an industrial dispute espoused by the union in terms of [Section 2\(l\)](#) of the said 1947 Act. **An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under [Section 2\(l\)](#) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case.** In the case of RadheyShyam and anr. v. State of Haryana and anr., it has been held after considering various judgments of the Supreme Court that, Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in [Section 2\(k\)](#) of the Industrial Disputes Act, 1947 (which is similar to [Section 2\(l\)](#) of the said 1947 Act). [Section 2-A](#) does not cover every type of dispute between an individual workman and his employer. [Section 2-A](#) enables the individual worker to raise an industrial dispute, notwithstanding, that no other workmen or union is a party to the dispute. [Section 2-A](#) applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities etc.

22. This Court opines that the present case is an issue with regard to resignation, its acceptance and it being voluntary, but however, there is no discussion nor any finding recorded that there was any force or coercion. There is no reasoning in the impugned Award as to how Sec.2-A could be applied to the present case without even a finding having been brought on record.

23. This Court opines that the pleas put-forth by the learned counsel appearing on behalf of the Respondent are untenable in the light of the discussion and conclusion arrived at as above and the judgments relied upon by the learned counsel appearing on behalf of the Respondent do not apply to the facts of the case.

24. This Court opines that the 1st Respondent failed to give any reasons in support of its findings. On the face of it, the matter requires reconsideration and fresh disposal on merits.

25. Taking into consideration the above said facts and circumstances of the case and the view of the Apex Court in the judgements reported in:

(i) 1994 (3) SCC Page 510 in S.K.Maini v. CaronaSahu Co.Ltd.,

(ii) W.P.No.17150 of 2006 dated 22.08.2008 in H.Rama Murthy v. KRD Technologies Ltd., & others,

(iii) (2007) 1 SCC 610 in Bharat Heavy Electricals Ltd., v. Anil & Others, (referred to and extracted above),

the writ petition is allowed and the impugned Award dated 20.01.2007 passed in I.D.No.116 of 2003 passed by the Presiding Officer, Labour Court-I-A.P. Hyderabad, is set aside and the matter is remitted to 1st Respondent for fresh disposal on merits in accordance with law after giving due notice and reasonable opportunity of personal hearing to both sides expeditiously and since the subject issue had been pending from the year 2007, preferably within a period of 3 months from the date of receipt of the copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Date: 03.06.2024

Note :L.R. Copy to be marked.
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