

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5297 of 2022

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KIRANBHAI HARKISHANDAS PATEL ALIAS KIRANBHAI HARKISHANDAS
BHANDARI

Versus

M/S MEET CHETANS PRIVATE LIMITED
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Appearance:

MS SIDDHI VADODARIA for THAKKAR AND PAHWA ADVOCATES(1357)
for the Petitioner(s) No. 1

MR YOGI K GADHIA(5913) for the Respondent(s) No. 1
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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 05/04/2024

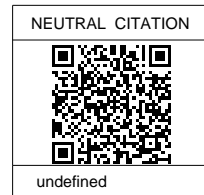
ORAL ORDER

1. Workman has filed this petition challenging the award of the Labour Court, Valsad dated 18.12.2020 in Reference (LCV) No.163 of 2011, wherein the reference seeking reinstatement with continuity of service and backwages has been denied.

2. Considering the issue involved and with the consent of the respective parties, the matter is taken up for final disposal.

3. Facts in brief referred in the petition are as under:

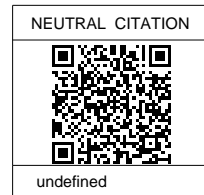
3.1. It is case of the petitioner – workman before the Labour Court that he was appointed as Machine Operator in



production department w.e.f. 15.10.1986. He continued to work till 07.04.2011, however, the owner of the respondent company terminated his services w.e.f. 08.04.2011. For his termination, the petitioner workman raised dispute before the Labour Court, Valsad registered as Reference (LCV) No.163 of 2011. Upon adjudication, the Labour Court, rejected the reference, aggrieved by which, the petition is filed.

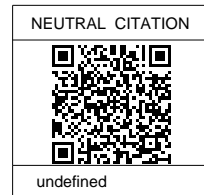
4. Heard Siddhi Vadodaria, learned advocate for the petitioner workman and Mr. Yogi Gadhia, learned advocate for the respondent Company.

5. Ms. Vadodaria, learned advocate for the petitioner workman submitted that the award of the Labour Court dated 18.12.2020 is erroneous because it is not a question of transfer but it is a question of termination. The Labour Court in the reference held that the workman completed 240 days in a year, despite that no procedure was followed prior to termination. The contention of the respondent – Company before the Labour Court, Valsad that on account of transfer, the petitioner – workman abandoned the work is incorrect because not a single document was produced justifying transfer of the petitioner from one department to another department. She, therefore, submitted that when the issues were framed in relation to the termination of the workman being illegal or

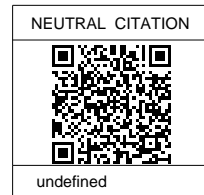


not, the Labour Court had erred in arriving at a finding that it was not a case of termination but of transfer. She reiterated that without any documents suggesting transfer, the award deserves to be quashed and set aside. In support of her submissions, she relied upon communication dated 03.08.2011 from the petitioner - workman to conciliation officer. From the said communication it is clear that the petitioner-workman said that he went to work but not permitted, therefore it was case of termination and not transfer. In the letter dated 03.08.2011, the oral termination by the owner of the Company and willingness of the petitioner – workman to join duties was indicated. She, thus submitted that the award of the Labour Court deserves to be quashed and set aside.

6. On the other hand, Mr. Gadhia, learned advocate for the respondent – Company submitted that the award of the Labour Court is just and legal because the petitioner – workman was appointed as a Helper in the respondent – Company. Referring to the initial appointment order at mark 31/1, Learned Advocate submitted that as per terms of appointment, the workman can be transferred from one department to other or any branch of the company, situated in India. The said condition was reiterated in the confirmation order at Exh.31/2. The workman joined with respondent-company as Helper on 15.10.1986 and, thereafter on 07.04.2011, was asked to

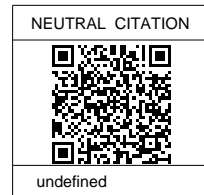


perform his duties in some other department. On account of transfer of the petitioner workman from one department to other department, he abandoned his work. In support, he relied upon letters dated 14.06.2011 and 29.06.2011 to submit that the petitioner – workman was informed to join duties as Helper because he was working as helper prior to 07.04.2011. The allegation of oral termination was denied and intention of the petitioner – workman, not to work on the transferred department was also indicated in the said letters. Copy of both the letters i.e. communication dated 14.06.2011 and 29.06.2011 were marked to the conciliation officer also where the dispute was raised. Despite that the workman choose not to join duties on the transferred department and to work as Helper which is evident from his cross-examination at Exh.8. Placing heavy reliance on the cross-examination, learned advocate submitted that service of both the communications dated 14.06.2011 and 29.06.2011 were accepted by the workman. In the cross-examination workman admitted that he had not responded to the said letter. More so, from reading of cross-examination, it is evident that the workman was ready to work as Helper in the packing department where he was working prior to 07.04.0211. Very categorically he stated that he would not be joining except packing department because he was operating the machines. Thus, conjoint reading of communications referred herein above and the cross-



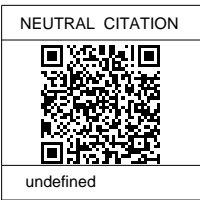
examination at Exh-8, it is evident that the workman objected to work, since he was transferred to other department and was not ready to work there. On the aspect of no document produced in relation to the transfer, learned advocate submitted that since it was one of the service conditions referred in the appointment order and the petitioner workman was only transferred from one department to another department, no communication was addressed. There is no denial to communications of the respondent – Company. On the aspect of response given to the conciliation officer at Exh.24, learned advocate submitted that the said letter also refers that he is ready to join the duty in the department which he was earlier working. Therefore, the award of the Labour Court rejecting the reference on the ground that there is no case of illegal termination is appropriate and no interference is called for.

7. Considered the submissions. Revisitation of facts reveals that the workman worked as Helper from 15.10.1986 to 07.04.2011. The order of initial appointment and confirmation at Mark 31/1 and 31/2, refers to condition of transfer. If these two appointment orders are read with the communications of the respondent Company dated 14.06.2011 and 29.06.2011, it indicates appointment of the petitioner-workman as Helper and calling him to join work as Helper in



Fixing department. The reluctance on the part of the petitioner workman to join another department is evident from his cross examination at Exhi-8. The reason for his reluctance was also spelt stating that he was machine operator. Cross examination also indicates service of letters of the company to him and no reply to the same. Further, in the reply dated 25.07.2011, before conciliation officer the company had showed its willingness to take him as Helper in the Fixing Department. Therefore, in the opinion of this Court, from conjoint reading of all documents, it is clear that the workman abandoned the work from 08.04.2011 because he was asked to work with the fixing department of the respondent Company. Therefore, the response of the workman to conciliation officer vide letter dated 03.08.2011 at Exh.24 on which heavy reliance is placed by, in the opinion of this Court, is of no help to the workman because in the said letter also it was stated by the workman that he was ready to join duty where he was continuously working since many years. Thus, it cannot be denied that he was reluctant to join another department where he was asked to work. Therefore, in view of the above finding, in the opinion of this Court that the award of the Labour Court dated 18.12.2020 in Reference (LCV) No.163 of 2011 does not call for any interference.

8. However, considering more than 20 years of service by the



workman and pendency of litigation from the year 2011, this Court in facts and circumstances of this case deems it appropriate to grant Rs.1 lakh to the petitioner – workman for his service and legal dues. This amount is awarded in the facts and circumstances of this case, and shall not be treated as precedent.

9. With the above, the present petition is disposed of. Notice discharged.

(MAUNA M. BHATT,J)

NAIR SMITA V.