

A M/S. CREATIVE GARMENTS LTD.

v.

KASHIRAM VERMA

(Civil Appeal No. 5758 of 2012)

B MARCH 16, 2023

[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

Labour Laws: Labour dispute – Non-mentioning of the permanent address of the workman, addressed furnished is care of Union, and as such efforts to serve him at the given address remained futile – Held: Effective relief can granted to a worker only if the permanent address of the workman is furnished in the pleadings – Issuance of directions to the authorities working under the various labour laws to take corrective measure – Parties to furnish their permanent address – Even if the representative of the workman is appearing, he shall furnish permanent address of the workman as well – Mere mentioning through labour union or authorised representatives, who are sometimes union leaders or legal practitioners not sufficient – Service of notice of workman to be affected on the permanent address of the workman – On facts, the employee did not furnish his own address but is through some Union – Management sent various communications by Registered Post/ Courier requesting him to report for duty, but there was no response – Conduct of the employee itself establishes that he is no more interested in employment – Thus, the award passed by the labour court directing reinstatement of the employee with continuity of service as upheld by the High Court, set aside – Judicial directions.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5758 of 2012.

G From the Judgment and Order dated 10.06.2010 of the High Court of Bombay in AN No.781 of 2006 in WP No. 1607 of 2007.

Ms. Sonal Gupta, M/s. Parekh & Co., Advs. for the Appellant.

H

The Judgment of the Court was delivered by

A

RAJESH BINDAL, J.

1. The Management has filed the present appeal challenging the order passed by the Division Bench of the High Court of Judicature at Bombay dated 10.06.2010 *vide* which the order passed by the Single Bench dated 06.07.2006 was upheld. As a consequence, the award of the Labour Court was held to be valid. The Labour Court *vide* its award dated 28.10.2005 had directed reinstatement of the respondent with continuity of service from 08.12.1997 with full back wages.

B

2. A perusal of the paper-book shows that the notice in the Petition for Special Leave to Appeal was issued on 22.10.2010. As the respondent remained unserved, fresh notice was directed to be issued on 13.12.2010. Dasti service was also permitted through nearest civil court or trial court. On 24.10.2011, this Court being not satisfied that service of the respondent had been effected, directed for issuance of fresh notice subject to deposit of ₹ 10,000/- to be paid to the respondent for his travelling expenses as and when he enters appearance. Dasti service was also permitted. Fresh notice was issued on 24.07.2011 as the service was not complete. As per Office Report dated 14.12.2011 in terms of the affidavit filed by the appellant, the service on the respondent was complete but he had not put in appearance till date. Meaning thereby that he is not interested to defend the present litigation.

C

D

E

3. A perusal of the award of the Labour Court shows that the address of the respondent is through some Union and he had not furnished his own address. A perusal of the order passed by the Single Bench of High Court shows that the respondent workman was represented, hence he knew about the challenge to the award of the Labour Court and also dismissal of the Writ Petition.

F

4. The Order dated 07.11.2006 passed by the Division Bench of the High Court in the appeal filed by the Management against the order passed by the Single Bench shows that the statement of the counsel for the Management was recorded that the Management will reinstate the workman and he shall be communicated accordingly so as to enable him to report for duty. Challenge was to the award of the Labour Court only to the extent of award of back-wages. The appeal was admitted. Thereafter, the Management had sent various communications by Registered Post/Courier on 08.11.2006, 10.11.2006 and 24.11.2006

G

H

A requesting the respondent to report for duty. However, there was no response.

5. Further, when the matter was taken up by the Division Bench of the High Court on 30.10.2007, the statement of counsel for the workman was recorded that he will report for duty on 05.11.2007 at

B 10:00 A.M. The order reads as under:

C *“1. The learned Counsel appearing for the Respondent No.1 states that the Respondent No.1 will report for work at Amir Industrial Estate, Sun Mill Compound, Lower Parel, Mumbai. The learned Counsel for the appellant states that if the respondent No.1 comes to Amir Industrial Estate, Sun Mill Compound, Lower Parel, Mumbai, at 10.00 a.m. on 5.11.2007 and meet Mr. S.K. Kedia, he will be permitted to join immediately. The statements are accepted. Put up on 19.11.2007.”*

D 6. The Management sent another letter to the workman on 26.12.2007 specifically mentioning that his inaction to report for duty would amount to presumption that he is no more interested to join the duty. Request was also made to him to furnish his permanent address.

E 7. When the matter was taken up for hearing, the learned counsel for the appellant on instructions from his client submitted that the respondent has not reported for duty till date. Meaning thereby that he is no more interested in joining duty and must have been gainfully employed after leaving the job in question.

F 8. Considering the aforesaid factual matrix, in our opinion the award of the Labour Court granting back-wages and continuity in service to the respondent workman deserves to be set aside as he has not reported for duty despite the statement made by his counsel in Court on 30.10.2007. The present appeal cannot be kept pending as the conduct of the respondent itself establishes that he is no more interested in employment what to talk of back-wages.

G 9. The appeal is accordingly allowed. The impugned order passed by the High Court and the award of the Labour Court are set aside.

H 10. A sum of ₹ 10,000/- which was directed to be deposited by the appellant before this Court *vide* order dated 21.04.2011 be refunded back to the appellant.

11. Before parting with the order, this Court would like to direct the authorities working under the various labour laws to take some corrective steps. A

12. It is a case in which permanent address of the workman has not been mentioned. The address furnished is care of Union. All efforts made to serve him at the given address remained futile. Finally, appellant served the respondent and filed affidavit. The service was at the address of the Union, which may not be interested to pursue the case on behalf of the workman. B

13. Effective relief can be granted to a worker only if the permanent address of the workman is furnished in the pleadings. C

14. Under section 15(2) and section 16 of the Payment of Wages Act, 1936, if an application is filed by an individual, there is a specific requirement of furnishing permanent address of the applicant as per Form-A. If an application is to be filed by a group of persons all the applicants are required to furnish their addresses as per Form-B annexed to Payment of Wages (Procedure) Rules 1937. D

15. Under Workman Compensation Act 1923, when an application is filed by a workman for compensation, he is required to furnish his residential address while filing an application in Form-F (see Rule 20). In cases of compensation for fatal accident a workman is required to furnish his permanent address on Form-A (see Rule 6(1)) appended with Workman Compensation Rules, 1924. E

16. Under Industrial Disputes Act, 1947, for initiating the proceedings under the Act, mentioning of addresses of the parties to the disputes is required as contained in Forms-I, J and K appended with Industrial Dispute (Central) Rules, 1957. F

17. Under section 20(2) of Minimum Wages Act, 1948 if an applicant files an application for payment of wages, he is required to mention his residential address as contained in Form-VI framed under the aforesaid Act. G

18. Under Payment of Gratuity Act 1972, when an employee makes an application for payment of Gratuity, he is required to mention full address as per Form-I (see Rule 7(1)) appended with Payment of Gratuity (Central) Rules 1972. H

A 19. If any party approaches any authority for a relief, the first thing required to be mentioned is his complete address. Mentioning of address of the representative is secondary as someone may like to appear in person. Even in Civil Procedure Code, 1908, Order VI Rule 14A provides that in every pleading, the parties are required to furnish their complete addresses and if there is any change it is also required to be informed.

B 20. Supreme Court Rules, Form-32 of the Supreme Court of India Handbook on Practice and Procedure and Office Procedure mentions that in every petition, the petitioner and respondent are required to furnish their complete addresses.

C 21. To simplify labour laws and strengthening the protection available to workers, including unorganised workers in terms of statutory minimum wages, social security and healthcare of the workers. The Parliament has consolidated 29 labour laws under 4 category of Codes, namely, Wage Code, Social Security Code, Occupational Safety, Health and Working Conditions Code and The Industrial Relations Code. Different existing statutes, as consolidated in four Codes, are as under:

1. **Code on Wages, 2019**

- E (i) The Payment of Wages Act, 1936;
(ii) The Minimum Wages Act, 1948;
(iii) The Payment of Bonus Act, 1965;
(iv) The Equal Remuneration Act, 1976.

F 2. **Occupational Safety, Health and Working Conditions Code, 2020**

- G (i) The Factories Act, 1948;
(ii) The Mines Act, 1952;
(iii) The Dock Workers (Safety, Health and Welfare) Act, 1986;
(iv) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
H (v) The Plantations Labour Act, 1951;

- (vi) The Contract Labour (Regulation and Abolition) Act, 1970; A
- (vii) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- (viii) The Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; B
- (ix) The Working Journalist (Fixation of Rates of Wages) Act, 1958;
- (x) The Motor Transport Workers Act, 1961; C
- (xi) The Sales Promotion Employees (Condition of Service) Act, 1976;
- (xii) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
- (xiii) The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981. D

3. Industrial Relation Code, 2020

- (i) The Trade Unions Act, 1926;
- (ii) The Industrial Employment (Standing Orders) Act, 1946; E
- (iii) The Industrial Disputes Act, 1947.

4. Code on Social Security, 2020

- (i) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; F
- (ii) The Employees' State Insurance Act, 1948;
- (iii) The Employees' Compensation Act, 1923;
- (iv) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; G
- (v) The Maternity Benefit Act, 1961;
- (vi) The Payment of Gratuity Act, 1972;
- (vii) The Cine-workers Welfare Fund Act, 1981; H

- A (viii) The Building and Other Construction Worker's Welfare Cess Act 1996;
- (ix) The Unorganised Workers Social Security Act, 2008.

B 22. The aforesaid Codes are yet to be enforced. With the enforcement of 4 Labour Codes, we are hopeful that in future, when rules are framed, authorities will take care that parties to the dispute furnish their permanent addresses in the cases relating to labour law disputes.

C 23. In future all the cases to be filed and in all the pending cases, the parties shall be required to furnish their permanent address(es). Even if the representative of the workman is appearing, he shall furnish permanent address of the workman as well. Even in proceedings subsequent to first stage, it shall be mandatory to provide permanent address of the party for his service. Merely mentioning through Labour Union or authorised representatives, who are sometimes union leaders or legal practitioners, will not be sufficient. Service of notice of workman will have to be effected on the permanent address of the workman.

D

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal allowed.