

(1984) 01 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1887 of 1981

Abdul Khalique

APPELLANT

Vs

Heavy Engineering Corp. Ltd. and Others

RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (1985) PLJR 1099

Hon'ble Judges : Satyeshwar Roy, J;Abhiram Singh, J

Bench : Division Bench

Advocate : M.K. Habib, for the Appellant; S.B. Sinha, Anil Kumar Sinha and A.K. Sahni, for the Respondent

Judgement

Satyeshwar Roy, J.—By this application under Articles 226 and 227 of the Constitution the petitioner has prayed for quashing Annexure 7, order dated 21st Jan., 1980 passed on behalf of respondent 1 by which the petitioner was removed from service of respondent 1 and the order contained in Annexure 8 by which on behalf of respondent 2 the appellate authority rejected the appeal filed by the petitioner. The petitioner joined service of respondent 1 in the year 1963. There was a departmental enquiry against him with regard to certain charges and he was found guilty. When he was removed from service, the petitioner raised a dispute which was referred under S. 10 of the Industrial Disputes Act, 1947 (the I.D. Act). The petitioner withdrew from the reference. The respondent 1 gave a fresh appointment to the petitioner in the year 1973. While he was so working Annexure 7 was issued and on appeal preferred by the petitioner the order contained in Annexure 8 was passed.

2. The petitioner has challenged the validity of the orders on the grounds that his removal from service amounts to retrenchment and as Section 25-F of the I.D. Act was not complied with the order was void ab initio. During the course of hearing on behalf of the petitioner it was contended that Standing Order No. 31

of the Certified Standing Orders of the respondent No. 1, did not apply to the case and Annexure 7 did not disclose that it was passed under that Standing Order.

In the counter affidavit filed on behalf of the respondents, inter alia, it was contended that no relief can be granted to the petitioner in this writ application even if the order of removal cannot be upheld. The petitioner was removed from service in terms of the Standing Order No. 31. It was not a case of retrenchment and, therefore, Section 25-F of the I.D. Act was not attracted. Chapter V-A of the I.D. Act did not apply to the establishment of respondent 1 and, therefore, Section 25-F was not attracted.

3. According to the counter affidavit more than twelve thousand workman are employed by respondent 1. Clearly, therefore, Section 25-F of the I.D. Act appearing in Chapter V-A of the I.D. Act has no application to the petitioner. Section 25-N appearing in Chapter V-B of the I.D. Act will apply in the case of the workmen of respondent No. 1.

4. According to the respondents the order of removal of the petitioner was passed under Standing Order No. 31. There is no dispute that the conditions of service of the workmen of respondent 1 including the petitioner were regulated by the certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 (The Standing Order Act).

5. Mr. Habib, learned counsel appearing on behalf of the petitioner, did not dispute the fact contended by Mr. S.B. Sinha, learned counsel appearing on behalf of the respondents that the order contained in Annexure 7 amounted to punishment. That being the factual position, the removal of the petitioner cannot be said to be retrenchment as defined in Section 2(oo) of the I.D. Act. Consequently Section 25-N of the I.D. Act has no application to the case of the petitioner.

6. Mr. S.B. Sinha contended that the Standing Orders were not statutory and the relationship between the parties was purely that of master and servant. Mr. S.B. Sinha addressed us at length on the question whether the terms and conditions of the service of the petitioner were statutory or were mere contractual. According to him it was contractual and therefore cannot be enforced even if there has been violation of the terms and conditions of the service. According to him in *Calcutta Electric Supply Corpn. Ltd. v. Ram Ratan Mahto*, (1975) LabIC 740 (Cal) it was held that the terms and conditions as embodied in Certified Standing Orders cannot be enforced in a court of law. He submitted that the Calcutta High Court case should be preferred to the case of *Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu*, Both the cases came to the High Court from decrees passed in suits filed by the workmen in which they challenged the validity of the orders passed by the management. The Calcutta High Court held that the suit was hit by Section 14(b) of the Specific Relief Act, 1963 as although the conditions of service of the workman was governed by the Certified Standing

Orders, yet the law that was applicable was the law of contract between master and servant. The Gujarat High Court held that the conditions of service of the workman statutory as the same was regulated by the Certified Standing Orders and suit was maintainable for enforcement of it.

7. Some of the relevant cases of the Supreme Court on the point whether in an establishment where there are certified Standing Orders, the conditions of service of the workman are statutory terms and conditions or contractual are; *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, *Dr. Raghubir Sharan Vs. The State of Bihar*, Both the cases arose out of reference u/s 10 of the I.D. Act. In both the cases the Supreme Court observed that the Standing Orders which had been certified under the Standing Order Act became part of the statutory terms and conditions of service between the industrial employer and his employees and the same will govern the terms between the parties. So far the Patna High Court is concerned, the only case which we could find out is *Behar Journals Ltd. Vs. Ali Hasan and Another*, *Ali Hasan's case (supra)* it was conceded on behalf of both the parties that the certified Standing Orders have statutory force and because of the same there was a statutory contract between the employer and the workmen concerned in that case. In the *Western India Match Co. Ltd. Vs. Rameshwar Prasad*, Allahabad High Court held that the Certified Standing Orders have statutory force and became statutory terms of employment. If any punishment is inflicted in violation of the relevant standing order, the suit is not hit by S. 21(b) of the Specific Relief Act, 1877 which corresponds to Section 14(b) of 1963 Act. In *Abani Bhusan Biswas Vs. Hindusthan Cables Ltd., Burdwan and Others*, it was held that the Standing Orders after they are duly certified have the force of law like any other instrument, and dismissal not in terms of the certified Standing Order is not mere violation of the terms of contract between the parties. This decision was not noticed by the Calcutta High Court in *Ramratan's case (1975 LabIC 740) (supra)*. In view of the Supreme Court decisions it must be held that the certified Standing Order of the establishment of respondent No. 1 are statutory terms and conditions governing the relationship between respondent No. 1 and its workmen. Violation of the requirement of the certified Standing Orders must, therefore, be held to be violation of statutory terms and conditions of service and not of contractual terms and conditions of service. In *Ramratan's case (supra)* Calcutta High Court inter alia, relied in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, and *Doma Sao Mohanlal Vs. State of Bihar and Others*, for holding that although standing orders were framed under the Standing Order Act, the conditions of service still remain contractual. The High Court did not notice that in *Sukhdev Singh v. B.S.S. Raghuvanshi*, commonly known as *Sukhdev Singh*, *Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, it was held that the decisions in those cases were in direct conflict with *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport*

Corporation and Another, , a decision of the Constitution Bench. I am of the opinion that Ramratan's case (supra) has not correctly laid down the law in this regard.

8. The next point that arises is whether respondent No. 1 could have taken action under Certified Standing Order No. 31 and whether the petitioner can be granted any relief in this case. Where a right or liability is created by statute, if that statute provides a remedy the remedy provided by that statute alone must be followed. The rights and liabilities have been created by the Certified Standing Orders. Whether the Standing Order Act provides any remedy. The only relevant section of that Act is Section 13-A which provides that if any question arises as to the application or interpretation of a Standing Order certified under that Act, any employer or workman may refer the question to any of the Labour Courts constituted under the I.D. Act and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard decide the question and such decision shall be final and binding on the parties.

9. According to the respondents the petitioner was removed from service under Standing Order No. 31. According to the petitioner Standing Order No. 31 had no application as there was no material to show that the petitioner was a security risk. The dispute, therefore, is whether on the materials found against the petitioner, Standing Order No. 31 was applicable. Since remedy has been provided in Section 13-A of the Standing Order Act, I find no reason to exercise extraordinary jurisdiction under the Constitution. Further, no relief can be granted to the petitioner in this application as we cannot go into the correctness or otherwise on question of facts on the basis of which respondent No. 1 asserted that the petitioner was a security risk and, therefore Standing Order No. 31 was attracted. The Labour Court under S. 13-A may very well go into the same. Even apart from the provision of the Standing Order Act the petitioner may raise an industrial dispute under the I.D. Act. So far suit is concerned the Civil Court has no jurisdiction in the facts of this case as this is a case where. Section 13-A of Standing Order Act is clearly attracted. In the result the application fails and the same is dismissed without costs The petitioner may, if so advised, seek his remedy before appropriate forum.

Abhiram Singh, J.

I agree.