

(1994) 12 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 818 of 1992

Amgauda Sidram Hakke

APPELLANT

Vs

Maharashtra Small Scale Industries Development Corporation
Ltd. and Another

RESPONDENT

Date of Decision : 06-12-1994

Acts Referred:

Constitution of India, 1950 — Article 14
Maharashtra Small Scale Industries Development Corporation Employees Service
Regulations — Regulation 31, 31(1), 68, 68(1)

Citation : (1995) 2 BomCR 595 : (1995) 2 LLJ 948

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : N.D. Buch, for the Appellant; P.H. Purav, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, J.—This Writ Petition under Article 226 and 227 of the Constitution of India is directed against an Award dated February 8, 1991 made by the 2nd Labour Court, Pune, in Reference (IDA) No. 81 of 1988, a proceeding under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The Petitioner was employed in the service of the First Respondent from March 15, 1979. On August 31, 1983, he applied for leave for three days on the ground that he had received a telegram from his village communicating that his child was sick. He was sanctioned leave for three days, and after suffixing the subsequent two holidays of 3rd and 4th September, 1983, the Petitioner was expected to resume work on September 5, 1983.

3. Instead of resuming work the Petitioner sent a telegram, which was received on September 5, 1983, communicating that he was unable to attend work and requesting for extension of leave upto September 17, 1983. By another telegram dated September 26, 1983, he sought extension of leave upto September 30,

1983 on the ground that his child was sick. By the telegram dated October 3, 1983, he sought further extension of leave upto October 14, 1983, on the same ground. On October 17, 1983 by another telegram, the petitioner sought extension of leave upto October 28, 1983, on the ground of illness of his child. By a telegram dated October 31, 1983, on the ground of child's sickness, he sought extension of leave upto November 15, 1983. By telegram dated November 16, 1983, without giving any reason, the petitioner sought extension of leave upto November 30, 1983. By telegram dated December 1, 1983 without giving any reason the petitioner sought extension of leave upto December 15, 1983. By the telegram dated December 30, 1983, he sought extension upto January 15, 1984. By a telegram dated January 16, 1984 he sought extension of leave up to January 31, 1984. By telegram dated January 23, 1984, he conveyed that he would be reporting for duty only on January 25, 1984 as his wife was not well. By telegram dated January 24, 1984 he sought extension of leave upto January 31, 1984 on the ground that he was not feeling well. By telegram dated February 15, 1984, the petitioner sought extension of leave upto February 15, 1984 without giving any reason, and, by another telegram dated February 17, 1984, he sought extension of leave upto February 29, 1984 without any reason. Interestingly, some of the telegrams sent by the petitioner to the First Respondent were from Solapur and some were from Akkalkot. Thus, it would be seen that, continuously from September 5, 1983 to March 2, 1984, the petitioner kept on addressing telegrams to the First Respondent seeking extension of leave on three different grounds, initially that his child was sick, later that his wife was sick and, finally, that he was sick. At no point of time did the petitioner produce any medical certificate in support of the excuse of alleged sickness put forward by him. The First Respondent addressed letters on September 28, 1983, December 21, 1983 and January 10, 1984 by which the petitioner was informed that he had been absent continuously upto January 18, 1984, in all, for 141 days without there being sufficient privilege leave to his credit. He was called upon to show cause why his service should not be terminated under the Employees Service Regulation 31(1). By letter dated February 23, 1984, the petitioner was informed that his services were treated as having come to an end on account of voluntary abandonment/desertion. The said letter was sent to the two addresses of the petitioner recorded in the records of the First Respondent. The petitioner had addressed a letter dated March 22, 1984 purporting to resign from service. The First Respondent, by its letter dated August 2, 1984, informed the petitioner that there was no question of accepting his resignation as his service had come to an end on March 23, 1984 under Employees Service Regulation 31(1). The dues of the petitioner was offered to him under cover of the said letter. Despite the barrage of telegrams from the petitioner to the First Respondent, even a single medical certificate from a competent medical officer, certifying the sickness of the petitioner's child, his wife or himself and indicating the nature of the sickness or advising absence from work, was ever sent by the petitioner to the First Respondent. After exhausting all accumulated leave, and the employer's patience, the petitioner sought to report back for work. However, by

this time, the first respondent had already issued him a Show Cause Notice on January 23, 1984 informing him that he had continuously remained absent from August 31, 1983 to January 18, 1984, i.e., for a continuous period of 141 days, though the maximum permissible privilege leave to an employee was 120 days at a time. He was called upon to show cause why his service should not be terminated under Employees Service Regulation No. 31(1) and directed to ensure that his explanation reached the office on or before February 6, 1984. This show-cause notice was addressed to the address of the petitioner at 19-B, Asara Housing Society, Hotgi Road, Solapur, which was the address of the petitioner recorded in the official records of the first respondent. It appears that this letter was returned undelivered by the Postal Department with the endorsement: "Owner out of station. Address not known." The utter lack of anxiety of the petitioner to report back to work and his irresponsibility are sufficiently displayed by his continuous seeking of leave on vague grounds. To top it all, on March 22, 1984, the petitioner addressed a letter of resignation to the first respondent purporting to resign his employment. The First Respondent, however, refused to accept the resignation on the ground that his service had already been terminated by the letter of February 23, 1984 with effect from March 23, 1984, which had already been dispatched to the petitioner before his resignation letter was received. By a letter dated August 2, 1984 addressed to the petitioner at his addresses at Hotgi Road and 92, Goldfinch Peth, Main Road, Solapur, the petitioner was informed that, because of his conduct, he had been deemed to have voluntarily abandoned service of the First Respondent-Corporation and that his service had come to an end on March 23, 1984. It is interesting to note that, at this stage, after absenting from work for 141 days, which period the petitioner facily assumed to have been leave sanctioned in his favour, he chose to send his resignation letter on March 22, 1984 which also indicated that he was not anxious to get back to his job. The further fact that the petitioner did nothing for a period of 31/2 years after his removal from service, is further evidence of his lack of interest in the job. In a very leisurely manner, he raised a demand for reinstatement some time on September 14, 1987. There is no explanation at all for this delay on his part. The demand was processed by the Conciliation Machinery and, failing settlement of the dispute, was finally referred to the Labour Court at Pune vide Reference (IDA) No. 81 of 1988.

4. Before the Labour Court, the only evidence consisted of the correspondence between the parties, oral testimony of the petitioner and oral testimony of the First Respondent's witnesses. Most curiously, the petitioner, even at that stage, did not produce any medical certificate to support the story of sickness of his entire family by rotation. Nor did he adduce evidence of a medical practitioner in support of his story of sickness upon assessment of evidence before it. The Labour Court disbelieved the story of sickness of the child, the wife and himself put forward by the petitioner. The Labour Court came to the conclusion that the fact that the petitioner had sent his resignation letter on March 22, 1984 itself strengthened the presumption of voluntary abandonment of service drawn by the

First Respondent-employer. The Labour Court took the view that, even if the petitioner's case was considered as a case of punitive termination of service for continued and persistent absence from work, the facts proved on record did not indicate that there were any circumstances preventing the petitioner from reporting for duty on time.

5. With the help of the learned advocates on both sides, I have gone through the impugned Award of the Labour Court and I am unable to find fault with the reasoning therein.

6. Miss Buch, learned Advocate appearing for the petitioner, relying on the authority of the Supreme Court in *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, , contended that the expression "abandonment of service" has not been statutorily defined nor has it been defined under the Service Regulations that, in order to constitute abandonment, the circumstances must show that there was total or complete giving up of duties so as to indicate an intention not to resume the same. "She points out the observation of the Supreme Court that abandonment or relinquishing of service is always a question of intention and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf and that whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. In my view, the circumstances in this case are eloquent enough. They show an utterly irresponsible attitude of the employee towards his job. The circumstance of purporting to resign from service as soon as the leave was considered exhausted is a telling indicator that there was no intention to resume work. The further fact that not even a demand for reinstatement was made till September 14, 1987, coupled with a total failure to explain the said delay, is telling. All these circumstances, when cumulatively scrutinised, lead to the inference of voluntary abandonment on the part of the petitioner.

7. Miss Buch then relied on the judgment of the Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, , and contested that, it was termination simpliciter. Without holding an inquiry and affording an opportunity to the employee to put forward his explanation, has been looked at askance by the Supreme Court which took the view that the action of employer must ring true on the touchstone of Article 14 of the Constitution and not smack of arbitrariness. My attention was particularly invited to the Service Regulations in *Delhi Transport* case. Regulation 9(b) conferred unfettered powers on the employer to terminate the service of an employee by giving a month's notice or pay in lieu thereof and the Supreme Court in *Delhi Transport* (supra) held that such a provision, particularly in the case of an entity falling within the definition of "State" for the purpose of Article 12 of the Constitution, was unconstitutional and void for being inconsistent with Article 14 of the Constitution. It was held that the Regulation could not be called reasonable, fair and just as it conferred unbridled, uncanalised and arbitrary powers on the authority. In the instant case,

however, I am not inclined to accept the argument that the Service Regulation in question is of the same nature or suffers from the same vice as Regulation 9(b) of the Delhi Transport Corporation, which was the subject-matter of consideration by the Supreme Court in DTC's Case (supra). In the First Respondent's case, Service Regulation 31 reads as under:-

"31. Termination of service by Notice:

Notwithstanding anything contained in any of the rules of these regulations, the Management may terminate the services of any employee at any time by giving him notice of 30 days in writing or one month's emoluments including all allowances in lieu thereof if the Management in its considered opinion is satisfied that it is expedient to terminate the services of such an employee on account of:

(1) Non-availability of the services arising out of prolonged or irregular absence without permission of the Management or any other reason.

(2) Loss of confidence in the employee:

(3) Possible threat to the security and the interest of the Corporation."

The power of termination of service by offering a month's notice or payment in lieu of notice period is neither unbridled nor uncanalised. It is conditioned upon the existence of three factual contingencies enumerated in Clauses (i), (ii) and (iii), each of which is capable of objective assessment without being left to the subjective vagaries of the employer. In the instant case, non-availability of the services of the petitioner arising out of the prolonged unauthorised absence of the petitioner, which is the applicable ground is very much capable of an objective determination and has been objectively determined by a trial before the Labour Court. In fact, to put it in its proper legal matrix, the dispute before the lower Court was as to whether such a ground really existed, so as to empower the First Respondent to terminate the service of the petitioner. The challenge was squarely met by the first respondent and, at the end of a protracted trial, the Labour Court recorded a finding which in effect means that the circumstances contemplated in Regulations 31(1) existed and, therefore, the employer was empowered and entitled to terminate the service of the employee in the manner done. In my view, the observations in DTC's case are of no avail to the petitioner as they are distinguishable on facts.

8. Apart from the fact that the Labour Court recorded a conclusion that the case put forward by the employee was not believable and that the case of the First Respondent was believable and acceptable, the Labour Court has as also tested the action of the first respondent, even assuming it to be a punitive discharge from service for misconduct of prolonged absence from work. Even on this count, it recorded a finding against the petitioner. In my view, in a situation like this, the bona fides of the action play an important role in the determination of the dispute. Even assuming that this was a case of misconduct of an employee for which his service has been terminated by not holding a domestic inquiry, I am

not inclined to interfere with the finding recorded by the Labour Court, for the reason that I am not satisfied that the petitioner's case of sickness was true. From the facts as on record it appears to me that the excuse of sickness was put forth repeatedly in order to exhaust all the accumulated privilege leave—never mind the consequences to the employer. It is unfortunate that, even when entitled to privilege leave, workmen assume that they have the right to go on leave, at the drop of a hat, forgetting it that leave is to be sanctioned at the discretion of the employer. This position is evident from the provision of Regulation 68(1) about general conditions regarding leave, which provides:

"68. General conditions regarding leave:

(1) Leave shall be granted by the management having regard to the exigencies of services and it shall be the discretion of the Management to refuse, postpone or revoke leave of any kind to any employee, subject to the provisions of any law for the time being in force."

Notwithstanding this provision, if the employee chooses to remain away from work, shoot off innumerable telegrams to the employer for extension of leave on vague excuses, and then finds himself in hot water, he does so at his peril. The argument of Miss Buch that the employer is guilty of breach of service rules by not holding an inquiry, leaves me unimpressed. It does not lie in the mouth of the petitioner, who is equally guilty of transgressing the rule, to thus contend.

9. Miss Buch also relied on the judgment of the Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., , to contend that this case was almost parallel to the petitioner's case as it was also a case of voluntary abandonment of service in which the Supreme Court took the view that the action of the employer was a violation of the principles of natural justice. She particularly emphasised the observations in paragraphs 11, 12, 14, and 16. In my view, reliance on this authority is not apposite, for more than one reason. It is not discernible from this judgment whether it was a case of an employee, who was similarly situated. Firstly, in the petitioner we have an employee who appears to be habituated to absenting himself without leave, as evident by the warning which had already been given to him on February 24, 1983, by which he had been informed that he had become habituated to remain absent without leave and to make repeated application for leave without any reason. Secondly, it is not clear from the judgment whether the Tribunal in that case recorded a finding against the employee disbelieving the story of sickness or any other valid excuse put forth by him, as in the present petitioner's case. I am, therefore, of the view that the judgment of the Supreme Court in Yadav's case also does not help the petitioner.

10. In conclusion, I find no grounds to interfere with the impugned Award of the Labour Court. The Labour Court appears to have correctly assessed the facts and declined to grant relief by exercising its judicial discretion against the petitioner. I see no reason to interfere therewith.

11. In the result, the petition is dismissed. Rule discharged. No order as to costs.