

(2018) 07 JH CK 0089

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 484 of 2017, I.A. No. 2614 of 2018

Balmukund Linda

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Constitution of India, 1950 — Article 51A(j)

Citation : (2018) 07 JH CK 0089

Hon'ble Judges : AMITAV K. GUPTA, J;D.N. PATEL, J

Bench : Division Bench

Advocate : Bhanu Kumar

Final Decision : Dismissed

Judgement

D.N. Patel A.C.J.

I.A. No. 2614 of 2018

1. This interlocutory application has been preferred under Section 5 of the Limitation Act for condonation of delay of 22 days in preferring this Letters

Patent Appeal.

2. Having heard learned counsels for both the sides and looking to the reasons stated in this interlocutory application, especially in paragraph nos. 4, 5

and 6, there are reasonable reasons for condonation of delay. We, therefore, condone the delay of 22 days in preferring this Letters Patent Appeal.

3. I.A. No. 2614 of 2018 is, therefore, allowed and disposed of.

L.P.A. No. 484 of 2017

4. This Letters Patent Appeal has been preferred by the original petitioner whose writ petition being W.P. (S) No. 4430 2008 was dismissed

by the learned Single Judge vide judgment and order dated 14th July,

2017, whereby, the order of dismissal passed by the respondents

authorities dated 29th November, 2003 was not interfered with and, hence, the original petitioner has preferred the present Letters Patent Appeal.

Reasons:

5. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, it appears that this

appellant is an original petitioner, who was appointed as Constable with the respondents in the year 1989. This appellant was granted leave for 10 days

from 12th April, 2001 to 22nd April, 2001.

6. There is charge of unauthorised absenteeism upon this appellant delinquent for one year and 11 months. Thus for 23 long months, there

was unauthorised absenteeism, for which, suspension order was passed initially in the month of April, 2001. Charge-sheet was given in the month of

March, 2003. Enquiry Officer has conducted enquiry and it has been held by the Enquiry Officer that charges levelled against this appellant have been

proved and on the basis of the Enquiry Officer's report, Disciplinary Authority has imposed punishment of dismissal vide order dated 29th

November, 2003. Thus, it appears that for 23 months, there was unauthorised absenteeism by this appellant. During this period, never any letter was

written by this appellant to the respondents that for what reasons he was absent.

7. It has become fashion in the State of Jharkhand that those who are absent, unauthorisedly, for long period, they are always coming with the medical

certificates. This appellant is no exception to such type of rule. Here also, half page medical certificate has been pointed out, wherein, it has been

stated that this appellant was suffering from mental disorder.

8. It appears from the facts of the case that Enquiry Officer has already conducted enquiry. The charges levelled against this appellant have been

proved. There is no correspondence by this appellant during the period of unauthorised absenteeism. Every sort of reasoning are coming after

issuance of charge-sheet. These aspects of the matter have been properly appreciated by the learned Single Judge while dismissing the writ petition

being W.P. (S) No. 4430 of 2008 preferred by this appellant vide judgment and order dated 14th July, 2017.

9. It has been held by the Hon'ble Supreme Court in the case of State of Punjab v. Dr. P.L. Singla, reported in (2008) 8 SCC 469, in paragraph 14,

which reads as under:

14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the

explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence.

Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from

service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the

position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal,

it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where

the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be

necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the

unauthorised absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc. of the employee. Any

consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or

supersede the order imposing punishment. (Emphasis supplied)

10. It has been held by the Hon'ble Supreme Court in the case of Bank of Baroda v. Anita Nandrajog, reported in (2009) 9 SCC 462, in paragraphs 9,

10 and 13, which read as under:

9. It may be noted that the management had been extremely lenient to the respondent by condoning her absence on the first occasion from 4-

8-1986 to 29-3-1987, that is, for a period of over seven months when she was absent without leave, and then again from 20-7-1987 to 10-4-1988, that

is, for a period of about seven months. Thus the respondent was absent for a very long period without leave. The Bank taking a lenient view condoned

the absence without leave. However, it seems that the respondent thought that she could do whatever she liked and remain absent whenever she liked

for whatever period she liked. She again sent an application dated 22-8-1988 for leave for 60 days, which was not sanctioned. However, she remained

absent without leave and she kept sending letters for extension of leave although she was on unauthorised absence.

10. In the Bank's letter dated 26-6-1989 copy of which is as Annexure P-1 to the appeal, it is clearly mentioned in Clause 4 that the respondent

did not have any leave remaining to her credit and she had remained on unauthorised leave for a period of more than 150 days continuously and it

appeared that she has no intention of joining duty. She was asked to report for duty within 30 days, failing which it would be deemed that she has

taken voluntary retirement from service. In reply she wrote a letter dated 27-7-1989 that she will be joining duty by the last week of August 1989, but

again she wrote another letter dated 22-8-1989 for extension of leave till April 1990 on account of domestic problems. In our opinion such a behaviour

on the part of an employee is clearly unfortunate and highly improper.

13. The behaviour of the respondent remaining absent without leave for such long periods was clearly regrettable and unfortunate. We are fortified by

the view we are taking by the decision of this Court in *Syndicate Bank v. Staff Assn.* as well as the decision in *Punjab & Sind Bank v. Sakattar Singh*.

No establishment can function if it allows its employees to behave in such a manner. We, therefore, uphold the order of the appellant Bank

dated 25-8-1989 terminating the service of the respondent as a voluntary cessation of her job, and we set aside the award of the Tribunal

dated 5-6-1996 and the impugned judgment of the High Court dated 22-9-2003. Appeal allowed. No order as to costs. (Emphasis supplied)

11. It has been held by the Hon'ble Supreme Court in the case of *Om Prakash v. State of Punjab*, reported in (2011) 14 SCC 682, in paragraphs 7, 13

and 14, which read as under:

7. The first contention that is raised by the counsel appearing for the appellant is regarding non-furnishing of the absence report. The submission is

that it was not furnished to the appellant at all during the proceeding and, therefore, the enquiry proceeding was vitiated. The aforesaid submission is

untenable. The appellant himself was fully conscious and aware that he was absent from duties for 39 days. The said fact was mentioned in the

charge-sheet and he had full opportunity to defend himself against the said allegation of unauthorised absence for 39 days. Therefore, no prejudice

was caused to the appellant even assuming that such a report was not furnished

by the departmental authorities.

13. There is yet one more factor which stands against the appellant therein. It is indicated from the counter-affidavit filed by Respondents 1 to 4 that

the appellant had also been punished earlier to the aforesaid incident with a punishment for leave without pay for a total of 527 days on different

occasions in service as per details below:

13-11-1965 to 5-1-1966 - 54 days

25-7-1973 to 28-7-1973 - 4 days

4-10-1977 to 12-1-1978 - 120 days

13-1-1978 to 9-5-1978 - 118 days

25-10-1979 to 31-10-1979 - 6 days

10-2-1981 to 14-8-1981 - 185 days

13-10-1984 to 22-11-1984 - 40 days

14. Therefore, it is established that the appellant was a habitual absentee without leave and, therefore, he does not deserve any sympathy from this

Court. In terms of the aforesaid order, we hold that there is no merit in this appeal which is dismissed but leaving the parties to bear their own costs.â?

Â Â Â Â (Emphasis Supplied)

12. It has been held by the Hon'ble Supreme Court in the case of Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu,

reported, reported in (2014) 4 SCC 108, in paragraphs 23, 24, 25, 26, 27, 31, 32 and 33, which read as under:

â??23. We have quoted in extenso as we are disposed to think that the Court in Krushnakant B. Parmar case has, while dealing with the charge of

failure of devotion to duty or behaviour unbecoming of a government servant, expressed the aforesaid view and further the learned Judges have also

opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different

as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has

been stated therein that it is obligatory on the part of the disciplinaryÂ authority toÂ come to aÂ conclusionÂ that the absence is wilful.

On an apposite understanding of the judgment Krushnakant B. Parmar case we are of the opinion that the view expressed in the said case has to be

restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material

that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it

is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling

circumstances to remain absent.

24. In this context, it is seemly to refer to certain other authorities relating to unauthorised absence and the view expressed by this Court. In State of

Punjab v. P.L. Singla the Court, dealing with unauthorised absence, has stated thus: (SCC p. 473, para 11)

“11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two

courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period

of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an

enquiry and impose a punishment for the misconduct.”

25. Again, while dealing with the concept of punishment the Court ruled as follows: (P.L. Singla case, SCC pp. 473-74, para 14)

“14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the

explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence.

Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor

penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the

employee, the period of absence and the cause/explanation for the absence.”

26. In Tushar D. Bhatt v. State of Gujarat, the appellant therein had remained unauthorisedly absent for a period of six months and further had also

written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High

Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining

unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organisation such an approach and attitude of the employee cannot be countenanced.

27. Thus, the unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will

depend upon many a factor as has been laid down in P.L. Singla. xxx xxx xxx xxx

31. It is apt to note here that in the said Mukul Kumar Choudhuri case the respondent had remained unauthorisedly absent from duty for six months

and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior

authority or violate any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to theÂ obtainingÂ

factual matrix, the Court interfered with the punishment on the ground of proportionality. The facts in the present case are quite different. As has been

seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter

proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is tell-tale that the respondent had remained absent

for a considerable length of time. He had exhibited adamant attitude in not responding to the communications from the employer while he was

unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for

grant of leave at any time and also knock at the doors of the Court at his own will.

32. The learned counsel for the respondent has endeavoured hard to impress upon us that the respondent had not been a habitual absentee. We really

fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of

â??habitual absenteeismâ? is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to

think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also

made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed

reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does

not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.

33. Another aspect needs to be noted. The respondent was a Junior Engineer. Regard being had to his official position, it was expected of him to

maintain discipline, act with responsibility, perform his duty with sincerity and serve the institution with honesty. This kind of conduct cannot be

countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organisation. In this context, we may fruitfully quote a

passage from Govt. of India v. George Philip: (SCC p. 14, para 18)

“18. In a case involving overstay of leave and absence from duty, granting six months’ time to join duty amounts to not only giving premium

to indiscipline but is wholly subversive of the work culture in the organisation. Article 51-A(j) of the Constitution lays down that it shall be the duty of

every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of

endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such

orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the

same.”

We respectfully reiterate the said feeling and restate with the hope that the employees in any organisation should adhere to discipline for not only

achieving personal excellence but for collective good of an organisation. When we say this, we may not be understood to have stated that the

employers should be harsh to impose grave punishment on any misconduct. An amiable atmosphere in an organisation develops the work culture and

the employer and the employees are expected to remember the same as a precious value for systemic development.” (Emphasis supplied)

13. In view of the aforesaid decisions, there is long unauthorised absenteeism of one year and eleven months (Total 23 months) by this appellant which

is a gross misconduct and, hence, the order of punishment passed by the respondents authorities cannot be labelled as shockingly disproportionate nor

it can be labelled as unreasonably excessive. This aspect of the matter has been

properly appreciated by the learned Single Judge while dismissing the writ petition being W.P. (S) No. 4430 of 2008 preferred by this appellant vide judgment and order dated 14th July, 2017. We see no reason to interfere with the order passed by the learned Single Judge. Hence, there is no substance in this Letters Patent Appeal, the same is, therefore, dismissed.