

(2001) 03 KL CK 0034
In the High Court Of Kerala
Case No : W.A. No. 2944 of 2000

Beemakunju

APPELLANT

Vs

F.C.I.

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Food Corporation of India Staff Regulations, 1971 — Regulation 19(4), 22, 58, 62, 63

Citation : (2001) 90 FLR 683 : (2001) 2 ILR (Ker) 19 : (2001) 2 LLJ 671

Hon'ble Judges : Kurian Joseph, J;K.K. Usha, J

Bench : Division Bench

Advocate : M. Rajasekharan Nayar, John K. Joseph and K.N. Rajani, for the Appellant; P. Jacob Varghese, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Is it mandatory under the principles of natural justice of conduct a domestic enquiry in the case of disciplinary action for unauthorised absence is the question to be decided in this Writ Appeal.

2. Additional respondent 3 to 5 in O.P.No. 6935 of 2000 are the appellants. They are the legal representatives of the deceased workman A. Sainalabdeen. The Original Petition was filed challenging the award in I.D.NO. 6 of 1996 of the Industrial Tribunal, Kollam by the District Manager, Food Corporation of India (hereinafter referred to as "the management"). The question referred to the Tribunal for adjudication was :-

"Whether the action on the part of the management of Food Corporation of India in terminating the service of Sri. A. Sainalabdeen Watchman w.e.f., 27.8.1979 is legal and justified? If not, to what relief the workman is entitled?"

The management justified its action mainly placing reliance on Regulation 19(4) of the Food Corporation of India (Staff) Regulations, 1971 (for short "the Regulations"). The award was published as per notification dated 22.8.1997 in

the Government of India Gazette. The Writ Petition challenging the same was filed only after about 2 1/2 years. It was the contention of the workman that in any case the conduct of termination was not in compliance with the provision of Chapter V-A of the Industrial Disputes Act, 1947 and hence the award of reinstatement with backwages was liable to be upheld. The workman had also filed O.P. No. 7683 of 2000 praying for implementation of the award. Since the workman passed away during the pendency of the proceedings, the said Original Petition was closed.

3. The learned Single Judge took the view, particularly placing reliance on Bench decision of this Court in *Annamma v. Joseph* 1984 KLT 545, that since the workman too had not staked any claim regarding the implementation of the award for more than two years, there was justification in not non-suiting the management on the ground of delay and hence proceeded to examine the case on merits.

4. The workman after availing leave initially for 54 days from 2.7.1979 went abroad projecting the reason of attending his ailing uncle at Abu Dhabi. After the expiry of the period, he did not report for duty. However, it was the view of the management that since the workman was on unauthorised absence and since a memo served in his Abu Dhabi address had returned unclaimed, a notice published in the newspaper was sufficient for concluding the action of termination of the workman and it was not necessary to have another enquiry; and hence the workman was terminated from service on 20.8.1980. Long thereafter, in 1986, the workman started agitating his case. However, the Tribunal took the view that dispensation of the enquiry was in violation of the principles of natural justice and hence quashed the termination order and directed reinstatement with back wages.

5. The Industrial Tribunal was of the view that "admittedly the workman applied for leave from a foreign country and it cannot be said that it is a case of unauthorised absence. It is true that the management has rejected two leave applications and published notice in the newspaper informing the workman to join duty and also the consequences of his failure of not joining duty. But the management has not ordered a domestic enquiry affording opportunity to the workman of defend and prove his case". Thus it can be seen that only for the reason of not having conducted a domestic enquiry which according to the Tribunal resulted in the violation of the fundamental rights of the workman under Art. 14 of the Constitution of India, the award was passed holding the termination as illegal and declaring that the workman was entitled to get reinstatement in service with backwages and all attendant benefits.

6. The learned Single Judge however found that even after the termination of the service of the workman, he had not been seriously pursuing the matter until 1986 when the workman filed an appeal before the Regional Manager. His earlier letter on 24.12.1980 was only requesting for further leave for a period of one year. Ultimately it was only on 1.11.1991 the workman approached the Labour

Department for conciliation. It was also found that the management complied with the procedural formalities contemplated under the Regulations before dispensing with the enquiry since it was a case where the ritual of an enquiry was unnecessary. And in that view of the matter, the learned Single Judge set aside the award and allowed the Original Petition. Aggrieved, the Writ Appeal is filed.

7. Sri. M. Rajasekharan Nayar, learned counsel appearing for the appellants vehemently contended before us that a domestic enquiry is a sine qua non for taking action against a workman, going by the provision of the Industrial Disputes Act, 1947.

8. Sri. Jacob Varghese, learned counsel appearing for the Food Corporation of India invited our attention to Regulation 63 of the Regulations which empowered the Food Corporation of India to take recourse to special procedure in certain cases, in the matter of disciplinary action. The relevant provision reads as follows:-

"Notwithstanding anything contained in Regulation 58 to Regulation 62:

(i) XX XXX XXX

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these regulations,

(iii) XX XXX XXX

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

Regulations 19(4) also contain a non obstante clause which reads as follows:-

(4) Nothing contained in this regulation shall affect the right of the appropriate authority for dismissal, removal from service or compulsory retirement of an employee as a result of disciplinary proceedings or in pursuance of the provision relating to retirement under Regulation 22."

9. It has to be noted that the whole purpose of a domestic enquiry is to assess the factual situation. Unless an action is not with reference to the factual situation, it might be in violation of the principles of natural justice, mainly for want of opportunity to the workman. But the question is, in the factual situation indicated above where the workman never cared to present himself for joining duty after the sanctioned spell of leave, never enquired as to whether his application for extension had been granted, never cared to give proper address to the management, never responded to the communications sent by the managements and finally not even promptly responded to the notice published in two newspapers, one in English and the other in Malayalam, could it be said that there was any need for a domestic enquiry which obviously would not have made any difference? Merely for the sake of enquiry it is not necessary to conduct the

same as an empty formality.

10. It is significant to note that even Ext.P5 proceedings dated 30.6.1979 had made it clear that the leave for 54 days from 2.7.1979 to 24.8.1979 was granted "on the strict condition that he shall rejoin duty on the expiry of the leave period and that he shall not ask for further extension of the leave". A registered memo dated 27.9.1999 directing the workman to report for duty was returned unclaimed. He was again issued Ext.P9 letter dated 21.4.1980 bringing to his notice that his absence "amounts to gross misconduct and warrants disciplinary action against him. As such, he should explain within 30 days from the date of receipt of this proceedings why disciplinary action should not be taken against him failing which it will be construed that he had voluntarily abandoned the service of the Corporation and his service will stand terminated under Regulation 19(4) of F.C.I. Staff Regulations with effect from 27.8.1979 FN." It is pertinent to note that even after Ext.P11 proceedings dated 20.8.1980 terminating him from service from 27.8.1979, what he did was to apply for leave upto 31.12.1981 as per Ext. P12. On an analysis of the above factual situation, it can be seen that it is a case of abandonment of work by the workman.

11. Though the learned counsel for the appellant contended that there is violation of the principles of natural justice in not having conducted domestic enquiry before terminating the workman from service, we are not inclined to accept the said contention. As a matter of fact, on an analysis of the recent trend in the decisions of the Apex Court, it cannot be stated in absolute terms that it is mandatory to conduct a domestic enquiry before conducting disciplinary action against a workman proceeded against for unauthorised absence. It all depends on the service conditions and the circumstances of the case. When the service conditions provide for such procedure to dispense with a domestic enquiry in the case of unauthorised absence and if the circumstances would also show that the workman concerned had been put to notice regarding the same, it is not mandatory to conduct a domestic enquiry for that only purpose. Aligarh Muslim University and Others Vs. Mansoor Ali Khan, was a case where the workman was put on advance notice that it would not be possible to give any further extension, i.e., beyond one year, on the ground of continuance in the job at Libya and he was to resume duty by 19.4.1982. Thereafter also the workman was given a special consideration by granting joining time upto 1.7.1982 making it clear that in case he failed to join duty, he would be deemed to have vacated the post. The Apex Court took the view that the absence of notice would have made no difference, since the workman had already been intimated that in case he failed to join duty, it would lead to the inference of abandonment. Any explanation of the workman according to the Apex Court would not have made any difference and only one view was possible in such circumstances. However, the Court struck a warning that the "useless formality" theory is an exception and that the decision of the Court should not be described as a "preconceived view" or one in substitution of the view of the authority who would have considered the explanation.

12. The factual position in the instant case is also more or less similar to the above cases. The very grant of leave for 54 days was on the "strict condition" that the workman should rejoin duty on the expiry of the leave period and that "he shall not ask for further extension of the leave." Further, in the reply to the show cause notice for involving Regulation 19(4) of the Regulations and even after the issuance of the proceedings terminating the workman from service, his request was further extension of leave. Admittedly, the workman did not care to enquire as to whether his alleged requests for extension of leave were granted or not. It needs no explanation that mere sending of representations for extensions of leave would not serve any purpose and will not be a ground for desisting from proceeding with the disciplinary action initiated for unauthorised absence. It is a well-settled principle of law that leave is not a matter of right. It is to be specifically noted in this case that the request of the workman was for leave on loss of pay. It is also not clear under what provision the workman is entitled to ask for such leave on loss of pay.

13. *Punjab & Sing Bank v. Sakattar Singh* (2001) 1 SCC 214 is a still later decision. It was a case where the workman proceeded on leave for 3 days but remained absent unauthorisedly for a continuous period of 190 days and on that ground he was removed from service. The Punjab and Haryana High Court took the view that the workman had put in 16 years of service and his service could not have been dispensed with except after enquiry consistent with the principles of natural justice and that the action of the management in terminating the service of the workman was based on a misconduct in respect of which no enquiry had been held, though such a procedure was mandatory. The Apex Court referring to the service condition governing the workman however took the view that once the workman having been given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the management, and in case he failed to respond, then the inference drawn by the management that the workman was not interested in the job any more was justified. Thus "there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact situation arising in the case. This rule has been incorporated in an agreement where representatives of employees' unions were party. They also realised the futility of continuing with a situation when an employee without appropriate intimation to the management is playing truant"

(paragraph 4)

14. In the instant case also it can be seen that the Regulations authorised the management to take disciplinary action in appropriate cases dispensing with an enquiry. The workman knew very well that his sanctioned leave was only for a particular period. Having put to notice of such a strict condition, the workman should not have taken a chance of extending the leave on his own without even caring to know whether the management had accepted his application for

extension. As already observed above, even after the termination proceedings were issued, the request of the workman was for further extension of leave. All that apart, as per Ext.P9, he was also put to notice of "deemed abandonment". Governed by statutory provisions in such circumstances, no management can afford to accommodate such irresponsible conduct on the part of the workman. True, the step is harsh. But only on such stringent action there can be a proper order, discipline and efficient system of administration in an establishment.

15. In the instant case, coupled with all these is the long delay in setting the law in motion which would also give an indication that the workman refused to be disciplined and to be governed by the Regulations binding on him.

16. It has to be noted that it was only in 1986 the workman filed an appeal against the termination. Obviously, in such circumstances, no purpose would have been served, if a domestic enquiry had been conducted as a matter of fact in 1979 or 1980. The conduct of the workman leads to the inference of abandonment. Thus it can be seen that the Food Corporation of India was well within its jurisdiction in having terminated the service of the workman.

17. We are of the view that in such circumstances the learned Single Judge has properly exercised his jurisdiction under Art. 226 of the Constitution of India in quashing the award passed without reference to the relevant factors and which was reasonable, and for that matter contained errors apparent on the face of the record.

In the above circumstances, we do not find any merit in the Writ Appeal and it is accordingly dismissed. However, we make it clear that if the Workman was otherwise entitled for any terminal benefits, the Food Corporation of India will forthwith disburse the same to his legal representative.