

(1959) 02 PAT CK 0007
In the Patna High Court
Case No : Misc. Judicial Case No. 216 of 1957

Behar Journals Ltd.

APPELLANT

Vs

Ali Hasan and Another

RESPONDENT

Date of Decision : 03-02-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Industrial Employment (Standing Orders) Act, 1946 — Section 10
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 2, 3(1)

Citation : AIR 1959 Patna 431 : (1959) 2 LLJ 536

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Ram Narain Tiwari, for the Appellant; M.K. Verma, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Choudhary, J.—The petitioner in this case is the Behar Journals Limited, Patna. Respondent No. 2, R. K. Mishra, was appointed on a salary of Rs. 125 per month as a probationer sub-editor by M.S.M. Sharma, the Editor of the "Searchlight", a daily paper published by the petitioner-company on probation for six months. A copy of the letter of appointment is annexure "B" to this petition. According to its terms, his service was terminable during the above period of six months without notice and without assigning any reason. There appears to have been some difference between the workmen of the petitioner-company and its management which ultimately led to the organization of the workmen into an Union known as the Behar Journals Limited Employees' Union, Patna, through whom respondent No, 2 is represented.

This Union was registered in February, 1955. Ultimately, for reasons not necessary to be stated, the workmen went on strike from the 3rd of February to the 9th of February, 1956. Respondent No. 2 was a member of the action committee of the Union, and it is said that he took active part in that strike. On

the 29th of February, 1956, however, he was discharged from service by the said Editor as he did not require his services from March 1, 1956. A dispute thereafter arose between the management of the petitioner-company and its workmen represented by the above Union in regard to certain matters including the discharge of respondent No. 2 with which alone we are concerned in this case.

The Governor of Bihar acting u/s 7 read with Section 10(1) of the Industrial Disputes Act, 1947 (Act XLV of 1947), constituted an Industrial Tribunal of which Shri Ali Hasan was the sole member, and referred the said dispute to the Tribunal for adjudication. The reference in regard to the matter in question in this case was whether the discharge of Shri R. K. Mishra was unjustified and if so whether he is entitled to reinstatement or any other relief.

2. There was some difference between the parties as to the date of appointment of Shri R. K. Mishra. According to the management, he was appointed on the 1st of September, 1955, whereas, according to the Union, he was verbally appointed on the 24th of June, 1955, but the letter of appointment was given to him on the 1st of September, 1955. The Tribunal agreed with the management and held that he was appointed on the 1st of September, "1955, and not on the 24th of June, 1955, as contended by the Union.

On the merits it held, that, according to the Certified Standing Orders of the petitioner-company, respondent No. 2 was to be on probation for a period of three months only even though under the terms of the appointment letter the period of probation was six months and that till before the strike there was no record of any bad work of the said respondent so as to prevent him from being made permanent. It also held that he was entitled to have been given opportunity to show cause before his services were terminated summarily and found that it was a glaring case of arbitrary discharge.

The Tribunal accordingly gave an award and ordered the reinstatement of respondent No. 2 with 50 per cent of the wages etc. from the date of his discharge inasmuch as it was admitted by him that he had been earning something by working part time in some other press. Being, thus, aggrieved, the petitioner has presented this application under Article 226 of the Constitution for the quashing of the above award.

3. In support of the application the first point urged on behalf of the petitioner is that respondent No. 2, being a sub-editor, was not a workman within the meaning of the Industrial Disputes Act and, as such, there was no dispute between the management and the workman with regard to the point in question, and the reference was void. The argument, in my opinion, is based on misconception of law. An Act called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act XLV of 1955), was enacted by the Parliament to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments.

"Working journalist" has been defined in Section 2(f) of that Act to mean a

person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any newspaper establishment, and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who (i) is employed mainly in a managerial or administrative capacity, or (ii) being employed in a supervisory capacity, performs either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

Thus, according to this definition, respondent No. 2, a sub-editor, was a working journalist. Section 3(1) of that Act lays down that the provisions of the Industrial Disputes Act, 1947 (XIV of 1947), as in force for the time being, shall, subject to the modifications specified in Sub-section (2) (with which we are not concerned in the present case) apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act. It is, therefore, manifest that respondent No. 2 was a workman within the meaning of the Industrial Disputes Act and the reference, therefore, was perfectly valid. The argument raised on behalf of the petitioner on this point, therefore, fails.

4. The next point urged in support of the petition is that as under the terms of the appointment letter respondent No. 2 was to be on probation for a period of six months, he was not entitled to a notice in regard to the termination of his service. In reply to this contention, it was submitted on behalf of respondent No. 2 that under the Certified Standing Orders of the petitioner-company, the period of probation could not be for more than three months, and after the expiry of the same he became permanent and was, therefore, entitled to a notice for being given an opportunity to show cause against the termination of his service.

It is conceded by the counsel for the parties that if respondent No. 2 was a probationer on the date of termination of his service, he was not entitled to have any notice; but if on that date he was holding the post on a permanent basis, his service could not be terminated without giving him an opportunity to show cause against the termination of his service. The only question in dispute, therefore, is whether on the date on which his service was terminated he was still a probationer or had become permanent.

5. The petitioner relied on the letter of appointment which is annexure "B" to the petition. It states that the appointment which is subject to confirmation at the end of six months from the date of appointment is liable to be terminated without notice at any time during the period without assigning any reason. It is contended that there was a contract between the petitioner and respondent No. 2 as regards the termination of the service of the latter the terms of which were embodied in the above letter of appointment, which are binding on respondent No. 2.

The argument put forward is that respondent No. 2 had agreed to a particular mode of termination of his service at the time of his appointment and he cannot

be permitted to urge that he was not a probationer after three months of his service. The contention, in my opinion, has no merit. The Industrial Employment (Standing Orders) Act (No. XX of 1946), 1946, was enacted to require employers in industrial establishments formally to define conditions of employment under them. Standing Orders certified under the provisions of the above Act applicable to the workmen of the Behar Journals Limited (Searchlight and Pradeep) came into force on 12-8-1950, in accordance with Section 7 of that Act.

Clause (c) of Order 2 defines a "probationer" to be a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. Clause (b) of that Order states that a "permanent" workman is a workman who has been engaged on a permanent basis and includes any person who satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the establishment.

Thus respondent No. 2 could be a probationer till before the completion of his three months' service and on expiry of the above probationary period, he became a permanent workman if he completed that probationary period satisfactorily. In other words, according to the above definitions, a workman in the petitioner-company could be on probation for a period of three months only and if he has satisfactorily completed that probationary period of three months, he becomes a permanent workman, and the only ground on which he could be prevented from being a permanent workman is his unsatisfactory work during that period of probation.

It is conceded, and there is no doubt about it, that the Certified Standing Orders have the statutory force and under the above Standing Orders there is a statutory contract between the employer and the workman. It could not, therefore, be possible in law for the parties in this case, namely, the petitioner and respondent No. 2, to enter into a contract over-riding the statutory contract as embodied in the Certified Standing Orders and any contract contrary to the above orders must be ignored. In face of the above Standing Orders, the petitioner could not appoint respondent No. 2 on conditions of service different from those defined in the Standing Orders without a modification of the Standing Orders themselves.

6. On the above principle of the law the probationary period of respondent No. 2 could not be more than three, months from the date of appointment, and, after the expiry of that period, he became a permanent workman if he satisfactorily completed his probationary period. It has, therefore, to be seen whether he satisfactorily completed that period or not.

7. On behalf of the petitioner reliance is placed on the evidence of Shri M. S. M. Sharma, the Editor of the "Searchlight", who stated that Shri R. K. Mishra approached him a week after his return from holidays in January and he wanted

him to make him! permanent, but he told him that he should seek some job elsewhere as he was not satisfied with his English as also with the general manner of his editing copies. He also stated that he did not consider it necessary to ask explanation from Shri R. K. Mishra, but he had given him warning that he was not going to retain him as his work was not satisfactory.

On the basis of this evidence it is contended that respondent No. 2 did not satisfactorily complete the period of probation and, therefore, he could not be treated as a permanent workman within the meaning of Clause (b) of Order 2 of the Certified Standing Orders. The appointment of respondent No. 2 was made, as already stated, on 1-9-1955, and his probationary period, therefore, completed on 30-11-1955.

Even if the evidence of the Editor as stated above be accepted to be correct there is nothing to show that there was any complaint of unsatisfactory work against respondent No. 2 till 30-11-1955, that is, during the probationary period of three months. If, therefore, there was no complaint of unsatisfactory work with respect to the above sub-editor within his probationary period of three months,-nothing could prevent him from becoming a permanent workman within the meaning of the Certified Standing Orders. In my opinion, the Tribunal has rightly pointed out that till before the strike there was no record of his bad work and it is only after that that he was discharged unceremoniously without giving him even a notice of show cause or obtaining his explanation.

8. On consideration of the facts and circumstances of the case and the law on the subject as discussed above, my concluded opinion is that respondent No. 2 became a permanent workman after the completion of his probationary period for three months and was entitled to have a notice for being given an opportunity to show cause against the termination of his service. In the absence of such notice, the termination of his service is void and the award of the Tribunal for his reinstatement is perfectly valid.

9. The result, therefore, is that the application fails and is dismissed with costs. Hearing fee Rs. 150.

V. Ramaswami, C.J.

10. I agree.