
(2010) 02 CHH CK 0024
In the Chhattisgarh High Court
Case No : Writ Petition No. 2978 of 1994

Brijlal	Vs	APPELLANT
Steel Authority of India Ltd. and Others		RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Evidence Act, 1872 — Section 58

Citation : (2010) 3 LLJ 659 : (2010) 5 SLR 519

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the order dated January 29, 1994 (Annexure - P/3) passed by the Industrial Court, Raipur; in appeal Nos. 152/MPIR/93 {Steel, Authority of India Ltd. v. Brijlal and 32/MPIR/94 (Brijlal v. Managing Director, Bhilai Steel Plant) whereby the, appeal preferred by the respondent No. 1 was allowed, setting aside the order dated November 9, 1993 (sic) April 29, 1993, passed by the Labour Court, Durg, in case No. 8/MPIR/86 (Brijlal v. Managing Director, Bhilai Steel Plant) and consequently dismissed the appeal of the petitioner. The petitioner also seeks for issuance of a direction to the respondent No. 1 for his reinstatement with full back wages/from the date of his termination i.e. October 19, 1985 till his retirement.

2. The facts, in nutshell for adjudication of the case, are that initially the petitioner entered into service on July 22, 1963. According to the petitioner on October 19, 1985 the petitioner fell ill; thus, by communication he intimated his, employer about his illness. The Doctor advised him to take bed rest up to October 29, 1985. On October 30, 1985 when the petitioner went to resume his duty it was informed to him that he was terminated from service by order dated October 19, 1985 (Annexure-P/1).

3. Being aggrieved by the termination order dated October 19, 1985 the petitioner preferred a case before the Labour Court, Durg. In the said case the respondent No. 1 filed its written statement, stating that the petitioner was a regular absentee and remained absent from the service for 127 days during the period from October, 1983 to May, 1984 and again absented from the service for 196 days during the period from July, 1984 to April, 1985. The Labour Court by order dated April 29, 1993 partly allowed the case of the petitioner and directed, the respondent No. 1 to reinstate the petitioner in service without backwages.

4. There against, the respondent No, 1 as well as the petitioner filed separate appeals, before the Industrial Court. The respondent No. 1 filed appeal against the order of reinstatement and the petitioner filed appeal against the denial of grant of back-wages, respectively. The Industrial Court by order dated January 29, 1994 set aside the order passed by the Labour Court and allowed the appeal of the respondent No. 1 employer and consequently, dismissed the appeal of the petitioner/employee. Thus, this petition for reinstatement and back wages from the date of his termination till his actual date of retirement.

5. Shri Amrito Das, learned Counsel appearing for the petitioner, would submit that during the complete service period, there was not a single occasion where the petitioner was found involved in dereliction of duties, except for the last year of service where he was unduly constrained to remain absent on account of his ill health. According to the respondent No. 1 the petitioner was served with a charge-sheet on May 14, 1985. The petitioner submitted his reply and conditionally admitted the guilt setting out the reasons for the same. Shri Das would next contend that admittedly, the petitioner remained unauthorizedly absent, however, the petitioner has submitted explanation before the enquiry officer which was not considered. The petitioner was not holding any responsible or vital position nor had he been absent uninformed and on account of absence of the petitioner, the respondent No. 1/employer has not suffered serious prejudice and as such the order of removal from service is disproportionate and deserves to be set aside. Shri Das would further submit that the impugned order of termination was passed without affording proper opportunity of hearing to the petitioner and without following due process of law.

6. On the other hand, Shri Shailendra Shukla, learned Counsel appearing for the respondent No. 1 would submit that the petitioner was a habitual absentee and he remained on leave unauthorizedly for a long period. The petitioner has been terminated from the service after following due process of law. Thus, the punishment of removal from service is just and proper.

7. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

8. Indisputably the petitioner remained absent for 127 day from October, 1983 to May, 1984, which resulted into imposition of minor; penalty of reducing his basic pay by one stage from Rs. 787/- to 769/-. Thereafter, he remained

unauthorizedly absent from July, 1984 to April, 1985 for 96 days. A show-cause-notice was issued to him and during departmental enquiry, the petitioner admitted his guilt, thus, it was held that the petitioner, remained unauthorisedly absent without reasonable explanation which resulted into removal from service.

9. The Labour Court allowed the application of the petitioner by order dated April 29, 1993 on the ground that the explanation submitted by the petitioner was not considered by the enquiry officer, without disclosing the fact as to what was the explanation and whether the explanation was reasonable and proper. The explanation, if any, preferred by the petitioner, was for the period from October 19, 1935, to October 29, 1985 only. In appeal preferred by the petitioner against denial of back-wages, being Appeal No. 32/MPIR/94 and the appeal preferred by the respondent No. 1 being Appeal No. 152/MPIR/93 against the order of reinstatement, respectively, the Industrial Court after having considered the aspect of clear admission by the delinquent employee i.e. the petitioner, set aside the order of reinstatement passed by the Labour Court and allowed the appeal filed by the respondent No, I/employer on January 29, 1994. The parties have not produced any document with regard to explanation offered by the petitioner in the departmental enquiry. There is no dispute that the departmental enquiry has found the petitioner absent unauthorisedly for a long period.

10. The petitioner was Feeder Attendant. It is informed at the bar that Feeder Attendant is a very important post for; production of the goods. The unauthorized absence of the petitioner has caused prejudice to the production.

11. In Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu, relied on by the petitioner, the Supreme Court observed as under:

16. Indisputably, the respondent was a habitual absentee. He in his explanation, in answer to the charge-sheet pleaded guilty admitting the charges. In terms of Section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed. Before the enquiry officer, he did not submit the explanation of his mother being ill. He despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.

21. Once it is found that all the procedural requirements have been complied with the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee: The superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved: (See Sangfroid Remedies Ltd. Vs. Union of India (UOI) and Others, .

12. Further, in Mithilesh Singh Vs. Union of India (UOI) and Others, , relied on by the petitioner, the Supreme. Court held that remaining absent without proper intimation to the authorities may lead to order of removal from service.

13. Reliance of the petitioner on General Manager, Appellate Authority, Bank of India and Another Vs. Mohd. Nizamuddin, in support of his contention that the petitioner was not holding any responsible post, therefore his absence has not caused any serious prejudice is not relevant to the Case on hand, as admittedly, the "petitioner was a Feeder Attendant in Production Unit. If the Feeder Attendant remains absent, it may lead to loss of production. Thus, the petitioner was holding a responsible post. Accordingly; the punishment of removal from service was not disproportionate.

14. Further, reliance of the petitioner on State of Rajasthan and Another Vs. Mohammed Ayub Naz, , where the question under consideration before the Supreme Court was that if a government servant willfully remains absent for a period of about three years, whether has a right to receive monetary/retiral benefits, the Supreme Court held that such a person has no right to receive monetary/retiral benefits.

15. In State of M.P. and Others Vs. Hazarilal, , relied on by the petitioner, the Supreme Court observed as under:

7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge", but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion; is not warranted.

16. Having regard to the facts situation of the case and in view of the various pronouncements, as aforesaid, it cannot be held that the wilful absence of the petitioner has not caused any damage or loss to the respondent No. 1. The absence of 196 days from 1984 to 1985 was not the first instance as even earlier also, the petitioner remained absent for a period of 127 days from October 1983 to May; 1984. Thus, the petitioner was a habitual absentee. Some information to the employer does not grant sanction to an employee to remain absent unauthorisedly, without proper sanction of the employer. The Courts below have not examined the fact of wilful absence but on the basis of documents and the facts produced before this Court as well as before the Courts below, I have no hesitation in holding that the petitioner remained wilfully unauthorisedly absent from service.

17. Thus, for the reasons stated hereinabove, the writ petition fails and is accordingly dismissed.

18. There shall be no order as to costs.