
(1959) 01 MP CK 0008

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Petition No. 30 of 1957

Burhanpur Tapti Mills Ltd.

APPELLANT

Vs

State Industrial Court

RESPONDENT

Date of Decision : 28-01-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 16

Citation : (1959) J LJ 214

Hon'ble Judges : T.C. Shrivastava, J

Bench : Single Bench

Advocate : R.S. Dabir, for the Appellant; R.G. De" Silva, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.—This petition under Article 226 or Article 227 of the Constitution has been filed by the Burhanpur Tapti Mill to quash the order of the Assistant Labour Commissioner dated 30-8-1956 and the order of the State Industrial Court, dated 12-10-19-56 confirming that order.

2. The respondent No. 3 Latur was employed as a sweeper in the mill belonging to the petitioner. He was granted leave on 23-2-1956 for the period extending from that date to 7-3-1956. On the expiry of leave the respondent No. 3 did not return to work. On 14-3-1956 he made an application through the Rashtriya Mill Majdoor Sangh, Burhanpur, requesting for extension of leave. A telegram asking for extension was also sent by him on that date. On 14-3-1956 the petitioner refused the grant of leave and intimated the union about it. Later on 26-3-1955 he again applied for extension of leave, which was refused on 28-3-1956. Respondent No. 3 did not appear for work till 10-4-1956 and the petitioner treated him as having left the service under Standing Order 13 (4).

3. The respondent No. 3 then approached the Assistant Labour Commissioner, who ordered his reinstatement. An appeal against the order was rejected by the

State Industrial Court.

4. Shri Dabir for the petitioner contends that the order of the Assistant Labour Commissioner was without jurisdiction and should, therefore, be quashed.

5. Clauses 3 and 4 of the Standing Order No. 13 which are material to this case are as follows:--

13 (3) If an operative after proceeding on leave desires an extension thereof, he shall submit a written application for the purpose to the Manager or the officer or officers authorised by the Manager for the purposes, A written reply either of the grant or refusal of extension of leave shall be sent to the operative at the address given by him if such reply is likely to reach him before the expiry of the leave originally granted to him.

(4) Any operative remaining absent beyond the period of leave originally granted to him or subsequently extended, shall lose his lien on his appointment unless he returns within eight days of the expiry of the sanctioned leave and explains to the Manager or the authority granting leave of his inability to return before the expiry of leave as well as for his failure to apply in "writing for extension of leave. Any operative losing his lien on his appointment shall, if he returns before 15 days of the expiry of the leave, be entitled to be kept on the Badli list, if he so desires. Any operative not reporting for duty within 15 days of the expiry of the sanctioned leave shall be treated as having left the service from the date he was due to return to work.

It appears from the language of clause (3) that the application for extension of leave has to be made before the expiry of the leave, every application should normally be made leaving enough time to have reply regarding the extension. The respondent No. 3 did not apply within time. He applied seven days later through the union and the reply refusing leave was sent to him on that address. Still the respondent No. 3 did not appear.

6. Clause (4) of the Standing Order No. 13 provides that unless an employee returns within eight days of the expiry of the sanctioned leave, he loses his lien on his appointment. The respondent No. 3 did not appear at all in this case within the period. All that he did was to send an application through the Union. The State Industrial Court wrongly observed that mere application for leave within the period was enough. It is necessary that the employee must" return personally to the duty if he wants to continue his lien. This the respondent No. 3 did not do and, therefore, his lien was terminated from his appointment. Further, the clause provides that if he returns after seven days but before fifteen days he would be entitled to be kept on the Badli list. This also the respondent No. 3 did not do. Then the clause goes on to provide lastly that if he does not return for duty within fifteen days of the expiry of the sanctioned leave, he shall be treated as having left the service from the date he was to return to work. The language of the clause makes it clear that the consequences of failure to return to duty are that he is due to have left the service voluntarily. This clause will have effect

independent of any other order by the employer. As in the instant case, the respondent No. 3 did not return to duty he should be deemed to have voluntarily left the service of the petitioner.

7. Section 16 of the C.P. and Berar Industrial Disputes Settlement Act, 1947 provided in sub-section (2) that any employee may within six months from the date of such dismissal, discharge, removal or suspension apply to the Labour Commissioner for reinstatement. This removal should be by way of punishment. At any rate they did not apply to the case where the employee leaves service voluntarily or is deemed to have done so. As I have said the consequences of failure to attend duty for more than a fortnight after the expiry of leave amounts to giving up of employment voluntarily. Under these circumstances, the termination would not amount to dismissal, discharge, removal or suspension within the meaning of section 16 of the Act. Accordingly, the Assistant Labour Commissioner had no jurisdiction to order reinstatement of the respondent No 3. The error regarding jurisdiction is apparent on reading the order of the Assistant Labour Commissioner and the State Industrial Court along with the Standing Order No. 13. As the Assistant Labour Commissioner acted in excess of jurisdiction his order is liable to be quashed.

8. Accordingly I allow the petition. The order of the Assistant Labour Commissioner dated 30-8-1956 and the order of the State Industrial Court dated 12-10-1956 are hereby quashed. I make no orders as to costs.