

(2003) 11 AHC CK 0150
In the Allahabad High Court
Case No : C.M.W.P. No. 11649 of 1986

Chhedi Lal Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 1 AWC 442 : (2004) 2 UPLBEC 1873

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : K.P. Agarwal, B.P. Srivastava and Suman Sirohi, for the Appellant;
P.K. Mukherji, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard Sri K. P. Agarwal, learned senior advocate assisted by Ms. Suman Sirohi for the petitioner and Sri P.K. Mukherji, for the contesting, respondents.

2. This writ petition is directed against an award of the labour court by which the petitioner workman has been denied the relief of reinstatement and back wages.

3. The relevant facts for decision of this petition are that the petitioner was appointed as a Fitter in the respondent company in October, 1969. Due to his long absence, his services were terminated w.e.f. 11th November, 1981. This resulted in a reference which was registered as Adjudication Case No. 11 of 1983. The labour court after giving both the parties sufficient opportunity came to hold that the termination of the petitioner due to his long absence was justified and he was entitled to no relief at all.

4. Learned counsel for the petitioner has raised two submissions in support of this petition. Firstly, automatic loss of lien under the Standing Orders was hit by Article 14 of the Constitution of India and secondly, there being no guidelines for choice of exercise of power between the power providing for loss of lien and

taking action on misconduct, therefore, it was arbitrary.

5. The power exercised in the present case by the respondent company is provided for in Clause 23 of the Certified Standing Orders, which reads as under :

"Clause 23. If a worker remains absent without leave or beyond the period of leave originally granted or subsequently extended, he shall lose his Hen on the post and will be deemed to have voluntarily abandoned his post unless :

(i) He returns within ten days of the expiry of the leave or commencement of the absence, as the case may be, and

(ii) gives satisfactory explanation to the authority granting leave of his inability to return to work on the expiry of sanctioned leave."

6. From a perusal of the aforesaid clause, it is evident that in case of overstaying of leave, etc., if the workman does not return within ten days, and does not give any satisfactory explanation, he shall lose his lien on the post and would be deemed to have voluntarily abandoned his post. The learned counsel for the petitioner has urged that the loss of lien is prior in time to consideration of the explanation of the workman and as such it mitigates against the principles enshrined in Article 14 of the Constitution of India. Sub-clause (ii) of Clause 13 of the Standing Order is explicit that the workman would be entitled to explain his absence but there is nothing in the said clause to show that loss of lien would be prior in time to the consideration of the explanation to be submitted by the workman. Learned counsel for the petitioner has placed vehement reliance on the ratio of the Supreme Court in the case of *Uptron India Limited Vs. Shammi Bhan and Another*, . In *Uptron India* case (supra) the Supreme Court was considering Clause 17 (g) of the Standing Order which has been quoted in paragraph 12 of the report, it would be useful to quote the said clause here also :

"The services of a workman are liable to automatic termination, if he overstays on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week."

7. From a perusal of Clause 17 (g) it is clear that it does not speak about any opportunity to explain the absence of the workman. In *Uptron India* case (supra), in paragraph 20, the Supreme Court itself reads opportunity in the words, "the services are liable to automatic termination". Therefore, the said decision is of no help to the petitioner. However, learned counsel for the petitioner has also urged that the consideration of the explanation should be prior in time than the cessation. In my view, this argument cannot be accepted for two reasons, Firstly, the principle of ex post facto or post decisional hearing is not alien to service jurisprudence and secondly, in the present case, it is evident that vide letter dated 26.11.1981, the petitioner was asked to report for work by 10th December, 1981. He was also asked to submit satisfactory explanation of his absence or "your name shall be struck off from the rolls of the company under the provisions of Certified Standing Orders". This was also followed by

another letter dated 12th December, 1981. However, the petitioner did not respond to the aforesaid intimations, therefore, there was no question of cessation of lien prior to explanation because the petitioner himself did not avail of the opportunity granted to him.

8. The second contention in effect is that the management could resort to either holding a full-fledged enquiry under the clause for punishment for misconduct or under Clause 23 and since there were no guidelines provided, it was arbitrary. Though the relevant clause of the Certified Standing Orders has not been quoted or produced before me, but assuming the generality of such a Standing Order, ceasing of Hen like in Clause 23 is also part of proceedings taken for misconduct. In support of his contention learned counsel for the petitioner has relied upon a Full Bench decision of this Court rendered in *Ram Gopal Gupta v. Assistant Housing Commissioner*, 1968 ALJ 339.

9. In *Uptron India Ltd. case* (supra), the Supreme Court itself has held that such a power of cessation of Hen was justified. It is apparent that the two provisions applied in different fields. In *Uptron India Ltd. case* (supra) the Apex Court itself has held that the provision with respect to loss of lien would apply where the workman is engaged in the core activity of the establishment implying that it would not apply to the peripheral staff who were not engaged directly in the manufacturing process. Like in a steel manufacturing unit a gardener may not be covered by the aforesaid provision, but one who is engaged in the melting pot department or at the cooling bay would be covered with such a provision. The general power of misconduct can be used in both the cases but the loss of lien clause can only be used for the core workers. If the management is forced to exercise the general power of misconduct, it will lead to hazardous results. In a given case some core workers may absent themselves for couple of days leading to the closure of Industry itself, therefore, the special provision for loss of lien has been upheld by the Court. It is common knowledge that regular enquiries as is contemplated in the misconduct clause takes a long time and, as such, it would hurt the production itself in the unit and couple of workers can hold the entire establishment to ransom.

10. In *Ram Gopal Gupta case* (supra), the Court was concerned with the question as to which two of the powers of eviction could be utilised. Under U.P. Industrial Housing Act, 1955, the authority had power of summary eviction and also by a regular suit. The Full Bench of this Court after considering several decisions of the Apex Court held that as there were no guidelines as to when the respective powers could be exercised, it held the power of summary eviction as arbitrary. In my opinion, the aforesaid ratio would not apply to the present case. In the case at hand, both the powers operate in different fields and further in both the cases opportunity has been provided, as such, this argument of the learned counsel for the petitioner is bound to be rejected.

11. In view of the discussions hereinabove, the writ petition fails and is dismissed but without any order as to costs.