

(2001) 08 CAL CK 0076
In the Calcutta High Court
Case No : Writ Petition No. 17025 (W) of 2000

Dr. Nisit Ranjan Dey

APPELLANT

Vs

The Eastern Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2002) 2 CALLT 71

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra and Kartick Chandra Banerjee, for the Appellant; Alok Banerjee, Partha Basu and Nikhil Kumar Roy, for the Respondent

Final Decision : Allowed

Judgement

A.K. Banerjee, J.—Writ petitioner is a Medical Officer of Eastern Coal Fields Limited having MBBS qualification. For further studies the writ petitioner applied for permission to sit for the entrance examination. Such leave was granted by the respondent authority. In August, 1991 writ petitioner became successful in the qualifying examination conducted by National Board Examination. To sit for the final examination he was to complete three years training in any recognized Hospital/Medical College. Accordingly, writ petitioner duly applied before the respondent authority by his letter dated 9th January, 1992 for three years study leave so that he could join the regional Medical College, Silchar, Assam. Reminders were given by the writ petitioner. Unlunately, by a letter dated 6th November, 1993 such prayer for leave was rejected. As his application for leave was rejected the writ petitioner by a letter dated 7th March, 1994 addressed to the Chairman-cum-Managing Director, Eastern Coal Fields Limited resigned from service. His letter of resignation was also not accepted and the decision of the authority was communicated to him by a letter dated 17th May, 1995. By this time the writ petitioner was continuing his post graduate studies by taking casual leave medical leave from time to time. On 10th July, 1995 the writ petitioner

Informed the authority since his letter of resignation was not accepted he would join his duty after completion of the three years period. However, by a letter dated 27th November, 1995 the respondent authority Informed the writ petitioner that he had lost his service w.e.f. 28th May, 1995 because of "loss of lien". The writ petitioner immediately moved this Court. However, on the assurance of the local Member of Parliament the writ petition was withdrawn. Since the dispute remain unresolved the present writ petition has been filed.

2. Mr. Kashi Kanta Moitra, learned counsel appearing for the writ petitioner raised the following points: -

(i) When permission to sit for the qualifying examination was given by the respondent authority it was expected that the respondent authority would consider the application for study leave and such leave could not be denied except on cogent grounds. According to him, since permission was granted it was expected that the study leave would be granted. After the permission having been given, the writ petitioner sat for the qualifying examination on the expectation that he would be allowed to continue his studies provided he could qualify.

(ii) The letter of resignation was submitted on 7th March, 1994. The respondent authority took more than one year time and Intimated by their letter dated 7th May, 1995 that the letter of resignation could not be accepted.

(iii) Since the letter of resignation was not accepted the writ petitioner was entitled to join.

(iv) There could not be any automatic termination of his service without any proceedings being initiated against him.

(v) There could not be any loss of Lien in absence of any lien being exercised.

3. Mr. Moitra in support of his contention cited the following judgments:-

AIR 1966, Supreme Court, Page 13632

Deokinandan Prasad Vs. The State of Bihar and Others,

1976, Vol-1, Service law Reports, Page 191

AIR 1962 SC 600

4. Mr. Alok Barrierjee, learned counsel appearing for the Eastern Coalfields Limited contended as Follows: -

(i) Since the writ petitioner was refused study leave he was not entitled to continue his studies by obtaining sick leave which is an offence in service jurisprudence.

(ii) Since his resignation was not accepted he was to join immediately. Having not done so, his service was deemed to have been terminated which was

informed to him vide a letter dated 27th November, 1995.

(iii) in accordance with the Clause 12.4(iv) of the common coal cadre an executive cadre absenting himself for 8 calendar days without sufficient reason would loose his Hen and be deemed to have left the services of the company on his own accord. Hence his termination was lawful.

5. In support of his contention Mr. Banerjee relied upon the apex Court decision reported in Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, .

6. To decide this issue Clause 12.4(iv) is relevant for consideration and is quoted below:-

"An executive cadre employee, who absents himself without leave for more than 8 calendar days or fails to report without sufficient reasons within 8 days of the posting of a notice or being otherwise duly notified, shall lose his lien and be deemed to have left the services of the company on his own accord with effect from the date he was continued to return to work. The employee will, however, be entitled to represent his case to the management explaining the reasons of his absence. It will be upto the management to accept the explanation or not and if the explanation is accepted, the employee may be reinstated with or without break in service."

7. The parties cited cases as I have noted herein before. However, the latest decision of the apex Court, according to me, is relevant herein to decide this issue.

8. Although Mr. Banerjee cited the decision of the apex Court Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, on perusal of the said decision I find that the ratio decided in the said case clearly supports the case of the writ petitioner.

9. In the case before the apex Court the concerned employee absented himself without any authorized leave for a long period. He subsequently tendered resignation. Such resignation was accepted by the bank. On the request of the concerned employee bank allowed him to withdraw the letter of resignation on certain conditions. The said employee again absented himself from service. Apex Court found him as habitual absentee. Notice to show cause was issued as to why his service would not terminated. Employee refused to accept such notice. Order of termination was passed which could not be served by the bank for three years. Hence, there was nothing left open to the bank to Implement the order of termination. The matter went up to the tribunal. The tribunal considering the evidence held that the order of termination was bad. Bank approached the High Court. single Judge affirmed the order. Appeal preferred by the bank was dismissed. Hence the SLP was filed.

10. Paras 14,16 and 17 are relevant herein and are quoted below:-

"14. Two principles emerge from the decisions (1) principles of natural justice and duty to act in a Just, fair and reasonable manner have to be read in the Certified Standing Orders which have statutory force. These can be applied by the Labour Court and the Industrial Tribunal even to relations between the management and workman though based on contractual obligations: and (2) where domestic inquiry was not held on it was vitiated for some reason the Tribunal or Court adjudicating an industrial dispute can itself go into the question raised before it on the basis of the evidence and other material on record.

16. Now what are the requirements of principles of natural Justice, which are required to be observed? These are (1) a workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the management should be fair, reasonable and just. All these three criteria have been fully met in the present case. Principles of natural justice are inbuilt in Clause 16 of the Bipartite Settlement. When evidence was led before the Tribunal, the Bank produced the register covers, which had been received back with the endorsement "refused" and the addressee "not found during delivery time". Dayananda said that he never refused to receive the notice. In these circumstances the Tribunal thought it necessary to hold that notice was not served on Dayananda as the Bank did not examine the postman. The notice was sent on the correct address of Dayananda and it was received back with the postal endorsement "refused". A clear presumption arose in favour of the bank and against Dayananda. Yet the Tribunal held that no notice was given to Dayananda as the postman was not produced by the Bank. This appears to us to be rather an incongruous finding by the Tribunal. Unfortunately, the High Court did not go into this question at all. Considering the conduct of Dayananda all this period and after three years of his having voluntarily retired from the Bank in terms of Clause 16 of the Bipartite Settlement his statement that he did not receive the notice was a sheer lie. His whole edifice was built on falsehood and yet the Tribunal was there to give him relief on the platter though at the same time criticized his conduct during his employment with the Bank.

17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural Justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various Judicial pronouncements these two principles of natural justice have been expanded, e.g. a party must have due notice when the tribunal will proceed; the tribunal should not act on irrelevant evidence or shut out relevant evidence; if the tribunal consists of several members they all must sit together at all times; the tribunal should act independently and should not be biased against any party; its action should be based on good faith and order (sic) and should act in a Just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above."

11. In para 14 of the said decision the apex Court made an analysis of all the earlier decisions on the said point and observed that two principles emerged from the decision i.e. to find out whether the principle of natural justice and duty to act in just, fair and reasonable manner have been followed or not and secondly where domestic enquiry was not held or it was vitiated for some reason the tribunal or the Court can itself go into the question on the basis of the evidence and material on record.

12. The apex Court in the case of Syndicate Bank (supra) elaborated the principles and made a guideline for the same. Applying the said three test the apex Court in the said case held that all the three criterias "have been fully met. Hence order of termination was lawful."

13. Relying on the said apex Court decision may I now apply the said three tests in the present case.

i. "A workman should know the nature of the complaint or accusation." This criteria has been met in my view.

ii. "An opportunity to state his case"; This criteria was Initially not fulfilled, however, in terms of the order of this Court in an earlier writ petition the representation was allowed to be made by the writ petition and was ultimately considered by the respondent authority.

iii. "Management should act in good faith which means that action of the management should be fair, reasonable and just":- This criteria has not been fulfilled in the instant case. The writ petitioner was permitted to participate in the qualifying examination. It is true that the letter granting permission clearly stipulated that it should not be construed as permission for study leave. Even then it was expected that the respondent authority would examine his application for study leave and granting of such study leave, in my view, was a matter of course after granting of permission for the qualifying examination, refusal was exception and in my view must be backed by adequate and cogent reasons. Documents and materials on record before me do not manifest any such reason as to why the writ petitioner's application for study leave was rejected. I am not hesitant to say that the respondent authority has not acted in a fair and reasonable manner while rejecting the application for study leave.

14. Similarly when the letter of resignation was submitted by the writ petitioner the respondent authority neither rejected nor accepted the same and kept it pending without any reason for more than one year. The respondent authority being a public authority was not entitled to act in such manner and such act on the part of the respondent authority, in my view, can not be termed as just or reasonable or fair.

15. When the letter of resignation was submitted by the writ petitioner and no reply came within a reasonable period, the writ petitioner presumably took it as deemed to have been accepted. Hence he continued his studies. However, when

the writ petitioner was asked to Join, the writ petitioner although belatedly expressed his willingness to Join which was not allowed. In the said apex Court case, the concerned employee was habitual absentee, here the ground for absence of the writ petitioner was known to the respondent authority. It can not be equated with the facts and circumstances which was before the apex Court in the case of Syndicate Bank (supra).

16. With regard to the automatic termination of service the respondent authority relied on relevant clause of the standing order being 16.4(iv) which has been quoted hereinbefore. Even on perusal of the said clause it appears that the said clause itself provides for an opportunity to the delinquent, such opportunity admittedly has not been given to the writ petitioner before issuance of the impugned order of termination. Considering the above circumstances and the chronological events it is ex-facie clear that the respondent authority acted Indifferently from the date when the writ petitioner applied for study leave. Such action on the part of the respondent authority, in my view, can not be termed as just and reasonable or fair which could need the third criteria laid down by the apex Court.

17. In this back drop, in my view, although the first and second criteria laid down by the apex Court have been met the order of termination is bad in view of non compliance of the third criteria.

18. Hence the writ petition succeeds. The order of termination dated 27th November, 1995 is quashed and set aside. The writ petitioner is allowed to Join his duties forthwith and would be treated to be in continuous service. However the period when the writ petitioner was absent without any authorised leave, would be considered as a special leave without any pay and the writ petitioner will not have any claim of pecuniary benefit for the said period because of his unauthorised absence.

W.P. No. 17025(W) of 2000 is disposed of accordingly.

The Impugned order dated 26th August, 2000 passed by the Director (Personnel) Eastern Coalfields Limited rejecting the representation of the writ petitioner is similarly quashed and set aside.

Urgent certified copy, if applied for, will be given to the parties in the usual undertakings.

There would be stay of operation of this order for a period of fortnight from date.