
(1996) 02 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11630 of 1992

Durga Dutt Sharma

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1996) 113 PLR 742

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Sharma, for the Appellant; P.K. Mutneja, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh 19.6.1991 (Annexure P4) upholding the termination of the service of the petitioner has been made subject matter of challenge in this writ petition filed by the petitioner (workman).

2. Brief facts,--

The petitioner was appointed in the service of Salal Hydro Electrical Project Jyotipuram (Jammu and Kashmir) as a daily rated worker in June, 1977. He was made work charged employee w.e.f. 22.5.1979 and was paid salary in the grade of Rs. 210-290. On 10.10.1984, petitioner's wife died in fire incident. After some days his small daughter also died. The petitioner applied for grant of leave and proceeded for his home town. According to the petitioner, he fall sick due to mental shock and agony which he had suffered due to death of his wife and young daughter and remained under treatment for a long period between 15.1.1985 to 15.1.1987. He submitted his joining report alongwith medical certificate to the Assistant Engineer but the same were not accepted. He, therefore, raised an industrial dispute and the Government of India referred the same to the Central Government Industrial Tribunal-cum-Labour Court,

Chandigarh, for adjudication.

3. In his statement of claim, the petitioner questioned the action taken by the employer on the ground of violation of principles of natural justice and the provisions of the Industrial Disputes Act 1947. The employer defended the action of terminating the service of the petitioner w.e.f. 11.1.1985 on the basis of the provisions contained in clause 17 of the Certified Standing Orders. The Central Government Industrial Tribunal-cum-Labour Court examined the rival pleadings and took note of the arguments advanced before it by the representatives of the parties and held that the termination of the service of the petitioner was justified in view of the provisions contained in clause 17 of the Certified Standing orders and the workman must be deemed to have voluntarily abandoned his employment by remaining absent from duty without leave. In taking this view, the Tribunal placed reliance on the decisions of the Supreme Court in *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, , and *National Engineering Industries Ltd. Vs. Hanuman*, . The Tribunal has also held that the termination of the service of petitioner would be treated as covered by Section 2(oo) (bb) of the 1947 Act. In support of this view, the Tribunal placed reliance on the decision in *Bharat Heavy Electrical Ltd. v. R.V. Krishna Rao* 1990 I LLJ 87 and *The Tata Engineering and Locomotive Company Ltd. Vs. The Presiding Officer, Industrial Tribunal and Another*, .

4. Argument of the learned counsel for the petitioner is that the termination of service of the workman on the ground of absence from duty amounts to termination by way of punishment because absence from duty is one of the misconduct enumerated in para 28.53 of the Certified Standing Orders and before the petitioner could be punished on the basis of the allegation of misconduct, it was imperative for the employer to have made an enquiry against the petitioner in terms of clause 34 of the Certified Standing Orders. Learned counsel argued that failure of the employer to hold enquiry in accordance with the provisions of clause 34 of the Certified Standing Orders has the effect of rendering employer's act as illegal and contrary to the basic principles of natural justice. Learned counsel further submitted that the termination within the meaning of Section 2(oo) of the 1947 Act and the Tribunal has seriously erred in overlooking this aspect of the matter.

5. Shri P.K. Mutneja learned counsel for respondent No. 2 raised an objection to the jurisdiction of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh to adjudicate the dispute by arguing that the petitioner was posted in Jammu and Kashmir at the relevant time and, therefore the Tribunal at Chandigarh did not have jurisdiction. However he did not seriously pursue this objection and in our opinion rightly so because the Tribunal's headquarter is at Chandigarh and the entire matter was adjudicated at Chandigarh without any serious objections by the employer. Therefore, it is no longer open to the respondent No. 2 to question the competence of the Tribunal at Chandigarh to make adjudication of the dispute raised by the workman.

6. On the merits of the case Shri Mutneja learned counsel for respondent No. 2 argued that in view of the fact that the petitioner absented from duty after 11.1.1985 the finding recorded by the Tribunal does not call for any interference by this Court. Shri Mutneja supported his argument by making reference to the decision of the Supreme Court in National Engineering Industry Ltd. v. Hanuman (supra).

7. A look at the impugned award shows that after making reference to the rival pleadings of the parties the Tribunal has referred to clause 17 of the Certified Standing Orders and has recorded a conclusion that the action taken by the employer under clause 17 can be treated as termination of service due to voluntary abandonment of the job by the workman himself. The Tribunal also held that it was a case of termination of service covered by Section 2(oo)(bb) of the 1947 Act.

8. In our opinion, the view taken by the Tribunal suffers from an error of law apparent on the record. No doubt, the workman had not joined duty after expiry of the period for which he had submitted application leave but in the peculiar facts of this case, namely, the death of the wife and small daughter of the petitioner in succession the plea put forward by the petitioner that he had fallen sick and could not join duty for sufficiently long time could not have altogether been discarded. There is nothing on the record to show that the employer had ever issued any charge sheet to the petitioner and called upon him to submit his reply prior to the termination of his service. Rather, the employer took action against the petitioner on the basis of clause 17 of the Standing Orders and terminated his services w.e.f. 11.1.1985 by passing order dated 13.1.1986. In our opinion clause 17 of the Certified Standing Orders has to be read along with clauses 28 and 34 of these orders, and if action was taken by the employer on the basis of allegation of misconduct, it was necessary for the employer to have made enquiry against the petitioner in accordance with the procedure prescribed in clause 34 and also in accordance with the principles of natural justice. The Tribunal has seriously erred in taking the view that there was a voluntary abandonment of job. Voluntary abandonment of job involves conscious decision of the employee not to resume duty after absenting from work. In a case like the present one, such inference could not have been drawn by any reasonable person. In any case, before the employer could rely upon clause 17 of the Standing Orders, holding of enquiry consistent with the principles of natural justice was sine qua non and as that has not been done the impugned action of termination of service is liable to be nullified. In the similar facts situation the Supreme Court has, in D.K. Yadav v. J.M.A. Industries 1993 (4) S.L.R. 126, held as under :-

"It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequence of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore,

before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress and Ors.* (supra) the constitution bench per majority held that termination of the service of a workman giving one month's notice or pay in lieu therefore without enquiry offended Article 14. The order terminating the service of the employees was set aside.

In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980. and on all subsequent days and readiness to join duty he was prevented to report to duty nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under C1.13 of the Certified Standing orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice.

This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under these circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs."

9. In view of the above referred decision it must be held that the Tribunal has seriously erred in taking the view that the action of the employer was justified in the light of clause 17 of the Standing Orders. We are also of the opinion that the Tribunal has misapplied the decisions of the Supreme Court in *National Engineering Industry Ltd. v. Hanuman*, (supra) and other cases. The judgment of the Supreme Court in *National Engineering Industry Ltd. v. Hanuman*, (supra) does not lay down a proposition that even if termination of the service of the workman is founded on misconduct, the employer can take action without holding any enquiry and without compliance of principles of natural justice. Moreover it is to be kept in mind that the said decision was rendered when there was no challenge to the authority of the employer to dispense with the service even of a permanent employee by giving a notice of specific duration. The law has drastically changed thereafter. In *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, , *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, and *Delhi*

Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , it has been held that a rule authorising termination of the service of permanent employee by giving a simple notice is opposed to the constitutional code of equality. In D.K. Yadav's case (supra) it has been held that even though the Standing Order authorises the termination of the service of a workman on the ground of absence from duty for a particular period the employer can exercise that power only after compliance of the rules of natural justice. In our opinion, the ratio of D.K. Yadav's decision directly applies to the case of the petitioner and the impugned award upholding the action of the employer suffers from an error of law apparent on the face of it.

10. For the reasons stated above the writ petition is allowed. Award Annexure P-4 is quashed. The workman shall be entitled to reinstatement with the benefit of continuity of service. However, we make it clear that shall not be entitled to monetary benefits for the period between 11.1.1985 and the date of this order. Costs are made easy.