

**(2009) 05 JH CK 0118**  
**In the Jharkhand High Court**

Heavy Engineering Corporation Ltd.

APPELLANT

Vs

Somra Oraon

RESPONDENT

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**Date of Decision :** 01-05-2009

**Acts Referred:**

**Citation :** (2010) 2 LLJ 471 : (2010) 6 SLR 797

**Hon'ble Judges :** Pradeep Kumar, J; Narendra Nath Tiwari, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

N.N. Tiwari, J.—This appeal has been preferred against the order dated 6.1.04 passed by learned Single Judge in C.W.J.C. No. 990/1997(R) whereby learned Single Judge has affirmed the award dated 7.8.1996 passed by learned Presiding Officer, Labour Court, Ranchi in Reference Case No. 7/1990.

2. Whether removal of the concerned workman declaring him to have lost his lien on appointment in terms of Clause 15(X) of the Certified Standing Order of the Heavy Engineering Corporation Limited is justified, is a short question needs to be answered in this appeal.

3. The appellant-Heavy Engineering Corporation Limited, Ranchi (hereinafter referred to as "H.E.C Ltd.") raised the same point before the Presiding Officer, Labour Court, Ranchi in Reference Case No. 7/1990.

4. Learned Labour Court after thorough consideration and appraisal of the facts, materials and evidences on record held that in order to invoke the provisions of Clause 15(X) of the Certified Standing Order, notice has to be served on the concerned workman legally and validly before his dismissal/removal under the said clause. In this case notice was not validly served by the Management. Learned Labour Court, thus, rendered its award in favour of the concerned workman and answered the said point in negative. It was held that striking off the name of the concerned workman from the rolls of the H.E.C. Ltd. was not legal and justified and that he would be deemed to be in service and is entitled

to his salary and all consequential benefits.

5. Aggrieved by the said award of learned Labour Court, the appellant-H.E.C Ltd. challenged the same before this Court in writ petition being C.W.J.C. No. 990/1997(R). Learned Single Judge, who finally heard the said writ petition, came to the finding that learned Labour Court on proper appreciation of the materials and evidences on record rightly came to the finding that during the relevant period from 25.5.1984 to 17.8.1988 the concerned workman was under treatment of his mental sickness and was not fit to join his duty. His removal from service in terms of Clause 15(X) of the Certified Standing Order alleging unauthorized absence without serving him proper notice was not justified and there was no illegality and perversity in the impugned award. Learned Single Judge found no reason to interfere with the impugned award passed by the Presiding Officer, Labour Court, Ranchi and dismissed the writ petition.

6. Against the said concurrent finding of learned Presiding Officer, Labour Court, Ranchi upheld by learned Single Judge in the said writ petition, the Management M/S H.E.C Ltd. has raised the same issue for the third time in this appeal.

7. Certain facts are not in dispute.

8. The concerned workman-respondent joined the H.E.C. Ltd. on 22.7.1970 as Mazdoor. He was later on upgraded as Points Man Grade "G" w.e.f 31.5.1978. He is said to be absent from duty since 1.5.1984 without any information. A notice dated 25.6.1984 was sent to the concerned workman informing him of possible consequences with a direction to report for duty within three days on receipt of the said notice. The Management did not get any reply to the said notice. Again by Memo No. 1191 dated 12.9.1984 he was given a notice in terms of Clause 15(X) of the Certified Standing Order of the H.E.C Ltd. intimating that lien on his appointment is lost due to his unauthorized absence for more than 15 days and in terms of the said provision the employer has no obligation to hold domestic enquiry before terminating the service of the employee. According to the appellant, the concerned workman was removed from service under the said provision of the Certified Standing Order of the H.E.C Ltd. and there was no illegality and arbitrariness on the part of the Management and that learned Presiding Officer, Labour Court as also learned Single Judge without properly appreciating the said provision have erroneously held the removal of the concerned workman illegal.

9. We have heard Mr. Rajiv Ranjan, learned Counsel appearing on behalf of the appellant and Mr. A. K. Sahani, learned Counsel appearing on behalf of the respondent.

10. Learned Counsel appearing for the appellant submitted that Clause 15(X) of the Certified Standing Order of the H.E.C Ltd. clearly provides for removal of a workman/employee who remains absent from duty without leave or fails to return on duty after expiry of leave and where the period of the said absence exceeds 15 days, the Management may terminate his lien on his appointment

after giving one month's notice of their intention to terminate his lien.

11. Learned Counsel further submitted that in case an employee remains absent from duty for more than 15 days, the Management has not to observe any other legal formality, as according to the provision of the said Order No. 15(X), the employee loses his lien on the post.

12. In support of his contentions, learned Counsel referred to and relied on a decision of this Court in Heavy Engineering Corporation Limited Vs. Lidha Oraon and Others, . He further referred to and relied on a decision of this Court in Management of Heavy Engineering Corporation Ltd. Vs. Presiding Officer, Labour Court and Another, and a decision of the Supreme Court in Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, .

13. Learned Counsel appearing on behalf of the respondent, on the other hand, submitted that the point urged by the appellant has been considered by learned Labour Court as well as by learned Single Judge. Considering the facts and evidences on record, it has been concurrently held that the Management could not prove the service of notice on the respondent-workman which is the essential requirement for exercising the power under Order No. 15(X) of the Certified Standing Order of the H.E.C Ltd. for terminating lien on the appointment of the workman/employee. It has been held that the order of termination of the respondent by invoking the provision of the Certified Standing Order No. 15(X) without complying with the essential condition is not justified and legal. He further submitted that learned single judge after considering the facts of the case has held that the decision of this Court rendered in Heavy Engineering Corporation Ltd. v. Lidha Oraon (supra) is not applicable to the facts of the instant case.

14. In order to appreciate the rival contentions and submissions of the parties, it would be useful to look to the provision of the said Order No. 15(X) of the Certified Standing Order of the H.E.C Ltd. which reads as follows:

The workman/employee who remains absent from duty without leave or fails to return to duty after expiry of the leave originally sanctioned or subsequently extended shall be liable to disciplinary action. Where the period of such absence exceeds 15 days, the Management may terminate his lien on his appointment after giving one month's notice of their intention to terminate his lien, unless the workman/employee returns to duty before the expiry of the period specified in the notice and submits application for regularizing his absence.

15. On plain reading of the said provision, it is clear that giving a notice of the intention to terminate the lien of a workman with the condition after "giving one month's notice" essentially means after proper and valid service of notice. The Management all along stressed that notice was given to the concerned workman before invoking the said provision and terminating the services of the respondent, but the concerned workman denied the same.

16. Learned Tribunal on due appraisal of the evidences on record held that at the relevant time the concerned workman was undergoing treatment of his mental sickness and was not fit to join his duty. The evidences adduced on record do not prove that any notice was served on the concerned workman. The said finding on fact is based on due appreciation of evidences. The said finding was challenged in the writ petition.

17. Learned Single Judge after hearing the parties held that the finding arrived at by learned Labour Court is based on proper scrutiny of facts, materials and evidences on record and there is no illegality and perversity in the said award. Learned single Judge upheld the award of the Labour Court and dismissed the writ petition.

18. In Lidha Oraon's case (supra) this Court had upheld the termination of the workman in view of the said Order No. 15 (X) on different facts. In that case there was no controversy regarding the service of notice. The employee was on medical leave, but the medical certificate produced by him was not believed and accepted. The facts and circumstances of Lidha Oraon's case were different and the said decision has got no application to the facts of the instant case.

19. Similarly, in the Management of M/S Heavy Engineering Corporation Ltd. (supra) this Court had remitted the matter for fresh hearing before the Labour Court after giving opportunity to the parties to adduce their evidences. In the said case without giving any opportunity to the Management to adduce evidence, the Labour Court following a decision of the Supreme Court rendered in 1989 (6) SCC 538 [Uprton India Ltd. v. Shammi Bhan] had held that Clause 15(X) of the Standing Order was invalid being violative of the principles of natural justice and in the other circumstances available on record.

20. In Syndicate Bank's case (supra) the Supreme Court has held that the provisions for giving notice to the workman and for giving him an opportunity to join the duty are sufficient compliance of the principles of natural justice. In the said case it was held that the principles of natural justice require that (i) a workman should know the nature of the complaint or accusation (ii) an opportunity to state his case (iii) the Management should act in good faith which means that the action of the Management should be fair, reasonable and just. In that case it was held that all those criteria were fully met in the case, whereas in the instant case it has been concurrently held that there was no proper service of notice on the concerned workman. The said decision of the Supreme Court has, thus, got no application to the facts of the instant case. In the instant case the requirement of the principles of natural justice has not been met by the Management.

21. Learned Counsel for the appellant invited us to peruse the evidences and appreciate the finding of learned Labour Court as also of learned Single Judge. We do not find any special circumstance to deviate from the established principles of law and to enter into roving enquiry and appraise the evidences at

this stage as an original adjudicatory forum, occupying the seat of the Labour Court. We find that the finding of learned Labour Court is based on proper appreciation of evidences and materials on record. Learned Single Judge also duly considered the relevant aspects and held that there is no perversity and illegality in the award of learned Labour Court.

22. On proper scrutiny of records and consideration of the points raised by the appellant, we find no reason to differ from the said concurrent finding recorded by learned Labour Court as well as learned Single Judge. We, therefore, find no merit in this appeal, which is, accordingly, dismissed.

23. However, there is no order as to costs.