

(2011) 09 DEL CK 0367

In the Delhi High Court

Case No : Writ Petition (C) 2113 of 2000 and CM 11466 of 2011 (for directions)

Hindalco Industries Limited

APPELLANT

Vs

Suman Lata Tuteja and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Delhi Shops and Establishments Act, 1954 — Section 2

Industrial Disputes Act, 1947 — Section 11, 12, 12(3), 12(4), 17B

Citation : (2011) 185 DLT 301 : (2012) 2 LLJ 526 : (2011) LLR 1197 : (2012) 2 SLJ 194

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Syed Shahid Hussain Rizvi, for the Appellant; S.L. Hans, for R-1, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner, Hindalco Industries Limited ("HIL") seeks quashing of an order dated 25th November 1999 passed by the Labour Court and an Award dated 22nd March 2000 issued by the Lt. Governor, National Capital Territory of Delhi publishing the Award in ID No. 282 of 1987. By the impugned Award, the Labour Court held that the termination of the Respondent workman was illegal and directed her reinstatement with continuity of service and full back wages.

Factual background

2. Respondent No. 1 was appointed as a stenographer in the Petitioner company on 16th July 1974 at New Delhi. Her appointment letter stated that she would be liable to transfer anywhere in India. It is stated that she continued working at the Head Office ("HO") at Vandana Building, Tolstoy Marg, New Delhi till 1st July 1978 when she was transferred from the post of stenographer to that of a receptionist-cumtelephone Operator on her request.

3. HIL has a Staff House (SH) at 69, Ring Road, Lajpat Nagar-III, New Delhi. It is stated that there was a requirement of a receptionist-cum-telephone operator in the SH and accordingly Respondent No. 1 was transferred there by a letter dated 13th February 1986. Since she was on leave, the transfer order was sent to her by registered post. It is stated that she was sent subsequent reminders which were served upon her either by U.P.C. (under postal certificate) or by hand. On the other hand, Respondent No. 1 sought extension of leave till 28th February 1986 which was granted by HIL. According to HIL, despite repeated reminders, Respondent No. 1 did not join at the SH and reported at the HO at Tolstoy Marg, New Delhi. It is stated that under cover of letter dated 3rd March 1986, she was advised to report for duty at the SH.

4. On 4th March 1986, Respondent No. 1 joined duty at the SH but absented from duty on the following day, i.e., 5th March 1986. On 6th March 1986, she submitted an application for leave for three days. This was granted to her. It is stated that Respondent No. 1 again joined duty on 8th March 1986 and 10th March 1986 and thereafter absented from duties unauthorizedly from 11th March 1986 onwards. Meanwhile, Respondent No. 1 made a representation to HIL on 8th March 1986 requesting it review the transfer order and post her back to the HO. This was rejected by HIL on 11th March 1986. However, on 12th March 1986, Respondent No. 1 wrote to HIL stating that she would not report at the SH "as I have smelt wrong motives of some of the officials by posting me there...". HIL states that thereafter, by letters dated 15th March, 20th March, 24th March and 27th March 1986, Respondent No. 1 was asked to report for duty failing which suitable action would be taken against her. By her letter dated 24th March 1986, Respondent No. 1 reiterated that it was not possible for her to report for duty at the SH. On 25th March 1986, she reiterated her request that she be transferred back to the HO. These prayers were rejected by a letter dated 27th March 1986 and the Petitioner was directed to join duties within three days of receipt of this letter. Thereafter Respondent No. 1 applied for leave on 9th April 1986 for the period 11th March 1986 to 15th April 1986 on the strength of a medical certificate dated 31st March 1986. Thereafter she approached the Conciliation Officer ("CO").

5. On 15th April 1986, the CO was not present and no conciliation proceedings could take place. The case was adjourned to 30th April 1986. HIL states that the clerk of the CO, after marking the presence of the authorized representatives of both the parties, wrongly on his own, added in the note-sheet that "on the joining after leave she will remain posted in the H.Q. till the pendency of the case...". The presence recorded by the clerk was as follows:

...Both parties are present. The management and the workman side filed authority letter. The next date is fixed for 30.4.86 at 11.30 a.m. On the joining after leave she will be remain in the Head Office till pendency of the case.

-Sd-

Avdhesh Kumar

-Sd-

H.L. Hans

6. It is stated that Mr. Avdhesh Kumar, who was the management representative, could not have given the statement as recorded because he had gone there to collect papers relating to the case. On 30th April 1986, the CO made a noting that the management representative had agreed to discuss the matter with the Senior Executive "for finding out the solution about the settlement dated 15.4.86. The next date is fixed for 5.5.86". The conciliation proceedings were thereafter disposed of on 8th September 1986.

7. In the meanwhile on 24th April 1986, a chargesheet was issued to Respondent No. 1 by HIL to which she replied on 12th May 1986. The chargesheet was for unauthorized absence from 11th March 1986 onwards despite her having received repeated notices to join duties. It is stated that even thereafter on 30th May 1986 HIL wrote to Respondent No. 1 asking her to resume duty. In the enquiry Respondent No. 1 participated alongwith her lawyer. The Enquiry Officer ("EO") submitted a report on 25th September 1986 holding the charge to have been proved. By an order dated 1st October 1986, the management terminated the services of Respondent No. 1 with immediate effect.

Reference to Labour Court

8. The dispute as to whether the termination of services of Respondent No. 1 was legal and justified was referred by the Secretary (Labour), Delhi Administration, by a notification dated 14th July 1987, to the Labour Court. The preliminary issue whether the enquiry was held in a fair manner was answered in the negative by the Labour Court by an order dated 20th March 1997. The said decision was challenged by HIL in Writ Petition (Civil) No. 3653 of 1997 which was disposed of by this Court on 3rd July 2000 permitting HIL to raise the issue when it challenged the final Award. Meanwhile on 20th October 1997, the Labour Court granted interim relief to Respondent No. 1. Against the said interim Award, HIL filed Writ Petition (Civil) No. 1797 of 1998 in which by an order dated 16th April 1998 this Court granted a stay. The said interim order was further modified on 14th July 1998. After the final Award was passed by the Labour Court, W.P. (C) No. 1797 of 1998 was permitted to be withdrawn by HIL on 20th April 2000 with liberty to challenge the final Award.

9. On 25th November 1999, the Labour Court passed the impugned Award holding that the SH was an establishment within the meaning of Section 2(a) of the Delhi Shops and Establishment Act, 1954. On the second issue, the Labour Court held that even if the services of Respondent No. 1 workman had been terminated during conciliation, it was to no effect in the facts and circumstances of the case. On the question whether the termination of the services of Respondent No. 1 was lawful the Labour Court relied on the noting of the clerk of

the CO in the conciliation proceedings and concluded that the leave applied for by Respondent No. 1 was impliedly sanctioned. It was also held that since Respondent No. 1 was no longer unauthorizedly absent and reported at the HO, the transfer order was also complied with. On this basis, it was held that the chargesheet was vitiated and, therefore, Respondent No. 1 was entitled to reinstatement with continuity of service and full back wages.

10. By an order dated 30th July 2001 in the present writ petition, this Court stayed the operation of the impugned Award conditional upon the Petitioner depositing 25% of the back wages. Respondent No. 1 was held entitled to withdraw 50% of the said amount on furnishing security and the balance 50% was directed to be kept in a fixed deposit account to earn maximum interest. HIL complied with the said order. An application filed by Respondent No. 1 workman u/s 17B of the Industrial Disputes Act, 1947 ("Industrial Disputes Act") was allowed by this Court by an order dated 25th April 2006.

11. Mr. Syed Shahid Hussain Rizvi, learned Counsel for the Petitioner HIL submitted that the conclusion arrived at by the Labour Court on the fairness of the enquiry was entirely based upon the noting erroneously made by the clerk of the CO in the conciliation proceedings. Referring to the definition of "conciliation proceedings" u/s 2(c) of the Industrial Disputes Act and of "conciliation officer" u/s 2(d) Industrial Disputes Act read with Sections 4, 5, 11 & 12 thereof, it is submitted that the statement recorded by the clerk of the CO was entirely without jurisdiction and no reliance could be placed thereon. Learned Counsel for the Petitioner referred to the decisions in State of Uttar Pradesh Vs. Singhara Singh and Others, and Dr. Ram Deen Maurya Vs. State of U.P. and Others, . Mr. S.L. Hans, learned Counsel for the Respondent workman on the other hand submitted that an understanding had indeed been reached by the parties before the CO that Respondent No. 1 could report at the HO.

12. The decision of the Labour Court on the aspect of fairness of the inquiry does appear to have turned on the noting of the clerk of the CO in the record sheet of the conciliation proceedings. In the impugned Award, the Labour Court after noting the submissions of the parties held as under:

The above shows that the workman was asked to explain the non-compliance of transfer order and her continuing disobey the transfer order while not only in para No. 4 of the chargesheet there is contrary admission that the workman after attending duties for only three days started absenting from duty without any cause or intimation and it is admitted case of the parties before enquiry officer and also during the arguments that workman worked at the staff house w.e.f. 04-03-1986 to 10-03-1986 so there is no disobedience on her part. So she cannot be charged for disobeying the transfer order, when she has not disobeyed the transfer order she cannot be charged for continuing to disobey the transfer order. The chargesheet, therefore appeared to be defective and I agree with Id. authorised representative of the workman that findings of the enquiry officer that the workman deliberately and intentionally remained absent from her place of

work w. e. f. 11-03-1986 is not on the charges framed against her in the chargesheet.

13. The chargesheet dated 24th April 1986 served on Respondent No. 1 shows that there were three charges. One was that Respondent No. 1 had disobeyed the order of the superior officer. The second was that Respondent No. 1 had refused to join duty at the SH and the third was that she continued to disobey the transfer order. The Labour Court divided the charge of unauthorised absence of Respondent No. 1 into two periods. The first was from 11th March 1986 to 15th April 1986 and the second from 16th April 1986 to 29th April 1986. This was because pursuant to the transfer order, the Petitioner joined at the SH on 4th March 1986 but again proceeded on leave for three days. On 6th March 1986, she again submitted an application for leave up to 8th March 1986 and again remained absent from 11th March 1986 onwards. The Labour Court concluded that Respondent No. 1 had applied for leave with effect from 11th March 1986 to 15th April 1986 and had also submitted a medical certificate. Since this application was not rejected, she could not be said to have absented herself unauthorisedly.

14. The fact remains that after 11th March 1986, Respondent No. 1 submitted an application for leave only on 9th April 1986. In the meanwhile, in response to her letter dated 25th March 1986 where Respondent No. 1 requested for her transfer back to the HO, the management replied to her on 27th March 1986 rejecting her request and calling upon her "to report for duty at our Staff House, 69, Ring Road, Lajpat Nagar-III, New Delhi within three days of the receipt of this letter failing which suitable action against you will be taken as may be deemed fit and proper in the facts and circumstances of the case". Consequently, there was no question of any implied acceptance of the leave application submitted by Respondent No. 1 to the Petitioner. The inference drawn by the Labour Court in this regard is contrary to the above correspondence which was also placed on the record of the Labour Court. It does appear that Respondent No. 1 stayed away from work despite her request for retransfer to the HO being repeatedly rejected and despite knowing that she was required to report for work at the SH. The conclusion arrived at by the Labour Court on this aspect in its order dated 20th March 1997 is perverse and cannot be sustained in law.

15. As regards the period between 16th April 1986 and 29th April 1986, the Labour Court went by the conciliation proceedings dated 15th April 1986 and 30th April 1986 which according to it were "consent/admission of the management allowing the workman to join duty after leave period". It was held that after assurance in the conciliation proceedings, the management did not allow Respondent No. 1 to join duty at the HO on 16th April 1986 and, therefore, she could not be held to be absent from duty at the staff house from 16th April 1986 onwards. The Labour Court however noted that the proceedings dated 15th April 1986 were not in the presence of the CO, who was on leave on that date. Admittedly, it was the clerk of the CO who made a noting in his handwriting that

on joining after leave, Respondent No. 1 would remain posted in the HO till the pendency of the case. Clearly, this noting by the clerk was without jurisdiction, since the conciliation proceedings could only be drawn up by the Company Section 12(3) of the Industrial Disputes Act mandates that the report of settlement of a dispute arrived at in the course of conciliation proceedings has to be sent by the CO to the appropriate government "together with a memorandum of the settlement signed by the parties to the dispute". The reference in the subsequent conciliation proceedings held on 30th April 1986 to the settlement arrived at on 15th April 1986 was obviously an error since there was no such settlement in terms of Section 12(3) of the Industrial Disputes Act arrived at on 15th April 1986. The noting of the clerk on that date could not be taken to be a settlement. The clerk had no authority in law to record such settlement. In fact, Section 12(4) Industrial Disputes Act states that if no such settlement is arrived at, the CO would close the proceedings and send a report to the appropriate government. The Labour Court appears to have failed to notice that the conciliation proceedings in fact were closed on 8th September 1986. The affidavit dated 23rd September 1986 filed by Respondent No. 1 before the EO itself states in para 6 that HIL raised an industrial dispute with the Conciliation Officer on 12th May 1986 and the same was finally disposed of on 8th September 2006. HIL also filed an affidavit dated 19th September 1986 before the EO where it pointed out that the conciliation proceedings concluded on 8th September 1986 since no settlement could be arrived at. Therefore, the termination of the services of Respondent No. 1 on 1st October 1986 was after the conclusion of the conciliation proceedings and not during its pendency. In the circumstances, the conclusion drawn by the Labour Court that a "settlement" was arrived at on 15th April 1986 is plainly erroneous.

16. Having held the SH to be a part of the establishment of HIL, the Labour Court ought to have held the continued absence of Respondent No. 1 by refusing to report for duty at the SH, despite being directed to do so by the management, constituting unauthorised absence without sanctioned leave. There was no implied sanction of leave by the management. The correspondence placed on record substantiates this conclusion. It also shows that even after the chargesheet, the management by the letter dated 30th May 1986 required Respondent No. 1 to report for duty at the SH. This was also disobeyed by Respondent No. 1. In the circumstances, the fact that she remained continuously absent from her place of work stood proved. The conclusion to the contrary arrived at by the Labour Court cannot be sustained in law.

17. This Court also finds no ground to interfere with the order passed by HIL terminating the services of Respondent No. 1. Her continued unauthorised absence from duty despite several notices establishes the charge of insubordination. The result was an obvious loss of confidence in Respondent No. 1.

18. This Court accordingly sets aside the order dated 20th March 1997 and the

Award dated 25th November 1999 passed by the Labour Court. However, it is directed that Respondent No. 1 need not refund to HIL the amount received by her pursuant to the interim order dated 20th October 1997 passed by the Labour Court and as further modified by the order dated 14th July 1998 of this Court in W.P. (C) No. 1797 of 1998. Respondent No. 1 also need not refund to HIL the amount released to her pursuant to the order dated 30th July 2001 of this Court in the present petition. The balance amount deposited by HIL in this Court will be returned to HIL by the Registry together with the interest accrued thereon within a period of two weeks from today.

19. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs. The application stands disposed of.