
(2007) 03 AHC CK 0258
In the Allahabad High Court

Hindustan Aeronautics Ltd.

APPELLANT

Vs

Industrial Tribunal II and Another

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2008) 117 FLR 324

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri P.K. Sinha, learned Counsel for the petitioner-employer and Sri R.K. Verma, who is appearing on behalf of the opposite party No. 2 workman.

The petitioner has assailed the award rendered by the Industrial Tribunal II, Lucknow on 25.5.1984, a copy of which is contained in Annexure No. 11 to the writ petition.

2. A reference was made by the State Government u/s 4-K of the U.P. Industrial Disputes Act, 1947 vide G.O. No. 1348 (SHRA)/36-SHRM (1-CC-23 (LUCK)/82 dated 22.3.1982 to the Industrial Tribunal II, Lucknow, for settlement of a dispute between M/s Hindustan Aeronautics Ltd. and its workman. The reference reads as follows:

D;k Isok;kstdkas }kjk vius Jfed fo"kkY JhokLro dh fu;kstdks ds vkns"K i= la[k;k ,e-,y-,l-Mh-@1303@ I- ?240? fnukad 14-8-1981 }kjk Isok;s lekIr fd;k tkuk mfpr vFkok oS/kkfud gSA ;fn ugha] rks IEcfU/kr Jfed D;k ykHk@vuqrks"K ?fjyhQ? ikus dk vf/kdkjh gS rFkk vU; fdl vkooj.k lfgrA

3. The Tribunal, after going through the material on record, had concluded that the workman did not voluntarily abandon the employment and the order of termination of his services passed on 14.8.1981 was not just, legal and proper.

He was retrenched from services without following due procedure as provided in law.

Sri P.K. Sinha, learned Counsel for the H.A.L. has submitted that the respondent No. 2 was a design engineer, he was not a workman of the company. He had applied for one month's leave w.e.f. 3.4.1980 to 3.5.1980 and thereafter applied extension of leave from 4.5.1980 to 2.6.1980 on the ground of his sickness. He had further sought leave without pay for 111 days w.e.f. 20.10.1980 to 6.2.1981 on the ground of domestic circumstances. Thereafter the respondent No. 2 had remained absent from duty from 8.2.1981 to 19.5.1981 and from 21.5.1981 to 14.8.1981. He was formally granted leave up to 6.2.1981 only. He remained absent from duty for more than ten consecutive days. It was treated that he had lost his lien and abandoned the job. The employee's name was struck off from the rolls of the Division w.e.f. 14.8.1981. However, the respondent No. 2 turned up on 29.8.1981 and submitted his joining report, which was not accepted. He was formally informed vide notice dated 14.8.1988 that he had been considered to have voluntarily abandoned the job. The respondent No. 2 requested for his reinstatement vide his letter dated 2.9.1981, but that too was rejected on 29.9.1981. He then approached the conciliation officer but the matter could not be settled. As a result of this, a reference u/s 4-K of the U.P. Industrial Disputes Act was made by the State Government to the Industrial Tribunal, before whom written statements, rejoinder etc. were filed. It was pleaded before the Industrial Tribunal that the respondent No. 2, Sri Vishal Srivastava was not a workman within the meaning of Section 22 of the Industrial Disputes Act, and consequently the reference made by the State Government to the Industrial Tribunal was invalid. The H.A.L. examined Wing commander Sri N.K. Wadhwa as its witness. About 15 documents were produced before the Industrial Tribunal. The respondent No. 2 did not enter the witness box, instead the statement of her mother Smt. Madhuri Srivastava was recorded. The Tribunal gave its award on 25.5.1984, holding that respondent No. 2 was a workman and also observed that he ought to have been paid retrenchment compensation before terminating his service. The Tribunal also held the respondent No. 2 to be entitled for back wages and accordingly ordered for payment of the same.

4. Sri P.K. Sinha, learned Counsel for the petitioner has strenuously argued that the petitioner corporation is a Central Government's corporation under the control of Ministry of Defence, Government of India. The State Government was not empowered to refer the dispute for adjudication to the Industrial Tribunal u/s 4-K of U.P. Industrial Disputes Act. The Industrial Tribunal had no jurisdiction to adjudicate upon the case; Even if M/s H.A.L. had consented to submit itself to the jurisdiction of the Industrial Tribunal, such a consent or concurrence cannot give a jurisdiction to the Industrial Tribunal to adjudicate upon the dispute. Where there is an initial want of jurisdiction, the same cannot be cured by acquiescence. In support of his submission, Sri Sinha has placed reliance on the following judgments of Hon'ble Supreme Court of India and this Court.

1. The United Commercial Bank Ltd. v. Their Workman AIR 1951 (SC) 38.
2. Kliardah Co. Ltd. v. Baymon and Co. AIR 1962 SC 1810.
3. Union of India (UOI) Vs. A.L. Rallia Ram,
4. Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd.,
5. United Bank of India v. Achintva Kumar Lahiri. 2007 (25) LCD 176.
6. Chandrika Misir and Another Vs. Bhaiya Lal,
7. Kiran Singh and Others Vs. Chaman Paswan and Others,

According to Sri P.K. Sinha, learned Counsel for the petitioner, the reference in the present case should have been made by the Central Government and not by the State Government, u/s 4-K of Industrial Disputes Act.

Sri P.K. Sinha, has further submitted that the respondent No. 2 had absented himself from duty from 8.2.1981 to 21.5.1981. He had been absent from duty without obtaining proper permission of the appropriate authority. He had voluntarily abandoned the job as defined under the relevant standing order, which is quoted below :

Where an employee remains absent for more than 10 consecutive days and/or absents himself beyond the period of leave originally granted or subsequently extended, shall be deemed to have lost his lien on appointment. However, if the employee explains to the satisfaction of management the reasons for his unauthorized absence within eight days from the expiry of the above ten days, the Management at his discretion may revoke the order and restore his appointment.

5. The name of respondent No. 2 was struck off from the rolls of the Division w.e.f. 14.8.1981 and his applications for reinstatement were rightly rejected. The photocopies of the documents were placed for the perusal of the Court to show as to how, the applications submitted by the respondent No. 2 after 14.8.1981 were dealt with by the appropriate authority. In the present case the Industrial Tribunal has wrongly held that it was a case of loss of lien on appointment and retrenchment of services. The respondent No. 2 had voluntarily abandoned his employment. It was not expected from the employer to hold a formal, regular departmental enquiry. The principles of natural justice were followed. The Tribunal has placed reliance on the case laws in Uptron India Limited Vs. Shammi Bhan and Another, and M/s. Scooters India Ltd. Vs. M. Mohammad Yaqub and Another, which were not applicable to the present case. He had placed reliance on following judgments in support of his submissions:

1. The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another,
2. D.K. Yadav v. J.M.A. Industries Ltd. 1993 (67) FLR 111
3. Uptron India Limited Vs. Shammi Bhan and Another,

4. Binny Ltd. v. Their Workmen 1972 (25) FLR 74
5. National Engineering Industries Ltd. Vs. Hanuman,
6. G.T. Lad and Ors. v. Chemicals and Fibres India Ltd. 1979 (38) FLR 259 (SC)
7. Kumaon Motor Owners Union Ltd. v. State of U.P. and Ors. 1994 (68) FLR 1072
8. Jai Maa Kali Aluminum v. Tilak Raj and Ors. 1996 (72) FLR 518
- 9.. Ashok Kumar Pandey v. State of U.P. 1999 (83) FLR 1118 (All.)
10. Bharat Heavy Electricals Ltd. Vs. Presiding Officer, Labour Court, Meerut and another,
11. Syndicate Bank v. Gen. Secretary Syndicate Bank Staff Association 2000 (85) FLR 804 (SC).

6. Sri R.K. Verma, learned Counsel for the respondent No. 2 has vehemently opposed the writ petition. He has submitted that the respondent No. 2 was not performing managerial or statutory duty of the petitioner while working as aeronautical engineer, design engineer. The job of respondent No. 2 while working as aeronautical engineer, design engineer was of technical nature. He used to prepare designs and submit the same to his superiors for approval. He was rightly held to be a workman by the Industrial Tribunal. The respondent No. 2 had applied for leave, which was admittedly sanctioned by the appropriate authority upto 6.2.1981. He had obtained the formal permission of H.A.L. authority to earn a Post Graduate Diploma in business administration. He had clearly indicated the reasons in his application seeking leave from 4.5.1980 to 2.6.1980 on medical ground. The respondent No. 2 had apprised the authority of the reasons for his absence from duty* He was always willing to ensure compliance of the directions issued by his superior authority Copies of his applications and medical certificate were placed before the Industrial Tribunal and in this Court also alongwith the counter affidavit. In fact, his applications for leave were not dealt with. The H.A.L. authority was acting with a pre-determined mind to terminate the service of respondent No. 2. The respondent No. 2 on being medically fit immediately reported for duty but he was prevented to work. Moreover, the order dated 14.8.1981 and the order passed on 29.9.1981 were non speaking and non-reasoned orders.

7. Sri. R.K. Verma, learned Counsel for the respondent No. 2 has further submitted that striking off the name of respondent No. 2 from the rolls amounts to loss of his lien on appointment and retrenchment of his services. The said order of termination issued on 14.8.1981 was void ab initio. The Industrial Tribunal has rightly allowed the continuance of his services with full back wages. The principles of natural justice had not been followed before retrenching the services of respondent No. 2, no enquiry was held against him. Charges were not so serious, which could attract the penalty of dismissal, removal or retrenchment of the respondent No. 2 from services.

Learned Counsel for the respondent No. 2 workman has placed reliance on following judgements in support of his submission:

1. Mafat Lal Naraindas Barot v. J.D. Rathod, Divisional Controller, State Transport Mdisana and Anr. 1966 (12) FLR 191
2. Gujrat State Construction Corporation v. Indravadan Ambalal Soni 2003 (99) FLR 850
3. State of U.P. Vs. Presiding Officer, Industrial Tribunal (1), Allahabad and Another,
4. HAL Transport Aircraft Division Kanpur v. State of U.P. and Ors. 2003 LBESR 1156 (Alld.)
5. Inamdar A.D. Vs. Bajaj Tempo Ltd. and Others,
6. P.A.S. Press, Madras v. Presiding Officer, Labour Court, Madras and Anr. AIR 1961 (Mad.) 194
7. Vijai Prakash Singh and Ors. v. Zila Panchayat Raebareli and Ors. 2005 (23) LCD 1461.
8. Uptron India Ltd. v. P.O. Industrial Tribunal. 1998 (78) FLR 745 (Alld.).
9. Uptron India Limited Vs. Shammi Bhan and Another,
10. M/s. Scooters India Ltd. Vs. M. Mohammad Yaqub and Another,
11. Samiullah Khan v. U.P.S.R.T.C. 2005 (23) LCD 1435.
12. Vijay Prakash Singh v. Zila Panchayat, Raibareili. 2003 LBESR 1156 (Alld.).

8. As per learned Counsel for the respondent No. 2, the [petitioner- employer has taken fresh, new ground during the arguments and after the matter was finally adjudicated by the Industrial Tribunal that the Industrial Tribunal had no jurisdiction. No such objection was ever raised at any stage i.e. at the stage of conciliation or at the stage of pursuing the litigation before the Industrial Tribunal. No such issue was framed nor any such averment has been made in the body of the writ petition or in the written statement filed before the Industrial Tribunal.

This Court, relying on various judgments and legal propositions in H.A.L. Transport Aircraft Division Kanpur v. State of U.P. and Ors. 2003 LBESR 1156 (Alld.) has held in para 8 that the State Government is empowered to refer such disputes relating to H.A.L. employees for adjudication to the Industrial Tribunal u/s 4-K of the Industrial Dispute Act. However, in the absence of any such pleading, the petitioner cannot raise this question after more than 25 years of litigation and that too, at the time of arguments in the present case. The award of the Industrial Tribunal is just, legal and proper. As far as the evidence of Smt. Madhuri Srivastava, mother of respondent No. 2 is concerned, she was examined

only on the question of submission of leave application of the employee. Admittedly, she was the mother of workman Vishal Srivastava. She personally went to deliver all the leave applications covering the period from 20.10.1980 till August, 1981. Mis mother did not say anything about the nature of work performed by Sri Vishal Srivastava. She had only testified that she went to H.A.L. to deliver applications seeking leave sent by her son.

9. I have heard learned Counsel for the parties and perused the record.

In the present case as far as jurisdiction of Industrial Tribunal is concerned, this Court has noted that the workman respondent No. 2 had approached the conciliation officer, who had registered a conciliation/C.T. Case. After the conciliation had failed, the matter was referred to the Industrial Tribunal by the State Government u/s 4-K of the Industrial Disputes Act. Written t statements, etc. were filed before the Industrial Tribunal by both the parties. In these written statements, the H.A.L. employer petitioner had not pleaded any where that the conciliation officer at the conciliation stage or the Industrial Tribunal had no jurisdiction to adjudicate upon the dispute.

10. Following issues were framed by the Industrial Tribunal with the consent of contesting parties:

1. Whether the contesting workman, Sri Vishal Srivastava is a workman for the purposes of the U.P. Industrial Disputes Act, 1947?
2. Whether the workman voluntarily abandoned his employment in August, 1981?
3. Whether the termination of services of the workman, Sri Vishal Srivastava, w.e.f. 14.8.1981 was just, legal and proper?
4. To what relief, if any, is the w orkman entitled?

M/s. H.A.L. and the workman had been contesting their cases before the Industrial Court without raising any objection regarding jurisdiction of the Industrial Tribunal to adjudicate upon me dispute. The reference was made by the State Government vide Government Order dated 22.3.1982 u/s 4-K of U.P. Industrial Disputes Act. From the relief clause in the writ petition, it is amply clear that for the first time, the plea of jurisdiction has been taken at the time of arguments. M/s. H.A.L. petitioner had never objected to the jurisdiction of the Industrial Tribunal nor it has challenged the reference made by the State Government referring the matter for adjudication of the Industrial Tribunal under the U.P. Industrial Disputes Act, The relief clause in the writ petition is as follows:

Prayer

Wherefore it is most respectfully prayed that the Hon''ble Court may be pleased to.

(I) issue to writ, order or direction in the nature of certiorari quashing the award of the Industrial Tribunal I, Lucknow dated 25.5.1984, contained in Annexure No.

11.

(II) issue a writ, order or direction in the nature of mandamus commanding respondents not to give effect to the impugned award contained in

Annexure-11.

(III) award the cost of petition to the petitioner, and

(IV) issue such other writ, order or direction as this Hon''ble Court deems just and proper in the circumstances of the case.

11. Since it was not a part of the pleadings nor any relief has been sought in the writ petition assailing the reference, the petitioner cannot be permitted to raise such a plea after about 25 years of litigation. The employee has already been allowed the benefits of Section 17-B of the Industrial Disputes Act (Central) by virtue of an award granted in his favour and specific order passed by this Court in this regard. The workman's case is also covered by the decision of this Court as in *H.A.L. Transport Aircraft Division Kanpur v. State of U.P. and Ors.* 2003 LBESR 1156 (Alld.) . This Court had estopped the petitioner M/s HAL in that case from raising the question at such late stage. The petitioner already had several opportunities i.e. at the stage of conciliation, the stage of adjudication before the Industrial Tribunal and during about 23 years period of litigation before us Court, from 28.3.1984 when the writ petition was presented and till date when the writ petition has come up for final hearing. This would be beyond the scope of the writ petition to deal with such point, surprisingly raised by the petitioner at this late stage. This Court, taking instance from a decision as in *Hindustan Aeronautics Ltd. Vs. The Workmen and Others*, had held that the State Government is empowered to refer a dispute for adjudication by the Labour Court or Industrial Tribunal in such circumstances. Accordingly, I hold that the Industrial Tribunal has rightly dealt with the matter brought before it for adjudication through a reference made by the State Government vide Government Order dated 22.3.1982. In the present case, the Industrial Tribunal has recorded detailed findings, giving adequate reasons for drawing its conclusion. Relying on the statement of Wing Commander Mr. N.K. Wadhwa, an officer of H.A.L. and other documents placed on record, the Tribunal has come to the definite conclusion that the work of the employee was not supervisory in nature. His duties and functions were found to be highly technical in nature. He was not assigned supervisory duties at all and as such he was held to be a workman only.

12. The respondent No. 2 could not have been governed by the HAL Conduct Rules. The Tribunal has held that his case could have been dealt with in accordance with the standing orders of the corporation. It emerges from record that no opportunity of hearing was afforded to the workman before ordering loss of his lien on appointment as defined in Order XXI(ii) of the Standing Orders. The respondent No. 2 under bona fide belief had submitted his application seeking leave on medical and personal grounds. The authorities ought to have dealt with

the applications and passed reasoned and speaking orders. In the present case, straightaway the impugned order dated 14.8.1981 was issued striking off the name of the workman from the rolls and it was treated that he had abandoned his employment. The respondent No. 2 immediately approached the appropriate authority, explaining his absence. Without dealing with the applications, a non-reasoned and non-speaking order was passed on 29.9.1981, which is quoted below:

No HAL-LO/1300 (A-Per)-PF-1715 September, 1981

Sub: REINSTATEMENT

Reference is made to your application dated 2nd September, 1981 on the subject cited above.

In this context we have to inform you that your request for reinstatement was considered by the competent authority but the case has not been agreed to.

Personnel Officer Shri Vishal Srivastava 48, Gulistan Colony, LUCKNOW.

13. The respondent No. 2 was not even apprised of the reasons as to how his applications were dealt with and what persuaded the authority to reject his application for rejoining the duties. A concession has been provided in the standing orders that if the employee explains to the satisfaction of the management the reason for his unauthorized absence for ten consecutive days or " more, within eight days from the; expiry of said ten days, the management at its discretion may revoke the order and restore his appointment. The provisions contained in para 16 of the standing order, service .rule have not been followed in the present case. The Industrial Tribunal has recorded a (detailed finding while dealing with this issue.

14. It is noteworthy that HAL had not produced the personal file, service record of Sri Vishal Srivastava, the workman claiming it to be a confidential document. The register of the application and other relevant documents, leave register, etc. were not produced before the Industrial Tribunal. Loss of lien results in loss of service. In the present case, the employee had submitted himself to the administrative control of his superior officer i.e. appropriate authority of HAL after order dated 14.8.1981 was passed. The appropriate authority ought to have considered his case in the light of the provisions of para 16 of the Standing Order and kept the employee associated with the decision making process. A reasoned and speaking order ought to have been passed in this case. The workman was not given an opportunity of hearing and principles of natural justice had also been violated. Evidently the order dated 14.8.1981 has resulted in serious consequences, like loss of lien, retrenchment/termination of service of the employee. In these set of circumstances, the case of respondent No. 2 is squarely covered by the decisions in *Uptron India Limited Vs. Shammi Bhan and Another*, and *Scooters India Ltd. v. M. Mohammad Yaqub*. 2001 (88) FLR 247 (SC).

15. The Tribunal has considered the various decision of Apex Court and this Court. It has carefully dealt with the point of abandonment of employment, its effect and the law applicable on the subject. The Tribunal has recorded detailed findings on the basis of documentary evidence holding that the workman had always intended and desired to continue to work in the HAL. The employee went to see the General Manager HAL and pleaded for reinstatement. This fact finds place in the minutes of meetings dated 23.9.1981 which were produced before the Industrial Tribunal. The employee was keen to work with the HAL but the management had acted in an arbitrary manner. All the issues was decided against the employer petitioner.

16. This Court has taken note of the fact that the learned Industrial Tribunal has written a 23 page long well considered, well reasoned judgment dealing with all the points and questions of facts and law pleaded by the parties. The award is legal valid and proper. I find no illegality or infirmity in the award of the Industrial Tribunal. The authorities cited, by the learned Counsel for. the petitioner have no application to the present case/Accordingly, no interference is required.

17. The writ petition is dismissed. The executing authority shall continue with the execution proceedings. Here is a case where the Tribunal had concluded the controversy on 25.5.1984. More than twenty two and a half years have passed. In view of this, it would be appropriate that the award must be executed within one month from today by the executing authority.

In the facts and circumstances of the case, the respondent No. 2 shall be entitled for Rs. 25,000/- as expenses, costs for pursuing the litigation in this Court for more than twenty two and a half years applying the principles of law laid down by Hon"ble Supreme Court of India in Salon Advocate Bar Association, Tamil Naduv. Union of India 2005 (34) AIC 249 (SC) : AIR 2005 DC 3353.