

(1972) 09 OHC CK 0010

In the Orissa High Court

Hindustan Steel Limited

APPELLANT

Vs

Kishore Prasad Mohanty and Another

RESPONDENT

Date of Decision : 20-09-1972

Acts Referred:

Citation : (1973) 1 LLJ 561

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Judgement

R.N. Misra, J.—The employer, Messrs. Hindustan Steel Limited, Rourkela has asked for a writ of certiorari to quash the award given by the Industrial Tribunal-opposite party No. 2 in favour of a workman, opposite party No, 1.

2. The opposite party No. 1 was admittedly a workman in the employment of the company. He was recruited in May, 1960, and with effect from 1-11-1961, he was promoted as a convertermen. The workman was on leave for the period between 16th of March, 1964 and 30th of March, 1964. The workman did not report to duty upon expiry of the leave. According to the employer, he also did not apply for extension of the leave and remained absent for more than a fortnight after the leave expired on 31 3-1964. Understanding Order 16 (x) of the certified standing orders of the employer, the workman lost lien on his appointment and was, therefore, presumed to have left the services of the company of his own accord without notice. His name was, therefore, struck off the rolls of the company with effect from 15-4-1964.

3. The workman alleged that he fell ill from 06-3-1964 while he was on leave and continued to be under treatment till 2-5-1964. He had sent an application to the employer-management for leave. On 2nd of May, 1964, he was declared fit by the medical officer to attend to his duties and accordingly he returned to the place of employment on 3-5-1964 and reported to duty on 4-5-1964. His joining report was not accepted and he was required to be examined by the Ispat General Hospital of the employer. He was declared not on 6-5-1964 and when he came to report to duty, he was refused on the ground that his service had

already been terminated. He contended that he was entitled to notice and in the absence of a proceeding his services could not be put an end to.

4. Ultimately the following dispute was referred by the State Government to the Tribunal for adjudication:

Whether the removal from service of Shri K. P. Mohanty, workman by the management of the Hindustan Steel Limited, Rourkela, is legal and justified? If not, to what relief he is entitled?"

5. Before the Tribunal, the workman made an attempt to establish his plea of asking for extension of leave. The Tribunal, however, negated the contention by holding :

I have, therefore, no doubt in my mind that the workman Sri Mohanty did not submit any application to the management for extension of his leave from 31-3-1964.

Yet, the Tribunal came to hold that the action taken by the management under Standing Order 16 (x) was not justified. He accordingly held that the removal from service of the workman was not legal or justified and he was entitled to reinstatement with full back wages.

6. Mr. Das for the petitioner contends that the view taken by the Tribunal is erroneous and places reliance on a decision of their Lordships of the Supreme Court in the case of National Engineering Industries Ltd. Vs. Hanuman, . Their Lordships in dealing with a standing order of this type indicated :

...The standing order is inartistically worded, but it seems to us clear that when the standing order provides that a workman will lose his lien on his appointment in case b; does not join his duty within 8 days of the expiry of his leave, it obviously means that his services are automatically terminated on the happening of the contingency. We do not understand how a workman who has lost his lien on his appointment can continue in services thereafter. Where, therefore standing order provides that a workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens.

In view of the finding of the Tribunal that the workman did not apply for extension of leave and on the admitted case that the workman did not report to duty for more than a month after the leave expired, on the principle indicated by their Lordships in the aforesaid decision, the workman's employment must be found to have come to an end, he having lost his lien. The conclusion reached by the Tribunal was, therefore, erroneous and a writ of certiorari must issue to quash that decision,

7. We must, however, indicate that Mr. Das for the petitioner agreed to take back the workman in employment in case he offers his services and reports to duty as

and when appointed. Mr. Das has given us to understand that as soon as an application is made, the workman would be employed on fresh basis in the post he last held. He would, however, be not entitled to advantages of past service in any form and shall be treated to be a new employee. There shall be no order as to costs.

B.K. Ray, J.

8. I agree.