
(1962) 01 PAT CK 0010
In the Patna High Court
Case No : A.F.O.D. No. 167 of 1956

J.L. Toppo

APPELLANT

Vs

Tata Locomotive and Engineering Company Ltd.

RESPONDENT

Date of Decision : 31-01-1962

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 7
Works Standing Orders of Tata Locomotive and Engineering Company Orders — Order 24, Order 25, Order 26

Citation : AIR 1963 Patna 177 : (1962) 2 LLJ 395

Hon'ble Judges : Ramratna Singh, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Chandra Bhushan Sahay and Radha Raman, for the Appellant; A.C. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—This is an appeal by the plaintiff from the judgment of the Subordinate Judge, Jamshedpur, dated 10th December, 1955, dismissing his suit for damages for wrongful dismissal.

2. The material facts, not in dispute, are these. On 7th February, 1947, the plaintiff was employed by the Tata Locomotive and Engineering Company Ltd. the defendant, as a Material Checker on a monthly salary of Rs. 40/- in the scale of Rs. 40-5-60. On 8th June, 1948, he was promoted to the post of Assistant Ward Keeper on a salary of Rs. 75 per month, in the grade pay of Rs. 75-5-100 which, on account of the revision of the wage structure in 1949, was refixed at Rs. 85-5-100, and from 8th June, 1949, the plaintiff was drawing a salary of Rs. 85 per month, besides dearness allowance of Rs. 8/87- and emergency bonus and food rebate of Rs. 10 per month. On 8th August, 1949, two tons of Mild Steel Rods of half inch diameter disappeared from his custody. The plaintiff's case was that Kundan Singh Bedi, the contractor, urgently required the iron rods in connection with the work of the defendant and that Mr. Sharma, his agent, took

away those iron rods.

This aroused the suspicion of Mr. J. Winfield, Inspector-in-charge Watch and Ward, and he investigated into the matter. It transpired during the investigation that Kundan Singh Bedi had no contract work since after 4th August, 1949, and had not been authorised to draw the said iron rods, and that the plaintiff made over the iron rods to Mr. Sharma without authority. Mr. Winfield accordingly submitted a report on 9th August, 1949 (Ext. K). On the same day, that is, 9th August, 1949, Mr. Rao, Stores Controller, by a letter dated: 9/10th August, 1949 (Ext. A1) detailing the circumstances of the loss of the iron rods, asked the plaintiff to explain under what circumstances the materials (iron rods) were issued from his sub-stores-which, as he was aware, were only meant for the use of the Resident Engineer and not any other department of the defendant. The plaintiff submitted his explanation on nth August, 1949 (vide Ext. A2). He admitted that he had made over the iron rods to Mr. Sharma without proper authority and pleaded good faith and concluded his explanation in these words :

"I do admit that this is a mistake done by me. In future I shall be very very careful. Please do the needful."

Thereafter, Mr. K. C. Cooper, Administrative" Officer, lodged First Information Report against the-plaintiff and Mr. Sharma for their prosecution for criminal breach of trust. Mr. Sharma absconded, and the trial proceeded against the plaintiff alone. In the meantime the plaintiff was suspended from service with effect from 11th October, 1949. The cuspension order reads as follows :

"Mr. J. L. Toppo T. No. 200529 (Asst Ward Keeper) is suspended with effect from 11-10-49 as-he has been accused in a Court of Law for criminal offences. He will remain under suspension until the decision of the Court, when further orders will follow".

Vide Ext. 2.

In due course the trial concluded and the plaintiff was convicted on 4th September, 1951, u/s 408, Penal Code, and sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 1000 or, in default, suffer three months" rigorous imprisonment (vide judgment Ext. M). In view of his conviction, Mr. K. C. Cooper, Administrative Officer, dismissed the plaintiff from service with effect from the date of his suspension, that is, from 11th October 1949, by order dated 25th September, 1951 (Ext. J) which is as follows :

"Mr. J. L. Toppo, T. No. 20/10515/1, Assistant Ward Keeper, having been convicted in a Court of Law is dismissed from the service of the Company with effect from 11-10-1949".

This order was communicated to the plaintiff on 1st October 1951 (Ext. I). On 15th December, 1952, the conviction and sentence imposed upon him were confirmed by the Additional Sessions. Judge in appeal (Ext. MI). Against this order the plaintiff moved the High Court in revision, and on 12th November,

1953, the High Court gave the plaintiff the benefit of the doubt and acquitted him (Ext. 4). By his letter dated 6th February, 1954 (Ext. 2b) the plaintiff asked the Administrative Officer to reinstate him in consequence of his acquittal by the High Court. On 1/2nd March 1954 the Administrative Officer sent him a letter in reply (Ext. 2c) declining to reinstate him.

3. On 22nd April, 1954, the plaintiff instituted the present suit to recover from the defendant Rs. 8370 as damages on the ground that in view of his acquittal by the High Court, his dismissal was wrongful, illegal and without any reasonable cause.

4. The defendant resisted the plaintiff's suit on the ground that as a result of the enquiry and his own admission the plaintiff was guilty of serious neglect of duty, entailing heavy loss to the Company, that the defendant could have dismissed him then and there, but it stayed its hand due to the pendency of the criminal case, and that his dismissal was founded not on his conviction, but on the findings of the Courts and was fully justified, and he was not entitled to any compensation.

5. The learned Subordinate Judge held that the plaintiff was guilty of misconduct and the defendant was, therefore, entitled to dismiss him. He accordingly unsuited the plaintiff.

6. Learned counsel for the appellant contended that the dismissal of the plaintiff was wrongful and illegal, inasmuch as his conviction, being set aside by the High Court, there was no foundation for his dismissal. He further urged that there was no enquiry, and no reasonable opportunity was afforded to the plaintiff before dismissing him because of his conviction by the trial Magistrate. There is no substance in these contentions. Learned counsel strongly relied upon the Works Standing Orders of the defendant-Company issued in accordance with Section 7 of the Industrial Employment (Standing Orders) Act, 1946. These orders as was pointed out by a Bench of this Court in Behar Journals Ltd. Vs. Ali Hasan and Another, have a statutory force, and under such Standing Orders there is a statutory contract between the employer and the workmen concerned, which cannot be modified or superseded by any private contract between the employer and the workmen, and, therefore, any contract contrary to the said rules must be ignored. Order 24 of the said Standing Orders defines and enumerates act of misconduct. It lays down as follows :

"Without prejudice to the general meaning of the term "Misconduct", it shall be deemed to mean and include the following :

* * * * (iv) Habitual negligence or neglect of duty or work

* * * * (xxii) Conviction in any Court of law of any criminal offence involving moral turpitude"". Order 25 provides punishment for misconduct. Clause (a) of Order 25 is as follows :

"(a) An employee shall be liable to be dismissed if he has been guilty of

misconduct. An employee dismissed for misconduct shall not be entitled to any notice or pay in lieu of notice and thereupon shall not be entitled to any benefits or privileges under these Orders or any other benefits or privileges provided by the Company."

Order 26 lays down the procedure for dealing with cases of misconduct. The relevant portion is as follows :

"(i) If misconduct is alleged against an employee, an enquiry will be held by an Officer or Officers nominated at which enquiry the employee or employees concerned will be afforded a reasonable opportunity of explaining and defending his or their actions. Any such enquiry may relate to alleged acts of misconduct of several employees where in the opinion of the Management it is convenient to hold such an enquiry for several employees together.

(ii) An employee charged with misconduct may be suspended forthwith from duty for the alleged misconduct.

* * * * (iv) If during the enquiry it is found that the employee is guilty of misconduct other than that stated in the order of suspension, the employee shall none-the-less be liable to punishment for misconduct provided by Order 25, but before any punishment is awarded him, he shall be afforded a reasonable opportunity of explaining and defending his actions in respect of such act of misconduct as provided by Sub-Clause (i).

(v) If after enquiry the employee is adjudged guilty of misconduct and punishment is awarded, the employee shall be deemed to have been absent from duty for the period of suspension and shall not be entitled to any salary or wages for such period. If, however, he is found not guilty of the alleged misconduct or of any other act of misconduct, the order of suspension shall be rescinded and he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same salary or wages as he would have received if he had not been suspended.

(vi) If the employee be dismissed as a result of the enquiry, the dismissal shall have effect from the date of suspension."

It will be observed that there was no violation of the standing orders. The plaintiff was in charge of Stores, and there is no dispute that from his custody two tons of iron rods were taken away by Mr. Sharma. It has been established by evidence that Mr. Sharma, or his alleged master Kundan Singh Bedi, had no permission or authority to take the rods from the custody of the plaintiff. In parting with the iron rods, the plaintiff failed to observe the established rules, practice and procedure. These rules laid down that a despatch note had to be prepared whenever any material was required by a contractor.

This despatch note had to be checked and then passed by the department concerned, and then ultimately passed by the Controller of Stores. Further, before the delivery of the materials, the signature of the contractor or his agent

had to be taken which had to be compared with the specimen signature. The plaintiff did not observe any of these rules, and although Kundan Singh Bedi, or his agent Mr. Sharma, had no authority to take the rods, the plaintiff, without observing the rules and without authority of the superior officers, made over two tons of iron rods to Mr. Sharma. There was thus a gross dereliction of duty on the part of the plaintiff, resulting in heavy loss to the defendant. This is a case of culpable neglect of duty, and it certainly affords a justifiable ground for dismissal. It will appear from the above that neglect of duty constitutes misconduct, and for this misconduct the plaintiff, under Order 25, was liable to be dismissed.

Before, however, dismissing him, the plaintiff was entitled to a reasonable opportunity to explain his conduct, as provided in Order 26. There was in fact compliance with Order 26. An enquiry was held by Mr. J. Winfield, and there was sufficient evidence that the plaintiff had parted with the iron rods without authority, and, after this enquiry. Mr. Rao, Stores Controller, asked him to explain, and in his explanation he admitted that he had made over the iron rods to Mr. Sharma without proper authority and without complying with the rules, and he further admitted that he had made a mistake and gave an assurance to be very very careful in future, vide his explanation (Ext. A2). When, after enquiry, the plaintiff confessed his mistake, there was nothing more to be done, and it cannot be reasonably argued that the procedure dealing with the cases of misconduct, was not complied with. Thus, on his own showing, misconduct was fully established, and therefore, by virtue of Standing Order 25, he was liable to be punished. It cannot be said, therefore, that there was violation of the Works Standing Orders.

7. The contention of learned counsel, however, is that the plaintiff was not dismissed for neglect of duty but on account of his conviction for a criminal offence involving moral turpitude, which, under Clause (xxii) of Order 24 is a misconduct. He urged with some vehemence that his conviction having been set aside by the High Court, his dismissal cannot, on that score, be maintained. There was no doubt a criminal breach of trust on the part of the plaintiff, and this offence be committed in relation to the materials in his custody and in breach of his duty. If he had committed any offence involving moral turpitude independent of and unconnected with his duty, and if on his conviction for that offence by the trial Court, he was dismissed, and if thereafter his conviction was set aside by the appellate Court, the dismissal may be said to be wrongful and unjustifiable. The reason is obvious. In such cases, the defendant Company had no materials before it to support the dismissal, and the delinquent servant had not been afforded opportunity to explain his conduct.

Where, however, the offence was committed in respect of the property of the Company, and the Company was satisfied about the misconduct of its servant, after proper enquiry and after hearing the delinquent servant, the Company will be justified in dismissing him and maintaining his dismissal independent of the result of the criminal proceeding, if any, and his eventual conviction or acquittal

will not affect the order of dismissal. If, therefore, the criminal proceeding ends in his conviction by the trial Magistrate and his acquittal by the appellate Court, his dismissal cannot be characterised as illegal and wrongful and cannot be set aside, because it was rested on a definite finding by the company which was not affected by his acquittal, unless the entire departmental proceeding is said to be fraudulent and mala fide.

It will be noticed that in this case the conviction was set aside not on merits. The plaintiff was given the benefit of doubt. The finding that he had parted with two tons of iron rods in favour of Mr. Sharma without proper authority remained. The High Court, however, held that on the facts it was not clear whether he intentionally made over the iron rods to Mr. Sharma, and, therefore, he was given the benefit of doubt. Nevertheless, he was unquestionably negligent in the performance of his duty occasioning thereby heavy loss to the defendant. Therefore, when on his conviction by the trial Court, he was dismissed by the company, his dismissal was justified, and it cannot be set aside simply because his conviction was not maintained by the appellate Court on other grounds.

Learned Counsel complained that there was no enquiry after his conviction was set aside by the High Court. There was no necessity of a duplication of the enquiry that had already been held. The enquiry revealed gross negligence on the part of the plaintiff, and he also confessed it. It would have been wholly superfluous to undergo the same procedure after the conviction was set aside by the High Court. The defendant-Company would have been justified in dismissing him then and there after the completion of the enquiry, without waiting for the result of his prosecution. The defendant, however, did not like to inflict any punishment, because the case was sub judice. The fact that the dismissal of the plaintiff was kept in abeyance is not indicative of absence of power in the defendant to dismiss him on negligence being established.

The conviction of the plaintiff cannot be considered in the abstract. His conviction was based upon a certain finding of fact, and it is not finding of fact which is important and relevant for meting out punishment to the plaintiff. Even if the conviction is set aside, the dismissal will be justified, if the finding of fact remained undisturbed. Here, it was established by unimpeachable evidence that the plaintiff was grossly negligent in the performance of his duty, and under the Works Standing Orders, he was liable for dismissal. Therefore, the dismissal was fully justified and was not rendered illegal because of his conviction being set aside.

The view which I have just expressed finds support from a Bench decision of the Madras High Court in *M. S. M. Rly. Co. v. Ranga Rao* AIR 1940 Mad 269. In that case, the respondent was in the employ of the Company as a Station Master and claimed damages for wrongful dismissal. The respondent along with another was prosecuted on a charge of criminal breach of trust and conspiracy under the provisions of Sections 408 and 120-B of the Penal Code. On his arrest he was placed under suspension. The trial Magistrate, convicted all the accused and

sentenced the respondent to one year's rigorous imprisonment. As a result of the conviction, the Company dismissed him from service. His conviction was upheld on appeal, but the High Court, under its revisional powers, set aside the conviction and sentence imposed upon him. There- upon, he commenced an action for damages for wrongful dismissal. Disallowing his claim. Leach, C. J., delivering the judgment of the Bench, observed as follows :

"With great respect, if a dismissal is based on a criminal conviction it seems to me that it must be taken to be based on the findings of the Court. The conviction follows the conclusions arrived at by the Court and to base a dismissal on a conviction it follows in my opinion, that the conclusions of the Court are accepted. The respondent having recognized that his dismissal was based on his conviction I hold that he has no case. The fact that as the result of revision proceedings the conviction was set aside does not affect the position. If the company had the right to dismiss the respondent when he was convicted it could not be compelled to take him back into its employment when the conviction was set aside at some later date. In fact there was no argument to the contrary. In my judgment the respondent was rightly dismissed and he is not entitled to maintain this suit."

The instant case stands on a higher footing. Here, the negligence of the plaintiff was established by enquiry instituted according to the Standing Orders, and on his own admission, and the findings of the criminal Court did not establish his innocence. The High Court only gave him the benefit of the doubt. I hold, therefore, that the plaintiff was guilty of negligence, and his dismissal was fully justified.

8. While maintaining the dismissal of the plaintiff, the learned Subordinate Judge expressed the view that

"considering that there was an acquittal by the Hon"ble High Court and it had been observed by his Lordship that might have been that the plaintiff was made a dupe of Sharma who was absconding so it was expected that the defendant might re-consider and take a lenient view of the matter".

Learned counsel attempted to make a capital of this observation and urged that in view of this recommendation, the extreme penalty of dismissal should not have been imposed, It was only a pious wish expressed by the learned Subordinate Judge and in no way fettered the right of the defendant to dismiss the plaintiff on account of his negligence in duty. It did not constitute an extenuating circumstance and did not mitigate his guilt. The learned Subordinate Judge has himself observed that since the defendant cannot be compelled in a Court of law to follow a particular course of action, nothing can be done against it. This contention is without merit and must be rejected.

9. Next, learned counsel contended that the plaintiff was entitled to his pay and other allowances for the period of his suspension and up to the date of the order of the High Court setting aside his conviction. This contention is contrary to the

provisions of the Works Standing Orders, quoted above. Under Order 26 of the said Orders he was liable to be suspended forthwith from duty, and further under Clause (v) of Order 26 on his being adjudged guilty of misconduct and dismissed from service, he would be deemed to have been absent from duty from the period of suspension and shall not be entitled to any salary or wages for that period. Therefore, the plaintiff was rightly dismissed with effect from the date of his suspension, and he is not entitled to any wages or damages for the period subsequent to his suspension,

10. It follows that there is no merit in this appeal which must be dismissed with costs.

Ramratna Singh, J.

11. I agree.