
(2019) 08 JH CK 0008

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 434 Of 2010

Kansai Nerolac Paints Limited

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Bihar Shops And Establishments Act, 1953 — Section 2(6), 26, 26(1), 26(2)
Indian Contract Act, 1872 — Section 23
Constitution Of India, 1950 — Article 14

Citation : (2019) 08 JH CK 0008

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Indrajit Sinha, Amitabh Prasad, Gaurav Abhishek, Shresth Gautam

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant Company and the learned counsel for the private respondent.

2. The appellant Company is aggrieved by the impugned order dated 28.06.2010, passed by the Hon'ble Single Judge, in W.P.(C) No. 4405 of 2003, whereby, the writ application filed by the appellant Company against the Order dated 30.07.2003, passed by the Presiding Officer, Labour Court, Jamshedpur, in B.S Case No.7 of 2000, setting aside the order of termination of the private respondent and directing the Company to reinstate him with continuity in service with full back wages and other consequential benefits, was dismissed by the Hon'ble Single Judge.

3. The facts of the case lie in a short compass. The private respondent No.2 was engaged by the Company in the Supervisory Cadre, on 16th September 1988, with one of the terms of the service contract that the service was liable to be terminated by one month's notice on either side. Subsequently, by promotion letter dated 14th November, 1996, the private respondent was promoted to the post of Managing Staff of the Company, with the designation of Area Manager,

Technical Sales, and in paragraph 15 of the Promotion letter, it was stated as follows :-

"15. Termination of Employment : This arrangement could be terminable by either side at ninety days notice or by payment of ninety days salary in lieu of notice to the other side, without assigning any reason."

4. The service the private respondent was terminated by letter dated 10th February 2000, with effect from close of business on 15th February, 2000, in terms of Clause No.15 of the letter dated 14th November 1996, as mentioned above. In lieu of notice, the private respondent was given three months' salary. It may be stated that no reason whatsoever was assigned in the letter dated 10th February, 2000, as to why the service of the private respondent was terminated.

5. The private respondent challenged his termination order before the Labour Court, Jamshedpur, by filing a complaint under Section 26(2) of the Bihar Shops and Establishments Act, 1953, (herein after referred to as the 'Act'). The Labour Court adjudicated the matter, and by an order dated 30.07.2003, the order terminating the private respondent from service, was set aside, and the appellant Company was directed to reinstate the private respondent with full back wages and other consequential benefits. It may be stated that though, in the termination letter, no reason for dispensing with the service of the private respondent was mentioned, but in the show-cause filed before the Labour Court, a ground was taken that the performance of the private respondent was found disappointing and on several occasions, he was called upon to improve his performance, but the private respondent failed to improve his performance. It was also stated that the Company had lost confidence in him, and in terms of the letter dated 14.11.1996, terminated his service. Neither any oral, nor any documentary evidence was adduced by the Company in support of this contention, which ultimately led in setting aside the termination order of the private respondent with all consequential benefits.

6. The appellant Company challenged the aforesaid order of the Labour Court, by filing W.P.(C) No.4405 of 2003, in this Court, and by order dated 28.06.2010, the Hon'ble Single Judge, dismissed the writ application, taking note of the fact that the Labour Court had elaborately dealt with all the issues involved in the matter, and also taking note of the findings by the Labour Court, that the appellant Company was an establishment within the meaning of Section 2(6) of the Act, and that the service of the private respondent was arbitrarily dispensed with, in violation of the principles of natural justice. Aggrieved thereby, the appellant Company has filed the present Letters Patent Appeal.

7. Learned counsel for the appellant Company has submitted that the impugned order passed by the Labour Court, as also the order passed by the Hon'ble Single Judge, cannot be sustained in the eyes of law. It is submitted by the learned counsel that admittedly, the appellant Company is an establishment within the

meaning of Section 2(6) of the Act, and Section 26 of the Act deals with the notice of the dismissal or discharge, relevant portion of which reads as follows :-

"26. Notice of the dismissal or discharge.- (1) No employer shall dismiss or discharge or otherwise terminate the employment of any employee who has been in his employment continuously for a period of not less than six months, except for a reasonable cause and after giving such employee at least one month's notice or one month's wages in lieu of such notice :

Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an enquiry held for the purpose:

*** **

(2) Every employee, dismissed or discharged or whose employment is otherwise terminated, may make a complaint in writing in the prescribed manner, to a prescribed authority within 90 days of the receipt of the order of dismissal or discharge or termination of employment on the one or more of the following grounds, namely : -

- (i) there was no reasonable cause for dispensing with his services; or
- (ii) no notice was served on him as required by sub-section (1); or
- (iii) he has not been guilty of any misconduct as held by the employer ; or
- (iv) no compensation as prescribed in sub-section (1) was paid to him before dispensing with his service.

*** ** ."

8. It is submitted by the learned counsel that the reasonable cause for terminating the service of the private respondent existed due to the fact that the appellant company had lost confidence in him due to his non-performance, and even though Section 26 (1) the Act required only one month's notice, or one month's wages in lieu of notice to be given, the Company gave the wages of three months to the private respondent while terminating his service. It is submitted by the learned counsel that Sub Section 2 of Section 26 of the Act puts a burden upon the dismissed employee to show that there was no reasonable cause for dispensing with his service. Learned counsel accordingly, submitted that since the dismissal of the service of the private respondent was in accordance with the provisions of the Act, there was no justification either for the Labour Court, or for the Writ Court to interfere with the termination order passed by the Company.

9. Alternatively, learned counsel has submitted that the matter had been referred for mediation between the parties, for an amicable settlement of the dispute between the parties. The efforts of mediation have failed, but the appellant

Company had offered one time compensation of Rs.15 Lakhs to the private respondent, before the Mediator, and the appellant stands by that offer till today. It is also submitted that the private respondent is out of service of the appellant Company since the year 2000 itself, and there was no justification for reinstating the private respondent in service with full back wages and all consequential benefits, particularly, in view of the fact that the respondent had failed to bring anything on record to show that he was not gainfully employed elsewhere, in the meantime.

10. Learned counsel for the appellant has further submitted that there is no illegality in the impugned order of termination, as it was not at all necessary to give any reason in the termination letter, and according to clause 15 of the terms of the employment of the private respondent, his service could be terminated without assigning any cause, and just by giving three months' notice, or wages in lieu thereof. Had any cause of termination been assigned, the termination order would have become stigmatic, and the service could be terminated only after an enquiry held for the purpose, following the principles of natural justice, as required under Proviso to Section 26(1) of the Act.

11. Learned counsel for the private respondent, on the other hand, has opposed the prayer, submitting that there is no illegality in the impugned order passed by the Labour Court, or in the order passed by the Hon'ble Single Judge. It is submitted by the learned counsel for the private respondent that the services of the private respondent could be terminated under Section 26 of the Bihar Shops and Establishments Act, only upon showing the reasonable cause and not otherwise. In the termination order dated 10th February, 2000, no cause whatsoever was shown for terminating the services of this respondent, and his service was terminated only giving three months' wages in lieu of notice, which is absolutely illegal, and has been rightly set aside by the Labour Court.

12. Learned counsel has pointed out that even in the matters covered under the Shops and Establishment Act, there are catena of judicial pronouncements to show that the services of the employee could not be terminated without showing any reasonable cause. One such decision relied upon by learned counsel is the decision of the Hon'ble Apex Court in Management, Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers Union, reported in (1969) 2 SCR 131, wherein it has been held as follows :-

"17. ----- . During the last decade or so statutes have been passed such as the Bihar Shops and Establishments Act, 1953 which require a reasonable cause for dispensing with the services of an employee by an order of discharge simpliciter. If reasons for discharging an employee are furnished to the employee concerned, he not only has the satisfaction of knowing why his services are dispensed with but it becomes easy for him in appropriate cases to challenge the order on the ground that it is either not legal or proper which in the absence of knowledge of those reasons it may be difficult, if not impossible for him to do. In these circumstances, if the authorities under the Act have come to the conclusion

that such a modification is fair and reasonable we would hardly be justified to interfere with such a decision."

13. Having heard the learned counsels for both the sides and upon going through the record, we find that the service of the private respondent was terminated without assigning any reason and only giving three months' salary in lieu of notice. This was purportedly done in terms of paragraph-15 of his appointment letter, which shows that the services could be terminable by either side at ninety days notice or by payment of ninety days salary in lieu of notice to the other side, without assigning any reason. However, the fact remains that this arrangement between the private respondent and the appellant Company cannot stand the test of reasonableness, as in any event, both of them were not having the equal bargaining power. This arrangement of the service contract between the parties has to be held to be void under Section 23 of the Contract Act, taking into consideration the inequality of bargaining power of both the parties, as also the fact that the private respondent was in a position in which he could either get the employment, i.e., his means of livelihood only upon the terms imposed by appellant Company, or he had to lose his employment for good. As such, clause 15 of his promotion letter dated 14th November, 1996, cannot be said to be binding on him. Reference in this connection may be had to the decision of the Hon'ble Supreme Court of India, in *Central Inland Water Transport Corpn. Ltd. and Anr. Vs. Brojo Nath Ganguly and Anr.*, reported in (1986) 3 SCC 156, wherein the law has been settled, taking into consideration the judicial pronouncements on the law of contract in United States as also in United Kingdom, as follows:-

"88. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognised, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages... which are obviously disproportionate to the performance given in return". The position according to the French law is very much the same.

89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and

watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article

14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. -----."

(Emphasis supplied).

14. We also find from the record that though no reason whatsoever was cited in the order dated 10th February, 2000, dispensing with the service of the private respondent, but before the Labour Court, it was stated that the Company had lost confidence in the private respondent as his performance was absolutely dissatisfactory and he was called upon on several occasions to improve his performance. The fact, however, remains that no oral or documentary evidence was adduced by the Company before the Labour Court, in support of this contention.

15. In view of the admitted position that the appellant Company is an establishment within the meaning of Section 2(6) of the Act, the parties shall be governed by Section 26 of the Act. A plain reading of this section clearly shows that in absence of any misconduct on part of the employee, his service cannot be terminated without showing a reasonable cause, which was admittedly not done in the case of the private respondent. This settled position in law also gets fortified even from the decision of the Apex Court, in *Management, Shahdara (Delhi) Saharanpur Light Railway Co.'s case* (supra). The submissions of learned

counsel for the appellant Company, that there is no requirement of showing the reasonable cause in the termination order issued under Section 26 of the aforesaid Act, or that the burden of proof is upon the terminated employee to prove that there was no such reasonable cause, are absolutely misconceived, and cannot be accepted.

16. In the facts of this case, we are of the considered view that the Labour Court, has rightly come to the conclusion on the basis of the evidence on record, that the termination order dated 10th February, 2000 could not be sustained in the eyes of law, as the service of the private respondent was arbitrarily dispensed with, in violation of the principles of natural justice, and the same was set aside with all consequential benefits.

17. We do not find any illegality either in the order dated 30.07.2003 passed by the Presiding Officer, Labour Court, Jamshedpur, in B.S Case No.7 of 2000, or even in the impugned order dated 28.06.2010, passed by the Writ Court in W.P. (C) No.4405 of 2003, dismissing the writ application.

18. However, the fact remains that the private respondent was terminated from service with effect from the closure of the business hours on 15.02.2000 itself, and he is out of service till date. There is nothing on record to show that during this long period of about 19 years, the private respondent had not been gainfully employed elsewhere. As such, we find force in submission of the learned counsel for the appellant, that full back wages could not be allowed to the private respondent by the Labour Court. In the facts of this case, we only modify the order dated 30.07.2003 passed by the Labour Court, in B.S Case No.7 of 2000, to the extent that only 50% of the back wages and other consequential benefits shall be paid to the private respondent till today. Henceforth, the private respondent shall be entitled to all the benefits, as directed by the Labour Court.

19. This L.P.A. is accordingly, dismissed with the directions and observations as above.