
(2006) 09 GAU CK 0046
In the Gauhati High Court

Karna Kishore Deb Barma

APPELLANT

Vs

ONGC Ltd. and Others

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

Citation : (2007) 1 GLT 151

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The question that has fallen for consideration in this case is whether an employee under the Oil & Natural Gas Corporation Ltd. (for short "Company"), who remains absent for a period of more than 7 (seven) months without any permission ceases to be in the employment of the said Company by operation of the provision contained in Rule 14 of the Oil & Natural Gas Corporation Limited Leave Rules, 1995.

2. The short fact giving rise to the present proceeding is that the petitioner Shri Kama Kishore Debbarma was appointed as Fireman Grade-II under the Company on 11.01.1979 and got promotion to the post of Fire Supervisor on 31.01.1984. While serving as Fire Supervisor in the Tripura Project, he had fallen sick and remained absent from duties from 16.07.1995 without submitting any leave application. On 26.09.1995 he received a telegram from the Deputy Manager (P & A), the 4th respondent herein, asking him to resume duties followed by a memorandum dated 28.09.1995 declaring that the petitioner was absent from duties from 16.07.1995 without prior permission of the competent authority and that he was in the habit of absenting himself from duty without prior permission as observed from his past behaviour. As such type of unauthorized absence without prior permission amounts to negligence of duties calling for disciplinary action, the petitioner was asked by the aforesaid memorandum to explain why disciplinary action against him should not be initiated for his negligence of duties.

He was directed to submit his explanation by 16.10.1995. It is the case of the petitioner that he was not in a position to respond to the said communication and after becoming fully cured, he resumed his duties on 19.10.1995. He submitted his joining report with medical certificate justifying his absence from duties for a period of 95 days from 16.07.1995 to 18.10.1995. It is his contention that on his joining report, the competent authority made endorsement to the effect that "leave may be granted as per admissibility", but in spite of such endorsement, his joining report was not accepted. He continued to work from 19.10.1995 to 12.01.1996 where after, on 13.01.1996 he again fell sick and remained absent from duties without any application for leave. His grievance is that though his absence from duties from 16.07.1995 to 18.10.1995 was followed by a leave application on medical ground, he was not paid pay and allowances for the said period. Again, though he worked continuously from 19.10.1995 to 12.01.1996 before his second spell of illness, he was not shown on duty during that period. He had to remain absent from duties without seeking leave from 13.01.1996 to 15.02.1996 and thereafter, he resumed duties on 16.02.1996. He submitted joining report, which was, however, not accepted prompting him to submit representation explaining the reasons for his failure to join duties during the said period. He prayed for medical leave from 16.07.1995 to 18.10.1995 and from 13.01.1996 to 15.02.1996 which, however, could not evoke any favourable response. On 12.05.1998 after more than two years, he submitted a representation before the Chairman of the Company, which found no favour or response. On 01.06.1998 the 4th respondent informed him in writing that his joining report dated 16.02.1996 could not be accepted. On 13.06.1998, after 2 1/2 years he submitted another representation to the Chairman, which, however, met the same fate. On 04.06.1998, he approached the Labour Directorate by way of making a representation raising a labour dispute, which was, however, forwarded to the Regional labour Commissioner on 25.06.1998, as the matter relates to the Central Government. On 17.06.1999, the petitioner has instituted the present writ petition for cancellation of the memorandum dated 01.06.1998, whereby the 4th respondent informed him that his joining report dated 16.02.1996 could not be accepted. He has sought further direction from this Court to the concerned respondent to allow him to resume duties and to sanction his medical leave from 16.07.1995 to 15.02.1996.

3. The respondents, inter alia, contended that the petitioner is a habitual absentee and from past records it was found that he skipped his duties without permission showing his utter indifference to his duties, which is detrimental to the interest of the Company. He remained absent without any permission from 16.07.1995 to 15.02.1996 for a period of more than seven months, which attracted the provision of Rule 14 of the Oil and Natural Gas Commission Leave Regulations, 1968 (for short "Leave Regulation"), which provides that where an employee remains absent from duty for any period which exceeds the limit upto which he could have been granted leave under this rule, shall be deemed to have resigned from his appointment and shall accordingly cease to be in the

employment of the Company unless the Company determine otherwise in view of any exceptional circumstances of a case.

4. I have heard Mr. R Roy Barman, learned Counsel for the petitioner and Mr. S. Deb, learned senior counsel, assisted by Mr. R. Dasgupta, learned Counsel for the respondents. A perusal of the materials on record would show that the petitioner has not depicted and pleaded a true and consistent story about his long unauthorized absence and claim of resuming duties. It is noticed that though he claimed that after his unauthorized absence from 16.07.1995 to 18.10.1995, he resumed duties on 19.10.1995 and worked till 12.01.1996 followed by his further absence from 13.01.1996 to 15.02.1996, in the prayer part of the writ petition itself one of the directions he sought is that his absence from duties from 16.07.1995 to 15.02.1996 should be sanctioned as medical leave. Thus, by this prayer his story of resuming duties on 19.10.1995 and working up to 12.01.1996 appears to be a false statement. This position stands further confirmed from the joining report dated 16th February, 1996 of the petitioner himself, which reads as follows:

To

The D.M. (P.A.),

O.N.G.C. Ltd.

Tripura Project,

Agartala

(Through Proper Channel) Sub:- Joining Report.

Sir,

With reference to your urgent telegram No. 604205 CTDAIN dated 26.09.1995 I am joining my duty on 16th Feb"1996 (F.N.) after availing my medical leave w.e.f. 16.07.1995 to 15.02.1996.

Hence you are requested to accept my joining report for further consignment of my duties.

Yours faithfully, Sd/- (K.K. Debbarma) Fire-Supervisor

Dated,

The 16th Feb", 96.

Enclo:-

Medical Certificate of illness Certificate and fitness certificate.

5. It would thus, appear the petitioner has come before this Court invoking discretionary and extraordinary jurisdiction with unclean hands. A candid disclosure of facts is a sine qua non for invoking extraordinary jurisdiction under

Article 226 of the Constitution. In *M.T. Varghese v. The State of Assam and Ors.* reported in (7997) (2) GLT 318, the observation at para-7 reads:

7. Mr. Lahiri, learned senior counsel assisted by Mrs. Goel referred to us order dated 11.01.97 (Annexure-B) as filed by the Board. This order was also communicated to the writ petitioner appellant as is evident from the endorsement made in Annexure" B", but surprisingly enough he has not chosen to file the same along with the petition nor in the appeal. A candid disclosure of facts is a sine qua non for invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution. One who suppresses material facts is not entitled to be heard and the petition is liable to be dismissed on this short ground alone.

6. The pre-eminent question on which strong arguments were placed by the learned Counsels for the parties pertains to natural justice, which according to Mr. Roy Barman stood infracted in the present case by not affording to the petitioner reasonable opportunity of being heard. Admittedly, there is no order of punishment in the form of dismissal, removal or termination of service. By mere refusing to accept the joining report of the petitioner, the concerned respondent virtually has thrown the petitioner out of service. The memorandum dated 01.06.1998 issued by the Deputy Manager (P&A), ONGC, Agartala, which has been impugned herein simply states that the joining report dated 16.02.1996 submitted by the petitioner after long unauthorised absence from duty from 16.07.1995 to 15.02.1996 has not been accepted by the competent authority. Though the memorandum was issued on 01.06.1998, the petitioner was virtually out of employment from 16.02.1996 and according to Mr. Roy Barman, such an act of removal violates the principle of natural justice as no sort of inquiry was held affording the petitioner reasonable opportunity of being heard before he was thrown out of employment.

7. The petitioner not only prayed for quashing and cancelling the said memorandum dated 01.06.1998 conveying him the decision of the authority not to accept his joining report, he has also sought a direction from this Court to the respondents to allow him to resume duties as Fire Supervisor, to treat the period w.e.f. 16.02.1996 till date as period spent on duty and to direct the respondents to sanction medical leave in his favour for the period of his absence from 16.07.1995 to 15.02.1996. The plea that he resumed duties on 19.10.1995 and worked till 12.01.1996 have been found a false statement, it is now to be seen whether his long absence for about 7 months without any prayer for leave operates automatically as abandonment of his appointment by virtue of the deeming provision of Rule 14 of the Leave Rules. The main plank of the arguments per contra advanced by Mr. Deb, learned senior counsel for the respondent Company is that Rule 14 does not provide for any enquiry to precede automatic cessation of service of an employee who remains absent from duty exceeding the limit up to which he could have been granted leave under the Rules.

8. As noticed above, the period of unauthorised absence is about 7 months without any authority. The relevant provision under which such an employee automatically ceases to be in the employment of the Company is in Rule 14(5) of the Leave Rules, which reads as follows:

14.(5) Where an employee fails to resume duty on the expiry of the period of extraordinary leave, if the leave granted to him is the maximum that can be granted or where an employee is granted a lesser amount of extraordinary leave than the maximum admissible under this Rule, remains absent from duty for any period which together with extraordinary leave so granted, exceeds the limit upto which he could have been granted leave under the Rule, he shall be deemed to have resigned from his appointment and shall accordingly cease to be in the employment of the Company unless the Company may determine in view of the exceptional circumstances of the case.

It would appear from the above provision that the automatic cessation from employment would operate only when an employee remains absent from duty for any period together with extraordinary leave so granted exceeds the limit upto which he could have been granted leave under the Rules. In the supplementary counter-affidavit, the respondent Company stated that the petitioner applied for 215 days earned leave. But neither earned leave nor half pay leave was available at his credit. No rejoinder to controvert this contention was filed by the petitioner. It is the submission of Mr. Deb, as the long absence of 215 days could not be covered by any leave admissible to the petitioner, Rule 14(5) of the Leave Rules would inevitably come into play putting an end to the employment of the petitioner under the Company. Mr. Roy Barman's persistent submission is that even though there exist such a provision for automatic cessation from employment, the same cannot be resorted to without providing reasonable opportunity of being heard, as by refusal of accepting the joining report the bread and butter of the petitioner was taken away.

9. In support of the contention that even in the face of such a provision of automatic cessation of employment opportunity of being heard is sine qua non for removal from service, Mr. Roy Barman has placed reliance on the following decisions of the Supreme Court and this Court:

- 1) Jai Shanker Vs. State of Rajasthan, ;
- 2) Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, ;
- 3) Deokinandan Prasad Vs. The State of Bihar and Others, ;
- 4) Oil & Natural Gas Corporation Ltd. and Ors. v. Monoranjan Debnath, reported in (1997) 1 GLR 406;
- 5) Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, ;
- 6) S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, .

10. In *Jai Shanker (supra)*, the Apex Court held that

The removal of a Government servant from service for overstaying his leave is illegal even though it is provided by the service Regulation that any individual who absents himself without permission after the end of his leave would be considered to have sacrificed his appointment and may be reinstated only with the sanction of the competent authority.

It has been further held:

A discharge from service of an incumbent by way of punishment amounts to removal from service, and the constitutional protection of Article 311 cannot be taken away from him by contending that under the Service Regulations the incumbent himself gives up the employment and all that the Government does is not to allow the person to be reinstated. It is true that there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal and one circumstance deserving removal may be overstaying one's leave. But a person is entitled to continue in service if he wants until his service is terminated in accordance with law.... A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it.

11. In *Monoranjan Debbath (supra)*, this Court applied the ratio decidendi of *Samsher Singh Vs. State of Punjab* and *Another*, to take a view that an order of removal from service resorting to the provision of Rule 14(5) of the Rules without affording any opportunity to showing cause before passing the impugned order is not sustainable in law. The consistent view taken in the above decisions is that whatever may be the provision in the Rules or Regulations, an incumbent must be given opportunity of being heard before he is removed from employment, as such an opportunity to defend is sine qua non for conforming to the principles of natural justice. At the same time, it is not to be forgotten that a judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning, which can be deciphered only upon reading the same from its entirety. In other words, the factum of a case cannot in all aspects be similar to another and, therefore ratio decidendi of a judgment rendered in a given set of facts has to be carefully culled out and applied to another set of facts. Broadly speaking, opportunity of being heard must be provided in every case though modality of its application may be different.

12. Mr. Deb, learned senior counsel for the respondent Company would strongly argue that in all such cases relied on by Mr. Roy Barman, the incumbents were entitled to the protection of Article 311 of the Constitution as the organization of the body under whom they were employed were State within the meaning of Article 12 of the Constitution. This submission is not correct in the face of the admission by the respondent that the Oil and Natural Gas Corporation is a State. In para-2 of the writ petition, the petitioner claimed that ONGC is an

instrumentality of the State, which has been admitted in para-5 of the Counter-affidavit. Therefore, the decision of the Supreme Court in Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, , relied on by Mr. Deb has no application for the reason that application of Article 311 of the Constitution was not considered necessary as the institution PGIMER was not held to be a State within the meaning of Article 12 of the Constitution. However, in Anil Bajaj Vs. Post Graduate Institute of Medical Education and Research and Another, , the Apex Court observed in para-3 that

A person who gets an advantage, namely, of a sanction to go abroad on service on the condition that he will come back within two years and if he does not come back, his lien will automatically be regarded as being terminated, he then cannot turn around and challenge the said condition on the basis of which sanction to go abroad was granted...but where the facts are not in dispute the inquiry would be an empty formality.

13. That the principle of natural justice cannot be strictly applied in all situations has been endorsed by the Supreme Court in Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, in the following lines:

The principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a strait jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to turn wild. While interpreting legal provisions, a Court of law cannot be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". In certain circumstances, application of the principles of natural justice can be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim audi alteram partem cannot be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. The principles of natural justice have no application when the authority is of the opinion that it would be inexpedient to hold an enquiry and it would be against the interest of security of the Corporation to continue in employment the offender workman when serious acts were likely to effect the foundation of the institution.

14. The submission of Mr. Deb, in view of the legal position noticed above is that the petitioner is an incorrigible person, who being a Fire Supervisor, a position calling for dealing with emergency like fire-fighting was unmindful of his duties and habitually he was absenting himself on many earlier occasions. In the supplementary affidavit, the respondent Company contended that he was given opportunities of being heard first by memorandum dated 28.09.1995 calling

upon him to explain his conduct and why disciplinary action should not be initiated for his unauthorized absence from 16.07.1995 without prior permission of the competent authority. This was followed by another notice to him on 09.11.1995 about his remaining absence from 16.07.1995 without any intimation and asking him to giving reply immediately. The petitioner did not avail of any of the opportunities of being heard about his prolonged absence from duties without intimation though no leave was at his credit to cover such period. Therefore, it cannot be said that the petitioner was denied of reasonable opportunity of being heard. In the petitioner it was not contended that he had enough leave in his credit admissible under the Leave Rules and thus, the contention of the respondent that the petitioner was a habitual absentee remains uncontroverted.

15. What has emerged from the above discussion is that the petitioner was holding a very important post of Fire Supervisor, whose duty is to attend to emergent situation to fight fire but he was a habitual absentee from duties and all his admissible leave was exhausted before he again remained absent for a period of 7 months continuously without even caring to intimate the respondent Company. Even two opportunities given to him to explain his conduct fell into deal ear and, therefore, it cannot be said that he was not given any opportunity of being heard. His long absence without authority and without any admissible leave in his credit brings into play the provision of Rule 14(5) of the Leave Rules which puts an end to his employment by virtue of the deeming provision. This provision contained in Rule 14(5) has not been put under challenge by the petitioner. As has been held by the Apex Court, principles of natural justice cannot be confined into a straitjacket and that its application should be on pragmatic consideration. The realities of life in a given situation must ensure that the interest of the community or a Company must prevail over interest of an individual. In the case at hand, the application of Rule 14(5) of the Rules was preceded by two opportunities to the petitioner to defend himself and situated thus, it can be said that the principles of natural justice has not been violated.

16. For the discussions and reasons aforementioned, this writ petition has no merit and consequently the same is dismissed leaving the parties to bear their own cost.