
(1988) 05 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 809 of 1988

Madhab Dev Goswami

APPELLANT

Vs

Assam State Co-Operative Marketing & Consumers
Federation Ltd.and Others

RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:

Citation : (1988) 2 GLR 108

Hon'ble Judges : A.Raghuvir, C.J. and S.P.Rajkhowa, J

Bench : Division Bench

Advocate : S.K.Sen, O.Mishra, C.K.Sharma Barua, B.P.Kataki, B.M.Goswami,
Advocates appearing for Parties

Judgement

A. Raghavir, C. J.

The impugned order in the instant case was passed by the Managing Director of Assam State Cooperative Marketing & Consumers Federation Ltd., who will be referred in this order as employer. The writ petitioner is the employee whose services are terminated by the impugned order. The employee assails the termination order as it was passed without notice, without any enquiry, and in contravention of the principle, of natural justice especially the principle of audi alterem partem was violated therefore the impugned order is void and liable to be set aside.

The employer cited Regulation 39 of the Services Staff Regulation of STATFED, 1985 to support the impugned order which reads as under :

"39. Overstayal after expiry of leave or absence otherwise.

An employee who remains absent on expiry of his leave or otherwise absents himself shall not, unless the competent authority otherwise direct be entitled to any pay and allowance for the period of such absence and shall be deemed to have resigned from the service of the Federation if the period of such absence

exceeds 15 days without proper reason, intimation and without justification."

The defence of the employee in the case is two fold. That under Regulation 39 if an employee absents from work without justification without reason, and without justification such an employee is deemed to have resigned. In that perspective under Regulation 39 no inquiry need be held. The cessation of service follows so it is argued. The employer argued next that there is forum available for a workman (the petitioner is a workman) under the Industrial Disputes Act, 1947. The petitioner therefore should be directed to approach the Labour Court at first for a reference to the Labour Court and seek redressal in that forum provided under the Industrial Disputes Act of 1947. These additional contentions are raised but as to the fact that the impugned order was passed in violation of audi alterem partem no defence is raised in that sense it is admitted the order was passed without notice and without inquiry.

In the instant case the absence of the petitioner from duty is more than 15 days. (The learned counsel for the employer represented he has no precise information available but the petitioner absented for more than 30 days therefore the employee under Regulation 39 is deemed to have resigned).

The words "if the period of such absence exceeds 15 days without proper reason, intimation and without justification" in the Regulation 39 indicate the employer to record the finding and a finding can be recorded after giving notice to the employee to hold the absence from duty of the employee was without intimation or reason and justification. In a given case the employer may record a finding the absence was without intimation, reason and justification. All the three combined these words or phrases used in Regulation 39 do indicate an inquiry be held by the employer. The inquiry thus is a must under Regulation. In the absence of notice and inquiry such a finding cannot be recorded. Therefore the cessation of service is not "automatic".

Whether this Court should direct the employee to seek relief under the Industrial Disputes Act, 1947 we may reiterate what the Courts have repeatedly stated in such circumstances with reference to violation of principles of natural justice. When principles of natural justice are violated the aggrieved need not be driven to the alternative forum that is available. If authority is needed see Venkateswaran vs. Ramchand, 1961 SC 1506 p. 1509. For all the aforesaid reasons the impugned order is quashed. The employee if so desires, may issue notice to the petitioner under Regulation 39, hold an inquiry and pass order in accordance with law. The writ petition is allowed. No costs.