

(2003) 01 JH CK 0088
In the Jharkhand High Court
Case No : C.W.J.C. No. 2885 of 1997 (R)

Malti Devi

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : (2003) 2 JCR 286

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : P.N. Mishra, H.B. Lakhaiyar, R.N. Sinha and Pradeep Kumar Prasad, for the Appellant; R. Mukhopadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—The petitioner who is the wife of workman Ghanshyam Tiwary has filed this writ application for quashing the award dated 20.8.1996 as contained at Annexure 8, passed in reference case No. 3 of 1992 by which it was held that the termination of the concerned workman was just and proper and therefore, he was entitled to no relief.

2. The petitioner has further prayed for quashing the Office Order dated 8.8.1987 as contained at Annexure-7 by reason whereof the Deputy Manager (Personnel) informed the petitioner that in view of his unauthorized absence from duties with effect from 9.3.1987 for which no satisfactory explanation had been given, the management, invoking Clause 15(x) of the Certified Standing Orders, had deemed that he had left the services of the Corporation of his own accord and therefore, his name was struck off from the rolls of the HEC from 9.3.1987. The petitioner also prays for issuance of a writ of mandamus for payment of adequate compensation for illegally terminating the services of the workman who died during the pendency of the case in the Court below and also hold that the said order of termination is illegal, without jurisdiction and in violation of the provisions of Certified Standing Order Nos. 15(x), 28(v), 30(ii)(f), 33 besides Article 14 of the Constitution of India. She also prays that the respondents be

directed to pay compensation for agony, torture and hardship on account of which the workman died on 18.1.1994 during the pendency of the case leaving behind him a big family. She also prays for 18% interest per annum and cost of litigations.

3. The short facts, which are necessary to be taken note of in the instant case, are that the husband of the petitioner, namely, Ghanshyam Tiwary was appointed as Tracer on 26.1.1965 and at the time when his services were terminated, he was working (after having been promoted twice) as a Senior Draftman Grade-I. According to the petitioner, he fell ill and was put under the treatment of the then Superintendent of Ranchi Mansik Arogyashala, but due to his mental illness (schizophrenia) he could not join duty.

4. On 30.3.1987, he received a letter/notice issued under memo No. 1201 by which he was informed about his unauthorized absence and consequently asked to file an explanation failing which, it was stipulated, that the management would be constrained to invoke the provisions of Clause 15(x) of the Certified Standing Orders.

5. According to the petitioner, he reported for duty on 28.4.1987, together with a certificate of medical fitness given by the authorized medical practitioner, but the administration did not given him clearance for reporting in the plant and asked him to come on the next day. This caused a set back to his mental state and in the night ensuing between the 29/30.4.1987, he again suffered mental illness and continued to remain under treatment till 5.12.1990. Subsequently, on being found medically fit, he again reported for duty on the said date, i.e., 5.12.1990 but, came to learn that his name had already been struck off from the rolls of the Corporation with effect from 9.3.1987 vide Annexure-7. Thereafter the husband of the petitioner, met various senior officers and also submitted a representation before the Executive Director, HMBP with a copy thereof to the CMD, but nothing happened, and finally, a dispute was raised which ultimately led to the reference on 3.6.1992. Subsequently, after filing of the written statement, Rejoinder and documents by the parties concerned, but before commencement of evidence, the husband of the petitioner who was ailing and had been admitted in the District Government Hospital, Balla at U.P., died on 18.1.1994. The petitioner was then substituted and she contested the case.

6. The learned counsel for the petitioner has argued on various aspects and one of the major points submitted by him was that the order of termination is totally in violation of Clause 15(x) of the Certified Standing Orders.

7. Clause 15(x) of the Certified Standing Orders reads as follows :

"A workman/employee who remains absent from duty without leave, or in excess of the period of leave originally sanctioned or subsequently extended, shall be liable to disciplinary action unless he is able to explain his absence in a manner satisfactory to the sanctioning authority. Where the period of such absence exceeds 15 days, the workman/ employee shall lose his lien on his appointment

and he presumed to have left the service of the Company of his own accord without notice. In case the workman/employee loses his lien on his appointment and if he explains his absence to the satisfaction of the management his name may be kept on the Badli list." (underlining supplied by Court).

8. The learned counsel for the petitioner submitted that there was no willful intention on the part of the workman to absent himself. He did report for duty on 28.4.1987, but for some reason or the other, he was not allowed to join and he was asked to get himself once again examined by the Plant Medical Officer. He was, accordingly, re-examined, and the Plant Medical Officer declared him to be medically fit. In spite thereof, he was not allowed to join and he was asked to come back on 29.4.1987. But, in the meantime he again had an attack of mental illness, which precluded him from joining till 5.12.1990 and on that day, when he went to join, he was told that he has lost his lien and his name had already been struck off from the rolls of the Company.

9. Thus what the learned counsel for the petitioner contends, is that Clause 15(x) of the Certified Standing Orders does not give a right to the Management to claim that absence from duty would entail automatic striking off the name from the rolls of the Company, because, this clause speaks of disciplinary action unless being able to explain. In other words, what the learned counsel submits is that the rules of natural justice relating to hearing, giving an opportunity to give a satisfactory explanation followed by a disciplinary action is mandatory and unless these are resorted to, the Management cannot straightaway proceed to terminate the services of an employee.

10. In the backdrop of the aforesaid submission of the learned counsel for the petitioner, it is necessary to consider the observations/findings of the Labour Court, but it has also to be borne in mind that before commencement of evidence, the workman died on 18.1.1994 and therefore, he could not be examined. In fact, at paragraph 8, the Presiding Officer has stated that admittedly the concerned workman was not examined in this case.

11. In the instant case, no counter affidavit is on record, but when pointed out, learned counsel for the respondents stated that he had filed a counter affidavit on 12.5.1998. He produced for perusal of this Court a photocopy of the said counter affidavit, which according to him had been filed on 12.5.1998. In that view of the matter the said counter affidavit is ordered to be kept on record. In the said counter affidavit, the facts narrated by the petitioner have also been repeated but the allegations made have been denied. In the counter affidavit, it has also been stated that the concerned workman was in the habit of remaining absent from duties and he continued absenting himself with effect from 9.3.1987 unauthorisedly. He was given notice vide No. HMBP/1201 dated 30.3.1987 asking him to Join duty. In response to the above notice he came to report for duty on 28.4.1987 and made an application for allowing him to join. On receipt of this application, the Administration Division/HMBP wrote to the Controlling Officer vide No. T/47/PF/HMBP/1712 dated 2.5.1987 to allow him to joint duties and he

was advised accordingly but Ghanshyam Tiwary did not report for duty before the aforesaid Controlling Officer. Again, Shri Tiwary was issued a notice bearing No. HMBP/1959 dated 23.5.1987 asking him to report for duties but he did not do so. Ultimately his name was struck off from the roll with effect from 9.3.1987 vide Officer Order No. 493 dated 8.8.1987.

12. At paragraph 20 of the counter affidavit, the respondents have stated that no disciplinary proceeding was required in this case. Additionally, from paragraph 5(C) and (D) of the written statement filed by the Management it appears that between the year 1980 to 1984, the workman was not in a position to earn his leave on account of his habitual absenteeism but in the year 1985, he did earn leave of twenty days and in 1986 again he did not earn any leave. However, the period 1982 to 1986 is not the subject matter of the instant case because at paragraph 5(D) of the written statement (Annexure-3) read with Annexure-4 as also paragraphs 11 of the counter affidavit, the charge against the workman is that he absented himself unauthorisedly with effect from 9.3.1987. In other words, the period after 9th of March, 1987 is relevant. But, the Labour Court, while dealing with the argument to the effect that no proper opportunity was given, writes as follows :

"The management filed Ext. A series the notices to show that requisite notices were issued to him. From Ext. A notice dated 22.7.1980 it appears that concerned workman were absent from his duty since 23.6.1980. He was directed to appear and file paper explaining his absence within a week of receipt of the notice failing which action will be taken for termination of his lien in accordance to provisions of Clause 15(x) of the Standing Order. Ext. A/1 is a notice dated 28.5.81 to the same effect, Ext. A/2 is a notice dated 18.5.1981. All these notices alongwith notice Ext. A/3 dated 16.12.1983 and Ext. A/4 notice dated 31.10.1987 goes to show that ample of opportunity was given to the concerned workman to appear and explain his absence. Ext. A/5 is also a notice dated 23.8.1982."

13. Thus, it appears that notices sent in the year 1980, 1981, 1982 and 1983 were taken into consideration for purposes of coming to a conclusion that these notices "invariably suggest that the concerned workman remained absent from his duties without leave". .

14. Let me hasten to add that it is not that the Labour Court has not considered notices dated 13.1.1987, 23.5.1987 and 30.8.1987, but what this Court intends to consider is that whether the notices of 1987 should have been allowed to have been linked with notice of 1980 to 1983 for purposes of coming to a conclusion that the concerned workman unauthorisedly absented himself with effect from 9.3.1987 ? In the opinion of this Court, it appears that perhaps the Labour Court did not properly consider this aspect and he should not have considered notices issued in 1980 to 1983. Apart from the aforesaid when the concerned workman did not produce Annexure-5 appended to this writ application and which showed that the workman, in fact, had gone to join his duties and when the Management

himself stated at paragraph 5(D) of the written statement that on being noticed, the workman submitted his joining report on 28.4.1987, which was accepted, but unfortunately the workman did not report and remained continuously absent till 8.8.1987 and when the workman himself in written statement gave a sufficiently plausible action at paragraphs (ii)(b), (ii)(c), then the Labour Court should not have come to a conclusion that "thus from the above documents it appears that the concerned workman never reported on duty", because in the next sentence he says "from WS also it appears that concerned workman could not join" (underlining by this Court). Thus, the two findings of "never reporting for duty" and "could not join" are contradictory to each other.

15. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court in the case of Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, in support of the contention that striking off of the names cannot be done unless the rules of natural justice are followed. He has submitted that in the instant case, four dates are really important and they are (a) Notice dated 30.3.1987 as contained at Annexure-4 by which the workman was directed to file explanation in relation to his unauthorized absence with effect from 9.3.1987; (b) 28.4.1987, i.e., the day on which the workman presented himself for joining as would be apparent from Annexure 5/1; (c) 29.4.1987, i.e., when he was asked to come on the next day and the date when he was again struck with mental illness; and (d) 5.12.1990, i.e., the date on which he went to join, but was told that his name had already been struck off from the rolls with effect from 9.3.1987.

16. In the backdrop of the aforesaid factual happenings, the learned counsel for the petitioner relying upon the aforesaid judgment of the Supreme Court, submitted that the action of the Management is devoid of any justification and it does not depict that the doctrine of natural justice has been followed or the concept of fairness been adhered to.

17. Mr. Rangon Mukhopadhyaya, learned counsel for the respondents submitted that the Labour Court being the Final Court of facts, its award should not be interfered by the High Court. It is true that the Labour Court is a final authority on facts, but in the instant case, this Court is not interfering on facts. All that it is concerned with is that the Labour Court has not taken into consideration the true effect of Clause 15(x) which makes adherence to the elementary principles of natural justice, the minimum requirement before proceeding to invoke the said clause. In the instant case, there is no whiff of even a proper notice calling for an explanation, save and except Annexure-4. After Annexure-4, the concerned workman did present himself on 24.8.1987 and thereafter there are explanations which he gave, but before actually passing the order striking off his name, the workman was never served with either a charge-sheet nor was any disciplinary action taken nor did the competent authority give reasons and say as to why his explanations were not found to be satisfactory. This aspect does not appear to have been properly appreciated by the Labour Court. On the contrary, he has given a finding of "could not join" and "never reported for duty". These two

findings are in conflict with each order.

18. For the reasons stated above, this Court is of the opinion that the matter requires to be considered afresh by the Labour Court giving all opportunity to all the parties to present their case in the right perspective so that a proper adjudication is made, finally letting the dispute to rest.

19. In that view of the matter, the impugned award is set aside and the matter is remanded to the Labour Court to proceed afresh and pass a fresh award in accordance with law within a period of 6 (six) months from the date of receipt of a copy of this order after giving notice and adequate opportunity of hearing to all the parties concerned.

20. The writ application, is therefore, allowed with the aforesaid observations and directions. There shall, however be, no order as to costs.