
(2013) 07 OHC CK 0020

In the Orissa High Court

Case No : Writ Petition (C) No. 12068 of 2004 in W.F. No. 3725 of 2005

Management of M/s. Tata Sponge Iron Ltd.

APPELLANT

Vs

G.C. Mohanta and Another

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 139 FLR 405 : (2013) 5 LLN 708

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : S.K. Nayak, B.K. Sahoo, M.S. Sahoo and D. Nayak, for the Appellant; Sandeep Rath, A.K. Moharana, A. Rath, J.K. Rath, S.N. Rath, P.K. Rout, C.S. Mishra, C.K. Rajguru and D.N. Rath, for the Respondent

Judgement

Sanju Panda, J.—Since common question of law is involved in both the writ petitions, they were heard together and are being disposed of by this common order.

WP (C) No. 12068 of 2004 has been filed by the Management and WP(C) No. 3725 of 2005 has been filed by the workman challenging the award dated 30.4.2004 passed by the Presiding Officer, Labour Court, Sambalpur in LD. Case No. 23 of 2001. The Labour Court answered the reference in favour of the workman on contest and awarded a sum of Rs. 1,20,000/- as compensation in lieu of his reinstatement in service and other benefits.

The management challenged the said award contending that the findings of the Labour Court are not sustainable as the same are contradictory. Therefore, the workman is not entitled to any compensation. The workman challenged the said award contending that fixation of compensation in lieu of reinstatement in service is illegal as the Labour Court has held that the discharge of the workman in service is illegal and unjustified. Therefore, it should have awarded the benefit of reinstatement with full back wages to the workman.

2. The facts of the present case are as follows:

The workman was engaged as Fitter (Electrical) under the management on 10.1.1986. While discharging his duty as such, on 3.10.2000 he met with an accident and he was severely injured. On 4.10.2000, as the doctor was not available at the dispensary of the management, he was referred to Joda West Hospital of TISCO. The doctor advised him to take rest for five days. In spite of treatment, he could not be recovered. Accordingly, he was admitted as an indoor patient on 15.11.2000 in the Joda West Hospital and discharged on 19.11.2000 with advice to take rest. He availed treatment in the dispensary of the management again from 21.11.2000 to 24.11.2000. As the condition of the workman did not improve, he underwent treatment in the District Headquarters Hospital, Keonjhar for further ten days. After recovery, he resumed his duties on 27.12.2000 being declared fit by the Medical Board constituted by the management. The workman intimated all the above facts of his illness to the management but as the management did not receive any intimation, did not direct him to join duty. However, the management issued charge sheet against him on 6.11.2000 to show cause for absent in duty with effect from 10.10.2000 without leave or without sufficient cause. In reply to the same, the petitioner on 14.11.2000 intimated the management that he was medically unfit as declared by TISCO Joda West Hospital from 4.10.2000. He sent unfit certificate to the management through office boy stating that he would join the duty after becoming medically fit. But the management, without considering the matter in its proper perspective, appointed enquiry officer who conducted the domestic enquiry. The Enquiry Officer, by violating the principle of natural justice, gave a finding basing on which the management discharged him from service on 9.3.2001. As the said discharge from service was the outcome of victimization and unfair labour practice, the workman raised an industrial dispute before the Labour Court, Keonjhar. As the conciliation failed, the reference was made to the Labour Court for adjudication of the dispute. The reference is as under:

Whether the discharge of Sri Gokuli Ch. Mohanta by the management of TATA Sponge Iron Ltd., Bileipada in their order No. 4752 dt. 9.3.2001 with immediate effect is legal and/or justified? If not, what relief Sri Mohanta is entitled to?

The management filed its written statement taking a stand that the workman was charge sheeted and punished several times for the self-same misconduct of unauthorized absence from duty. In spite of the earlier punishment for absence from duty, he again absented himself from duty with effect from 10.10.2000 without sanction of leave or without sufficient cause. Accordingly, charge was framed, Enquiry Officer was appointed to conduct the domestic enquiry following the procedure because his explanation was not satisfactory. Ample opportunity was given to the workman to defend himself. After complying with the principle of natural justice, the Enquiry Officer submitted his report with findings that charge levelled against the workman was proved. Basing on it and in view of the gravity of charge, notice was issued to the workman on 22.2.2001 asking him to show cause against the proposed punishment. After considering the show cause filed by the workman, the management discharged him from service.

Accordingly, the action of the management was legal and justified. It also took a stand that the workman had not met with any accident during the duty hours and as such, the management was not aware of the severity of the injury, if any. However, during enquiry from the medical units, it came to light that on 4.10.2000, the workman went to the dispensary of the management for treatment and due to absent of the Medical Officer, he was referred to Joda West Hospital where he was advised for admission to which he refused. Subsequently, he appeared there again and was admitted as an indoor patient on 15.11.2000. He was discharged on 19.11.2000. Instead of joining duty on 20.11.2000, the workman made out a patient's ticket in Joda West Hospital on 29.11.2000 and 26.12.2000 but did not submit back its duplicate copy for treatment. Therefore, the ground of illness was false and during the said time, he organized a meeting in Joda area demanding 20% bonus from the employees of Rungta Mines. Therefore, the reference was answered in favour of the management. Considering the claim of the workman and the plea of the management, the Labour Court framed three issues which are as follows:

- i. Whether the domestic enquiry conducted by the management was fair and proper?
- ii. Whether the discharge of Sri Gokuli Ch. Mohanta by the management of TATA Sponge Iron Ltd., Bileipada in their order No. 4752 dt. 9.3.01 with immediate effect is legal and justified?
- iii. To what relief, if any, Sri Mohanta is entitled?

The parties adduced their evidence in support of their respective pleas. Considering the materials available on record, the Labour Court held that the domestic enquiry conducted by the management was unfair. The workman continued his treatment in the management's own dispensary from 10.10.2000 onwards. After his discharge from Joda West Hospital on 19.11.2000, he again remained under treatment in the management's dispensary from 21.11.2000. As such, mere was sufficient cause for the workman for remaining absent with effect from 10.10.2000 till he was issued with the charge sheet on 6.11.2000 and also during subsequent period of his treatment in management's dispensary as well as Joda West Hospital till 19.11.2000. However, the plea of the workman, that on 20.11.2000 he had not resumed duty as there was no Medical Board at that time, appears to be an after- thought and not convincing. He had not brought to the notice of the management the aforesaid fact which clearly showed his dominant intention to avoid duty on false pretext of illness. The Labour Court discussed the materials produced by the workman that the medical papers including X-ray report dated 26.11.2000 were stolen away from his possession while he was travelling to Jamshedpur by Bus on 2.3.2001. He lodged an FIR at Chainbasa Police Station vide P.S. Case No. 12 of 2001. He also produced the copy of the FIR which was marked as Ext.G with objection. The management seriously disputed the above plea of the workman as the doctor only advised him to take rest. The workman was under treatment as an indoor patient and he was

also under treatment in the District Headquarters Hospital, Keonjhar. Therefore, the allegation of the management did not repose any confidence. The allegation of the management regarding Dharana made by the workman demanding bonus on the basis of a Newspaper Publication (Ext.16) did not specifically disclose the physical presence of the workman at the very spot. The workman simply guided the strike by sitting in his home in spite of his illness. He resumed his duty after being declared fit by the Medical Board. To sum up the entire discussion, the Labour Court held that there was sufficient cause for the workman to remain absent from duty with effect from 10.10.2000 onwards except that the date on 20.11.2000 which could be ignored being single intervening day. As such, the charge of misconduct framed against the workman could not be said to have been duly proved by the management. In view of the said finding, the punishment of discharge from service imposed on the workman was held to be illegal and unjustified. On issue No. 3, the Labour Court held that the workman did not submit any leave application in respect of his absence from 10.10.2000 onwards covering a total period of more than two and half months. This may not strictly come within the definition of "misconduct" as per the Certified Standing Order of the Company but it could not be recognized as a healthy practice being averse to industrial production, prosperity and discipline. The workman was working as a Fitter (Electrical). The plant of the management functioned 24 hours in three shifts and did not remain close on holidays even. Therefore, the duty and responsibility of the workman as an Electrical (Fitter) was onerous one requiring high alertness and promptness for function of the plant. His absent without leave was sufficient ground for the management to lose confidence on the workman. As such, the allegation of the management regarding lose of confidence on the workman did not appear to be colourable, unreasonable and unjustified. In view of such strained relationship prevailing between the employer and employee, the order of reinstatement of the workman would not only bring misery and unhappiness to both but also affect the cordial and congenial atmosphere of work. Accordingly, the Labour Court passed the aforesaid award.

3. Learned Counsel for the workman submitted that in view of specific findings of the Labour Court that there was sufficient cause for the workman for remaining absent from duty with effect from 10.10.2000 till he was issued with the charge sheet and also during subsequent period of his treatment, the Labour Court should not have passed the award of compensation in lieu of reinstatement. The workman had rendered more than 14 years of service. As such, the award is liable to be interfered with. He further submitted that the findings of the Labour Court that the charge of misconduct against the workman cannot be said to have been duly proved by the management. The punishment of discharge from service imposed on the workman was illegal and unjustified. The Labour Court should not have held that the action of the workman is coming under the heading of "misconduct" and the management lose its confidence on the workman as per the Standing Order of the Company. The management has also in their report taking a specific ground that the principle of confidence is not applicable in the

present case and in view of the same, the impugned award is liable to be interfered with. In support of his contention, he has cited the decisions of the Apex Court in the cases of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, and Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others, and the decision of the Patna High Court in the case of Shri B. Choudhury Vs. Presiding Officer, Labour Court, Jamshedpur and another,

4. Learned Counsel appearing for the management submitted that sub-clause (xxiv) of clause 19 of the Standing Orders of the Company stipulates that continuous absence without permission or without sufficient cause for more than seven days is an act of misconduct. The Labour Court was to discuss and interpret the said Standing Orders as per section 7 Second Schedule of Clause-3. Since the Labour Court has not done so, the award is liable to be set aside because the management has taken action taking into consideration the past conduct of the workman in which he was punished for absent from duty without leave. He further submitted that the management has also taken a ground in its written statement that the management has lose confidence in view of repeated conduct of the workman. Therefore, even though the management does not support the award, for the show cause of the workman, he submitted that the compensation in lieu of reinstatement is proper and the compensation needs to be reduced. In support of his contention, he has cited the decisions of the Apex Court in the cases of Haryana State Electronics Development Corporation Ltd. Vs. Mamni, Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, and The Divisional Controller, KSRTC Vs. M.G. Vittal Rao,

5. This Court has considered the rival submissions of the parties and taken into consideration the respective pleas of the parties. The findings of the Labour Court that there were sufficient cause for the workman for absence from duty. However, the workman shall not continuous absence from duty without permission or without sufficient cause for more than seven days as stipulated in the Standing Orders of the Company. The Standing Orders of the Company stipulates continuous absence without permission or without sufficient cause for more than seven days is the act of misconduct.

6. Therefore, this Court is to decide whether the award passed by the Labour Court is sustainable or any interference in it is warranted.

7. As per the Standing Orders of the Company, two conditions are stipulated under the heading of punishment for "misconduct". The past conduct of the workman is not in dispute by the parties. However, the management discharged the workman from service after initiating a disciplinary proceeding. Though the workman was ill, the materials reveal that he was under treatment after accident for a few days. Thereafter, he was admitted as an indoor patient and then he was discharged as such from the hospital. However, after discharge from hospital, he was again treated at the District Headquarters Hospital, Keonjhar. However, there was no material that the condition of the workman was serious then. As such, he was not able to attend the duty prior to 27.12.2000 and he was not in a

condition to intimate his illness to the authority.

8. Law is well settled that the standard of proof in criminal proceeding vis-?-vis departmental/domestic proceeding is altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. Reinstatement and back wages are not automatic. If it is found that dismissal from service is illegal and unjustified then also the Court is to consider other relevant factors, for example, nature of service, duration/tenure of work and conduct of the workman. No precise formula can be adopted nor "cast-iron-rule" can be laid down as to when payment of full back wages along with reinstatement should be allowed by the Court or Tribunal. The approach of the Court should not be rigid or mechanical but flexible and realistic. While dealing with the case of industrial disputes, it may find force in the contention of the employee as to illegal termination of service of the workman and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such case, obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service and the relief to be granted in terms of section 11-A of the LD Act being discretionary in nature, the same is required to be considered on the facts and circumstances of each case.

9. The Apex Court in the case of Rajasthan Lalit Kala Academy Vs. Radhey Shyam, has held that the relief of reinstatement with full back wages need not be granted automatically. The factors relevant for determining back wages are required to be taken into consideration.

10. Considering the fact that the disputes between the management and the workman are regarding repeated unauthorized absence of the workman more than seven days and the workman has rendered service more than 14 years, the interest of justice would be sub-served in case the award of the Labour Court is modified and the quantum of compensation is enhanced. Accordingly, this Court, taking into consideration the facts and circumstances of the case, enhances the compensation from Rs. 1,20,000/- to Rs. 2,00,000/- (rupees two lakhs).

In the result, the writ petition filed by the management is dismissed and the writ petition filed by the workman is allowed in part.