
(1969) 07 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 1002 of 1968

Management of Shiva Flour Mills	Vs	APPELLANT
The Workmen and Another		RESPONDENT

Date of Decision : 03-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Employment (Standing Orders) Act, 1946 — Section 1(3), 15

Citation : AIR 1970 Patna 273

Hon'ble Judges : Shambhu Prasad Singh, J; N.L. Untwalia, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Saran, for the Appellant; S. Ali Ahmad, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application by an employer to call up and quash the award of the Industrial Tribunal, Bihar, in Reference Case No. 63 of 1967, a copy of which is Annexure "1" to the writ application. The short facts necessary to be stated for the disposal of this writ case are these. Shri Sudarsan Panda was an employee of the petitioner. He made an application to the Management on the 11th of March, 1967, praying for one and a half months' leave with effect from the 13th March, 1967, to the 27th April, 1967, on certain grounds. The Management granted to him leave only for fifteen days. The leave, accordingly, was to expire on the 27th March, 1967, and the workman concerned had to report and resume his duties on the 28th March, 1967. According to the case of the Management, he failed to join his duty on the 28th March, 1967, Therefore, it sent a reminder under letter No. 1265 dated the 1st April, 1967, directing him to report on duty latest by the 10th April 1967. The workman did not report for duty even by that date. Thereupon, the Management proceeded to terminate his services and did terminate them with effect from the 14th April, 1967 and sent an intimation by registered cover to that effect to the workman concerned.

2. The case of the workman is that he had gone on leave and applied for it for a month and a half from the 11th March, 1967 and that he had been orally informed that he had been granted one month's leave. He sent a petition from his home to the Management requesting extension of his leave. On the 29th April, 1967, he came and filed a petition along with a medical certificate about the illness, but the Management refused to accept it and told him that his services were not required any more. The stand of the workman was that the termination of his services was without any justification, it was illegal and he ought to be reinstated.

3. An industrial dispute was raised by the workmen represented by Mill Workers' Union. Bhikhampur, Bhagalpur (respondent No. 1). Thereupon, a reference was made by the State Government u/s 10 of the Industrial Disputes Act, 1947, for adjudication to the Industrial Tribunal, Bihar. The reference was in the following terms:

"Whether termination of services of Shri Sudarsan Panda is proper and justified? If not, is he entitled to reinstatement and/or any other relief?"

The Presiding Officer of the Industrial Tribunal, respondent No. 2, has recorded the following findings in his award:

(1) That Shri Sudarsan Panda had been granted leave for fifteen days only and he had full knowledge of this fact.

(2) That the case of the Management that a letter dated the 1st April, 1967 (Ext. G) was sent to Sudarsan Panda does not seem to be correct, while on the other hand the case of the workman that he did not receive any such letter seems to be correct.

(3) Even, assuming that such a letter was sent to the workman asking him to join his duties from the 19th April, 1967, no action could be taken against him for the termination of his services without framing a charge-sheet and allowing him an opportunity to defend himself as against the alleged charge of absenting himself from duties without having any justification and without taking any leave.

(4) That Shri Sudarsan Panda had actually fallen ill, and as soon as he recovered, he came to join his duties, but the Management did not allow him to do so.

4. In that view of the matter, the learned Presiding Officer has answered the reference in favour of the employee holding that the termination of his services was not proper and justified and that he was entitled to reinstatement with full back wages. The Management has obtained a rule from this court against the respondents to show cause why the award of the Industrial Tribunal be not called up and quashed by grant of a writ of certiorari.

5. Cause has been shown on behalf of respondent No. 1 by Mr. S. Ali Ahmad, while Mr. B. P. Hajgarhia has appeared in support of the rule.

6. In my opinion, the Industrial Tribunal has completely misdirected itself in the

approach of this case. It has not referred to any standing order or the model standing orders which would be applicable to govern the service conditions of the workman concerned. It is not quite clear as to whether the industrial establishment in question had its own certified standing orders duly certified and approved in accordance with the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946). No such standing order seems to have been relied upon before the Tribunal; nor was any shown to us on behalf of either party. It is also not clear as to whether Central Act 20 of 1946, is applicable to this industrial establishment, because it is not clear whether one hundred or more workmen are employed in this establishment. However, in absence of any standing order, or even failing the application of the Model Standing Orders framed by the appropriate Government under the rule making power conferred upon it u/s 15 of the Central Act 20 of 1946, the ordinary law of master and servant would be applicable to the facts of the case where the position of the petitioner obviously cannot be better than the one which would result on the application of the provision of the Model Standing Orders.

It is because of that reason that both parties have proceeded before us to argue and we also thought it advisable to decide this case on the footing of the application of the Model Standing Orders framed by the Government of Bihar in the Bihar Industrial Employment (Standing Orders) Rules, 1947. The relevant clause 9 of the Bihar Model Standing Orders, is exactly the same as the one in clause 9 of the Model Standing Orders included in the Industrial Employment (Standing Orders) Central Rules, 1946. Clause 9 of the Bihar Model Standing Orders is as follows:

"Leave -- (1) Holidays with pay will be allowed as provided for in Chapter IVA of the Factories Act, 1934, and other holidays in accordance with law, contract, custom and usage.

(2) A workman who desires to obtain leave of absence shall apply to the manager, who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefore shall be recorded in writing in a register to be maintained for the purpose and If the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof he shall apply to the manager who shall send a written reply either granting or refusing extension of leave to the workman if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

(3) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a)

returns within 8 days of the expiry of the leave and (b) explains to the satisfaction of the manager his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the badli list."

7. On an interpretation of the said clause of the standing orders, a Bench of this Court of which I was a member in C. W. J. C. No. 107 of 1968. Employers in relation to Digwadih Colliery of Tata Iron & Steel Co. v. Presiding Officer, Central Govt. Addl. Industrial Tribunal D/- 30-4-1960 (Pat) following the decision of the Supreme Court in National Engineering Industries Ltd. Vs. Hanuman, and certain other decisions of the different Benches of this court, has held that the termination of lien of the employee on his appointment is automatic on the expiry of his leave and the period of eight days within which under clause 9 of the Standing Orders he is required to return and explain to the satisfaction of the Management his inability to return before the expiry of the leave. That being so, on the facts found by the Industrial Tribunal in the present case, it is obvious that the termination of the lien of Shri Panda on his appointment was automatic on the expiry of the period of his leave as also the period of eight days within which he could come and explain his absence to the satisfaction of the management. An argument was advanced in other cases decided by this court as also before the Bench of which I was a member that the word "and" occurring in Clause 9 of the Standing Orders should be read as "or" but such an argument has been consistently rejected. In that view of the matter, it ought to have been held by the Tribunal that the appointment of the workman concerned automatically came to an end, and the termination of his services by the Management could not be held to be unjustified or illegal.

8. Mr. All Ahmad submitted on behalf of the workman that the leave of Shri Panda was extended up to the 10th of April, 1967, by the Management. Hence, the latter was not justified in terminating the services of the former before the expiry of the period of eight days that is, before the 18th April, 1967. He, therefore, persuaded us to hold that the termination of the service of the workman on the 14th April, 1967, should be held to be unjustified and illegal, and the reference should be answered in favour of the workman even on that ground, I am unable to accept this contention; firstly because as I have stated above, the finding of the Tribunal is that the letter (Ext. G) dated the 1st April, 1967 was not received by the workman and the case of the Management that it sent such a letter is not correct. That being so, on the facts it cannot be said that even unilaterally there was an extension of the leave of the workman. Assuming that such a letter was sent or at least it is not open to the Management to say that it was not sent, the contents of the letter do not show that the Management granted an extension of leave to the workman. They merely show that it showed a concession to the workman in extending the, period of eight days of grace and gavel him the latitude of joining his duties by the 10th of April. 1967, in which case if the workman would have joined his duties by that time, it may well be that there would not have been an automatic termination of his lien on his

appointment. But it is undisputed that the workman did not avail even of that concession. If, therefore, the workman attempts to rely, strictly and technically, upon the express order of termination passed by the Management on the 14th April, 1967, he cannot at the same time say that the termination was premature as it was before the expiry of the period of eight days counting from the expiry of the period of his leave. Strictly and technically speaking in that situation, his leave will be deemed to have expired on the 27th March, 1967, and the order of termination passed on the 14th April, 1967, will be beyond the period of grace of eight days. If, however, a view is taken in favour of the workman that his leave was extended up to the 10th of April, 1967, although unilaterally by the Management, he lost the lien on his appointment on the 18th of April, 1967. That being so, it cannot be said that he had a right to be reinstated with full back wages. The express order of termination of the service on the 14th of April, 1967, will be of no consequence. In either view of the matter, it has got to be held that the workman concerned was not entitled to any relief from the Industrial Tribunal in the reference made to it u/s 10 of the Industrial Disputes Act.

9. The learned Presiding Officer of Tribunal has, as I have said above, completely misdirected himself and proceeded upon the footing that it was a case of dismissal of the workman on the ground of certain misconduct without holding a domestic enquiry by the Management. He seems to be of the view that since no such enquiry was held, he could arrive at his own conclusion whether absence without leave of the workman amounted to misconduct. In my opinion, such an approach was wholly illegal and misconceived. The case ought to have been examined with reference to the particular facts by application either of the law of master and servant or, more precisely, application of the relevant clause of the Model Standing Orders framed by the Bihar Government. The tribunal failed to do so and its award, therefore, suffers from an infirmity of law of the kind which attracts the jurisdiction of this Court under Art, 22G of the Constitution.

10. The application is, accordingly, allowed, and, the impugned award of the Tribunal contained in Annexure "1" in so far as it concerns Reference No. 63 of 1967 is called up and quashed by grant of a writ of certiorari. There will, however, be no order as to costs.