
(2010) 05 JH CK 0055
In the Jharkhand High Court

Md. Aslam

APPELLANT

Vs

The Management of India Firebricks and Insulation Company
Limited

RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2010) 05 JH CK 0055

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The petitioner in this writ application has challenged the impugned order of the Presiding Officer, Labour Court, Hazaribagh in Reference Case No. 1 of 2000 whereby the reference was answered against the workman and in favour of the Management.

3. The terms of reference upon which the Labour Court was called upon to adjudicate, was as follows:

Whether the termination from service of the workman Shri Moh. Aslam, Card No. 3469 by the management of Ifico Refaclories Machine, Ranchi Road, P.O. Mararm Dist: Hazaribagh is justified?. If not, what relief workman is entitled to?

4. It appears that before the court below, both parties had adduced their respective evidences and on the basis of the evidences adduced, the learned court below had recorded a finding in following terms:

The entire evidence brought on the record by the parties on a careful scrutiny go to show that workman Md. Aslam remained absent more than 6 months continuously in the year 1994 without giving any information to his employer (Management) and prior to that also i.e. since 1990 to onwards he had remained absent from his duty in every year. So under Rule 20 of the Standing Order of

the company the action of the management regarding termination of service of workman Md. Aslam, appears a justified one. Accordingly, on the basis of the above discussion, it is held that this reference case is not maintainable and termination of the service of the workman Md. Aslam is a justified one and he is not entitled for any relief.

5. It appears from the facts pleaded that the Management had terminated the services of the workman in purported exercise of its right under Rule 20 of the Certified Standing Orders which provides that in the event any workman remains absent from duty without prior permission continuously for ten days, then it would be deemed that the workman has left the services under the company and he would lose his lien from service on such grounds. The Management would however pay the admitted and statutory dues to the workman upon such termination of his service.

6. The grievance of the workman as raised in the present writ application is that the Award of the court below is totally misconceived and contrary to the provisions of law and is therefore illegal.

Sri A.K. Sahani, learned Counsel for the petitioner would submit that notwithstanding the conditions laid down in the Certified Standing Orders, mere unauthorized absence in itself would not give the right to the employer to abruptly terminate the services of the employee. Rather, before passing any such order of termination in exercise of its purported right under Rule 20, the employer has to conduct a domestic enquiry or such enquiry so as to enable the employee to submit his reasonable explanations for the unauthorized absence. Learned Counsel explains the above contentions by referring to the judgments of the Supreme Court in the case of *The State Bank of India Vs. Shri N. Sundara Money*, Supreme Court 1111, in the case of *L. Robert D'Souza v. Executive Engineer, Southern Railway* AIR 1982 SC 854 and in the case of *D.K. Yadav Vs. J.M.A. Industries Ltd.*, , that even according to the Standing Orders, the unauthorized absence of an employee is deemed to be a misconduct and if any action on the charge of such misconduct is to be taken, then the Management cannot avoid conducting a domestic enquiry to establish and prove the alleged act of misconduct.

Learned Counsel explains further that the learned court below ought to have considered the terms of reference in the context of the question as to whether the termination of the services of the workman was justified? This having not been done, the findings on the basis of a post facto enquiry which the learned court below had conducted, would not rectify the defect which had already occurred by the failure of the Management to conduct the enquiry prior to the order of termination of the workman's services.

7. Sri Sanjay Piprawall, learned Counsel arguing for the respondent Management submits that the present writ application is not maintainable in view of the fact that the grounds advanced are totally misconceived. Learned Counsel explains

that the workman had not taken any such ground before the court below which is being now taken for the first time in this writ application. According to the learned Counsel, the petitioner appears to take a ground that the order of termination of his service is by way of the workman's retrenchment and before such order of retrenchment is passed, the mandatory provisions of law ought to have been complied with by the Management. This argument of the petitioner is a new ground and taken for the first time in this writ application.

8. From the rival submissions of the learned Counsel for the parties and from the material available on record, I find that admittedly on the ground that the petitioner had remained in unauthorized absence for a long time, the Management had taken recourse to the provisions of Rule 20 of the Certified Standing Orders and had passed the impugned order of his termination from service. Admittedly, before passing the impugned order of termination, the Management did not conduct any enquiry whatsoever nor was the workman offered any opportunity to give any explanation for his absence.

9. I find force in the argument of the counsel for the petitioner that even while resorting to the provisions of the Certified Standing Orders, the principle of natural justice cannot be ignored. Admittedly, the act of willful and unauthorized absence constitutes an act of misconduct for which the employee may be liable for the extreme punishment of termination of his service. However, such act of misconduct has to be proved by an enquiry in which the employee would have to be given reasonable opportunity of hearing.

10. In the case of D.K. Yadav (Supra), while considering an identical issue where the services of the workman was terminated by the employer on the basis of the provisions contained in the Certified Standing Orders, without conducting a domestic enquiry, the Supreme Court, by referring to the definition of the term "retrenchment", u/s 2(oo) of the Industrial Disputes Act, has observed as follows:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill health.

Thereafter, reiterating the ratio decided in an earlier judgment of the Court in the case of Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, , has held that striking off the name of the workman for absence of leave itself amounted to retrenchment.

The Apex Court has also observed that "Section 25F prescribes a mandatory

procedure to be followed before the retrenchment becomes valid and legal and violation thereof visits with invalidation of the action with consequential results". The Court further observed that "the principles of natural justice must be read into the provisions of the Certified Standing Orders, otherwise it would become arbitrary, unjust and unfair violating Article 14".

11. Referring now to the impugned order of the court below, it appears that the learned court below has missed the main issue for adjudication. The main issue here was as to whether the termination of the petitioner's services was justified? The very fact that no enquiry was conducted before passing the impugned order of termination, in itself, would suffice to record a finding that the order of termination was improper. Learned court below, in the facts and circumstances of the case, was not at all called upon to conduct any such enquiry to assess such reason or otherwise for the unauthorized absence of the workman. Such enquiry is a post facto enquiry which has no relevance on the issue relating to the terms of reference.

12. In the light of the above facts and circumstances, I am of the opinion that the impugned order of the court below suffers from infirmity and impropriety and the findings recorded in the impugned Award are not in consonance with the provisions of law. Accordingly, the impugned Award is hereby set aside. However, the respondent Management would be at liberty to conduct an enquiry in order to find out as to whether the workman had committed an act of misconduct by willfully absenting from duty and whether such absence was for any justified or reasonable ground or otherwise and then to take an appropriate decision on the relevant charge in the above context. The petitioner shall cooperate with the respondent Management in conducting the enquiry. If within a period of three months, the Management fails to conclude the enquiry and to take an appropriate decision on the above issues, without any fault on the petitioner's part, then, the petitioner would be entitled to claim for his reinstatement in service.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the counsel for the respondent.