
(1994) 05 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 1493 of 1985

Mehdi Hussain

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 02-05-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1994) 2 AWC 1154 : (1995) 2 LLJ 1088 : (1994) 3 UPLBEC 1612

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : S.A. Zilani, for the Appellant; N. Verma and Naveen Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—The petitioner, who was an Ex. Military personnel, was appointed as an Armed Guard on January 15, 1970 on temporary basis at Allahabad Branch of State Bank of India. Later on he was selected for the post of Armed Guard and was appointed on substantive basis on probation at the same branch on July 9, 1971. The Bank has asked the petitioner to submit his School Leaving Certificate in proof of his possessing minimum educational qualification for the post and date of birth. The petitioner submitted certificate on July 9, 1971 of principal R.R.K. Higher Secondary School, Palippur, Pratapgarh. On verification the aforesaid certificate submitted by the petitioner was found to be a forged one. Vide memo dated December 14, 1971 the petitioner was called upon by the Bank to give his explanation for submitting a forged School Leaving Certificate with a view to obtain appointment in the Bank. On November 20, 1971 the petitioner submitted his explanation. As the petitioner was on probation his services were terminated by the Bank vide order dated February 5, 1972. Agent, State Bank of India, Allahabad Branch on April 4, 1972 has made a report in connection with his forgery to Senior Super-intendent of Police, Allahabad. On this report a criminal case has been registered against the petitioner under Sections 467/468,

420 and 471, I.P.C. He was tried by the Chief Judicial Magistrate, Allahabad for the aforesaid offences in Crime Case No. 793 of 1977, State v. Mehdi Hussain. In the criminal case the petitioner was acquitted by the Court on March 23, 1978. After acquittal the petitioner has taken up the matter of termination of his services with the Bank. He sent a letter to the General Manager Operation, State Bank of India, Kanpur and prayed therein that he should be reinstated back in the service and be paid full salary. The Bank vide its letter dated January 2, 1980 informed to the petitioner again that his services were terminated on February 5, 1972. The petitioner thereafter raised an industrial dispute and the Govt. of India vide its order dated May 28, 1982 referred the dispute for adjudication to the Central Govt. Industrial Tribunal, Kanpur. The Tribunal has decided the reference vide its award dated Nil and the action of the management of State Bank of India in terminating the services of the petitioner with effect from February 5, 1972 has been held to be justified. This award was communicated to the petitioner by the Central Govt. vide its letter dated November 22, 1984. The award has been published u/s 17 of the Industrial Disputes Act, 1947. This award of the Tribunal has been questioned by the petitioner in this writ petition.

2. Shri S.A. Zilani, learned counsel for the petitioner first of all submitted that the order of termination of services of the petitioner by the respondent No. 2 is illegal as the same has been made in violation of the provisions of the Section 25F of the Industrial Disputes Act, 1947. Shri Zilani has next argued that the order of the termination is punitive in nature and has been passed by way of punishment without holding any enquiry in the matter and as such is void and inoperative. He has further argued that order of termination has been passed in violation of principles of natural justice and this order does not contain any reasons for discharge of the petitioner from the services of the Bank. Lastly, Shri S.A. Zilani submitted that in criminal case on the same charges the petitioner has been acquitted but judgment of the criminal court was not taken into consideration by the Tribunal. He cited the following cases in support of his arguments:

Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, ; Hari Mohan Rastogi Vs. Labour Court and Another, ; Mohan Lal Vs. Management of Bharat Electronics Ltd., ; The State Bank of India Vs. Shri N. Sundara Money, ; L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, , Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, ; Sant Raj and Another Vs. O.P. Singla and Another, ; Chandu Lal Vs. Management of Pan American World Airways Inc., . Chief Engineer, RSEBV Judge Additional Labour Court (Rajasthan) 1990 61 FLR 647.

3. On the other hand Shri Yaswant Varma, learned counsel appearing for the Bank has argued that the petitioner has not raised the ground before the Tribunal that his services were terminated without following the provisions of Section 25F of the Act 1947. The petitioner had not worked for 240 days in 12 months

preceding the date of termination and as such provisions as contained in Section 25F were not complied with. It is submitted by Shri Verma that it is a case of simpliciter, discharge of probationer without casting any stigma. As the case of the petitioner is only of discharge simpliciter of a probationer, there was no question of giving of a hearing to him before termination of his services. He further argued that it is a case where the petitioner has made attempt to get the employment on a forged document. He has already attained the age of 60 years on June 17, 1989, and it is a case of loss of confidence as such the relief of reinstatement with full backwages should not be granted in favour of the petitioner. Lastly, he argued that the petitioner raised an industrial dispute after six years of his termination of services and reference has been made on May 25, 1972 i.e. after ten years and as such he is not entitled for any wages for this period. In support of his arguments Shri Verma placed reliance on decisions in the case of Unit Trust of India and Others Vs. T. Bijaya Kumar and Another, , Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, and State of Punjab and Another Vs. Shri Sukh Raj Bahadur, .

4. I have considered the submissions made by the counsel for both the sides. The apex Court in the case of Karnataka State Road Transport Corpn. v. M. Boraiah (supra) held that the termination of services of probationer for unsuitability amounts to retrenchment and compliance with the requirements of Section 25F in case of such termination is essential. The apex Court again in the case of Punjab Land Development and Reclamantion Corpn. Ltd. v. Presiding Officer, Labour Court, Chandigarh (supra) held that "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever except those expressly excluded in the Section. It is not the case of retrenchment of type which is expressly excluded in Section 2(oo) of the Act, 1947. So the order of the termination of the services of the petitioner is certainly a retrenchment and the same is bad in case the petitioner has completed 240 days service in 12 months preceding the date of termination. The respondents have come up with the case that the services which the petitioner rendered as temporary employee in the Bank for the period from January 15, 1970 to July 6, 1971, could not be taken into account for the reasons, namely that the temporary services of the petitioner had come to an end on July 6, 1971, the date on which his services were terminated, and, secondly, there is a break in service from July 6, 1971, to July 8, 1971 and as such it is not the case of continuous service till February 5, 1972. His services could have been said to be continuous only from July 9, 1971 to February 5, 1972 and as the same is far less than 240 days, hence the provisions of Section 25F need not be complied with in the case. Before dealing with this argument of the respondent, I consider it proper to first decide the preliminary objection raised by Shri Verma, learned counsel for the Bank that the point of violation of provisions of Section 25F of the Act, 1947 was not pressed by the petitioner before the Industrial Tribunal. By bare perusal of the award passed by the Tribunal it does come out that no reference of this ground is therein. Shri Zilani, learned counsel for the petitioner

argued that this point was raised but was not referred and decided by the Tribunal. In this case the petitioner did not even mention in the petition that this point was pressed before the Tribunal but same was not considered and decided. The petitioner also did not file along with the writ petition an affidavit of the person who appeared and argued the matter before the Industrial Tribunal on his behalf. In such case where this type of dispute has been raised the proper course would have been to file a review petition before the concerned Court to bring to its notice that the point which had been argued before it has left its attention and consideration. This has also not been done by the petitioner in this case.

5. Now a question does arise whether the petitioner can be permitted to raise this new plea before this Court in the writ petition. The petitioner has made the necessary pleadings in the statements of claim that his services were terminated without complying with the provisions of Section 25F of the Act, 1947. The Bank has also made its defence in the written statement in respect of this plea of the petitioner. All the necessary facts have been brought on record by the parties before the Tribunal. A plea which goes to the root of the question and which is based on admitted and uncontroverted facts and no further investigation of the facts is required to be made in respect thereof the party should not be debarred from raising such plea which goes to the root of the question involved in this case. The reference in this respect may be made to the decisions in the cases, namely A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd., . The Cantonment Board, Ambala Vs. Pyarelal, and Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, . Looking to the facts of this case I consider it to be a fit case to permit the counsel for the petitioner to raise this point and the objection raised by the learned counsel for the Bank deserves to be rejected and the same is disallowed. On facts there are no dispute between the parties. The Bank has raised the dispute that the services of the petitioner were not continuous as there were break of two days i.e. July 6, 1971 and July 8, 1971. The Bank though in the written statement has taken a plea that the temporary services of the petitioner were terminated on July 6, 1971 and he was given fresh appointment after selection on July 9, 1971 but it has not produced any document whatsoever to support this plea. Even in the list of documents which has been submitted by the Bank before the Labour Court the document i.e. copy of order of termination of services of the petitioner on July 6, 1971 has not been cited what to say to produce the same. In a para No. 5 of the affidavit of Sri. O.P, Dwivedi, Officer of Bank it has been stated that the employee (petitioner) has accepted termination on July 6, 1971 after settling his final accounts voluntarily and without any protest, but no material whatsoever has been produced in support of this plea. In case the petitioner would have settled the accounts then that document should have been produced. It is a case where Bank has come up with the case that it is a case of termination of service of a probationer which does not fall within the definition of "retrenchment" and as such compliance of the provisions of Section 25F of the Act, 1947 need not be made. Admittedly, the petitioner faced the

selection during the period he was working on temporary basis and after selection vide appointment letter No. 42/8/8 dated June 28, 1971 he was appointed in Bank's service on permanent basis on probation of six months. In pursuance of this order he joined the post on July 2, 1971. These facts leave no doubt in the mind of the Court that it was a clear case of an artificial break of two days in the services of the petitioner made by the Bank. I also do not find any substance in the argument of Shri Verma that temporary services rendered by the petitioner for a period earlier to July 6, 1971 cannot be counted for the purpose of continuous services for compliance of the provisions of Section 25F of the Act, 1947. Learned counsel for the Bank has failed to point out any reason: to make such a distinction. The Act of 1947 nowhere contemplated such a situation. It is a case where initial temporary appointment of the petitioner has been culminated in the regular permanent appointment. The period of temporary service has to be taken into consideration and in case it is taken into account the total continuous service of the petitioner was certainly much more than 240 days on February 5, 1972 - the day on which his services were terminated. The artificial break in services of two days will not be taken to be a break in services of the petitioner. Such artificial breaks are being contemplated by Section 25B of the Act itself and that is the reason that a deeming fiction has been made under the said provision for continuous service of one year. Reference in this connection is made to the decision of the apex Court in the case of Mohan Lal v. Management of Bharat Electronics Ltd. (supra):

"The language of Section 25B(1) and (2) does not admit of any dichotomy. Clauses (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purposes of Chapter V-A. Section 25B(2) comprehends a situation where a workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within a period of 12 calendar months commencing and counting backwards from the relevant date i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25B and Chapter V-A."

6. In view of these facts I have no hesitation to hold that the petitioner has completed more than 240 days service within a period of 12 calendar months commencing and counting backward from the date of termination of his services. The Tribunal has decided the reference by considering it to be a case of termination of the services of the petitioner a discharge simpliciter not amounting to punitive action of dismissal for misconduct and without any ulterior motive. The action of the management in terminating the services of the petitioner was held to be bona fide. The order of termination of the services of the petitioner is filed on record along with the writ petition as Annexure 16. The order dated February 5, 1972 (Annexure 16) does not contain any ground or cause of termination of the services of the petitioner. It is not the form of the action but substance of the order that is to be looked into. It is open to the Court to lift the veil and gauge the effect of the impugned action to find out whether it

is the foundation to impose the punishment or is only a motive. The substance of the order is the soul and the effect thereof is the end result. This is what has been held by the apex Court in the recent decision in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., . In the reply to the statement of the claim the management has come up with the case that the services of the petitioner have been terminated under paragraph 522(1) of the Shastri award on account of loss of confidence in him on payment of one month's salary in lieu of notice. The relevant portions of the written statements read as under:

"(1). That after bank authorities became satisfied that the workman so had used a forged school leaving certificate with the knowledge that it was in order to support his false claim that he had read up to 8th class which was a condition for appointment as a Bank Guard, services of the workman was terminated w.e.f. February 5, 1972 vide order dated February 5, 1972 duly communicated to him. An employee, responsible for the security of Bank properties indulging in such serious acts of forgery and dishonesty could not be retained in service of a financial institution. Bank Management had lost confidence in the workman.

(m) That under the provisions of the Shastri award as retained by Desai Award which governs the service conditions of employees of the Bank including Bank Guards, a workman on probation can be discharged from service on one month notice or salary in lieu thereof. The circumstances in which the services of the workman on probation was terminated was fully legal, valid and justified. Even otherwise the employment secured by the workman by using a forged certificate to support a false declaration was void ab initio.

(n). That under the provisions of Shastri award, if a workman had committed an offence involving moral turpitude it is open to the Bank Management to have the workman prosecuted unless he was prosecuted otherwise or proceeded departmentally. In that event, if the workman is convicted, he is liable to be dismissed from Bank's service without notice. In case the workman is acquitted by a competent criminal court, it shall be open to the Bank Management to proceed against him by way of departmental action. In the present case the Bank Management did not resort to any of the said courses open to it but as the workman was on probation, the Bank Management decided to terminate his services under paragraph 522(1) on account of loss of confidence in him on payment of one month salary in lieu of notice."

"8. Para 6 of the claim statement is admitted. It is, however, admitted that the prosecution proceedings held against the workman had no connection or bearing on the termination of his services by the Bank Management, which had been ordered much before the filing of the F.I.R. by the Bank Management on entirely independent grounds viz. for loss of confidence. The appointment of the workman was itself invalid and void."

"15. Para 12 of the claim statement is not admitted. It is admitted that neither it was necessary to have the workman prosecuted by a criminal court before

terminating his services nor the said criminal proceedings against the workman in criminal case No. 793 of 1977 had any bearing or relevancy to the termination of the services of the workman by Bank Management which was done in bona fide exercise of powers conferred on the. Bank Management under the terms of the service conditions applicable to the workman." :

7. From the reading of the aforesaid pleadings of the Management it comes out that the termination of services of petitioner has been done without holding any enquiry on the ground of loss of confidence. It is not a case of simpliciter discharge of a probationer as alleged by the Bank.

8. The apex Court in *Chandulal v. The Management of Pan American World Airways Inc.*, (supra), held that the termination of services of a workman on ground of loss of confidence does not amount to retrenchment. In such termination holding of domestic enquiry is a condition precedent. It is relevant to refer para No. 8 of the said judgment which is as under at pages 182-183.

"8. It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave upto the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a common sense assessment of the matter is sufficient to dispose of this aspect. "Retrenchment" is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained."

In the case of *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, , the apex Court held that termination of service of a workman on the plea of loss of confidence amounts to stigma. The relevant consideration of this matter is there in paras Nos. 9, 10 and 11 of the said judgment which are reproduced hereunder:

"9. Loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, therefore, the Court correctly held in *Chandu Lal's* case that allegation of loss of confidence amounted to a stigma. The ratio in *Jagdish Mitter Vs. The Union of India (UOI)*, ,

also supports this conclusion.

10. Retrenchment as defined in S. 2(oo) of the Industrial Disputes Act and as held by this Court in several cases means termination of service for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action and the other exceptions indicated therein. In the present case though no formal domestic enquiry had been held, the employer took the stand in the allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication. In the facts of the present case, the order of termination grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to that conclusion upon assessment of the evidence.

11. Several decisions were relied upon by appellant's learned counsel in support of his contention that the conclusion in Chandu Lal's case (supra) that loss of confidence amounted to stigma was wrong. We have not been shown a single case other than Chandu Lal's where this aspect has been directly considered. Whether termination is grounded upon stigma could not vary from case to case depending upon whether it involves a Government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary enquiry has not preceded the prejudicial order in the case of a Government servant the action would be bad while in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no enquiry had been undertaken earlier."

In D.K. Yadav's case (supra) it has been held that before taking any action putting an end to the tenure of an employee by way of termination of his services grounded upon stigma fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principle of natural justice. In the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , the apex Court held by majority decision that the termination of the service of workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14 of the Constitution of India. The relevant paras Nos. 13 & 14 of the decision of apex Court in the case of D.K. Yadav (supra) are reproduced hereunder:-

"13. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee / workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress (supra) the Constitution Bench, per majority, held that termination of the service of a workman giving

one month's notice or pay in lieu thereof without inquiry offended Article 14. The order of terminating the service of the employees was set aside.

14. In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice."

In this case also before passing of the order dated February 5, 1972 terminating the services of the petitioner thereunder the management did not hold any domestic enquiry. Only an explanation was called upon from the petitioner-workman. The acquittal in criminal case has no relevance to the domestic enquiry because loss of confidence in such cases of the employee working in financial institution has an important consideration. Even the criminal court held that the document i.e. the School Leaving Certificate was a forged document. Though in this case a domestic enquiry has not been conducted by the management but it has right to prove the alleged misconduct before Tribunal. The Management can also plead before the Tribunal that as the termination being on ground of loss of confidence the workman is not entitled for reinstatement but for compensation. The delay in raising of industrial dispute and making of reference thereof by the Central Govt. after ten years is also a very relevant and material consideration to determining the amount of compensation or backwages. The Tribunal has decided the matter without considering these facts and the law on the subject. The award of the Tribunal in view of these facts and position of law cannot be allowed to sustain. After reaching to these conclusions, a question does arise as to what relief the petitioner is entitled. The management did not hold the enquiry in the present case but it can justify its action by proving the charges before the Tribunal. Similarly ultimately what relief has to be granted to the petitioner or no relief to be given is a matter which can properly be gone into by the Tribunal. Even the Tribunal may consider it to be a case for award of the compensation as it is the proper authority to decide the same. Other question on facts whether the petitioner was having the knowledge of the forged document and he himself has got the same can also be decided by the Tribunal. The cases cited by the learned counsel for the Management are of no help to him as it is not a case of simpliciter termination of services of the probationer without any stigma. It is a case where the services have been terminated due to loss of confidence which is not a simpliciter discharge of a probationer. The petitioner on April 11, 1994 has filed a supplementary affidavit with certain documents to show that no minimum qualification was prescribed for

the post of Guard. As I am remanding this case to Industrial Tribunal, this fact cannot be considered at this stage. The petitioner can raise all the said points before the Tribunal.

9. In the result, this writ petitions is allowed. The award of the Central Govt. Industrial Tribunal-cum-Labour Court, Kanpur dated Nil published vide notification of Central Govt. dated November 22, 1984 passed in I.D.N. 170/84 (New)/I.D.N. 56/86 (Old) is set aside and the case is remanded back to the said Tribunal to decide the matter afresh in accordance with law and observations made above in this judgment. As the matter is very old one the Tribunal is directed to decide the same within six months from the date on which either of the parties produces certified copy of this order before it. The parties are left to bear their own costs of this writ petition.

Petition allowed.