
(2013) 02 MP CK 0056
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4204 of 2005

Mohd. Sagir

APPELLANT

Vs

Bharat Heavy Electricals Ltd. and Others

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25F

Citation : (2013) 137 FLR 1103 : (2013) ILR (MP) 813 : (2013) 2 LLJ 777 :
(2013) 3 LLN 268 : (2013) LLR 506 : (2013) 3 MPHT 48 : (2013) 1 MPLJ 634

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : R.N. Shukla and R.B. Tiwari, for the Appellant; Ajay Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—In this petition under Article 227 of the Constitution of India the petitioner has challenged the validity of the order dated 16-3-2005 passed by the Industrial Court. The background facts, necessary for adjudication of the controversy involved in the writ petition, briefly stated, are that the petitioner was appointed as medical attendant grade-2 on 9-6-1977 on probation for a period of six months in the hospital of the respondent No. 1 (hereinafter referred to as "the company") at Habibganj. The petitioner remained absent from 15-4-1978 for a period exceeding thirty days. Thereupon a notice dated 4/16-5-1978 was sent by registered post to the petitioner by which he was asked to resume his duty within three days. It was further informed that if the petitioner remains absent for more than thirty days, it would be presumed that he is not interested in serving the company and shall be deemed to have left services of the company and his name shall be struck off. The aforesaid notice was received by the petitioner on 20-5-1978. However, the petitioner neither joined the duty nor submitted an application for his unauthorised absence. Thereafter in exercise of power under clause 42(10) of the Standing Orders, the

name of the petitioner was struck off from the roll of the company with effect from 15-4-1978 on the ground that he has voluntarily abandoned his services.

2. The petitioner approached the company on 21-9-1978 and requested for supply of copy of the order dated 4-6-1978 which was supplied to him on the same day. The petitioner thereafter filed an application on 22-8-1980 u/s 31(3) of the M.P. Industrial Relations Act, 1961 (in short "the Act") on the ground that his services have wrongly been terminated without holding the departmental enquiry which constitutes violation of section 25-F of the Industrial Disputes Act, 1947 (in short "the 1947 Act"). The Labour Court vide order dated 9-9-1985 held that the claim of the petitioner is barred by limitation. However, the Labour Court found that in similar circumstances other employees have been re-employed and, therefore, the company should consider the case of the petitioner for re-employment. Being aggrieved by the aforesaid order the petitioner as well as the company filed the appeal before the Industrial Court. The Industrial Court by the order dated 28-2-1992 decided both the appeals and remanded the matter to the Labour Court to decide all the issues afresh.

3. The Labour Court vide order dated 11-3-1995 inter alia, held that the petitioner was submitting the representations and there is delay of five months. Accordingly, the Labour Court found that sufficient cause for condonation of delay is made out. Labour Court further held that termination of the services of the petitioner amounts to retrenchment and the same constitutes violation of section 25-F of the 1947 Act. Accordingly, a direction was issued for reinstatement without backwages. Being aggrieved by the aforesaid order, the petitioner as well as the company preferred appeals before the Industrial Court. The Industrial Court vide order dated 27-6-2002, held that the Labour Court has no power to condone the delay in filing the application u/s 31 of the Act. Accordingly, the appeal filed by the petitioner was dismissed whereas the appeal preferred by the company was allowed. The petitioner challenged the order passed by Industrial Court in writ petition before this Court. The Full Bench of this Court in Mohd. Sagir vs. Bharat Heavy Electricals Ltd., 2004(2) MRU 359 held that the Labour Court has power to condone the delay in filing the application u/s 31 of the Act. Accordingly, the matter was remanded to the Industrial Court. The Industrial Court vide order dated 16-3-2005 inter alia, held that the delay in filing the application u/s 31 of the Act could not have been condoned in the absence of any application for condonation of delay. It was further held that the petitioner failed to prove that the order dated 4-6-1978 was passed in violation of the Standing Order. Accordingly, the Industrial Court came to the conclusion that the name of the petitioner was rightly struck off from the roll of the company. In the aforesaid factual backdrop, the petitioner has approached this Court.

4. Learned senior counsel for the petitioner submitted that the Industrial Court ought to have appreciated that the termination of the services of the petitioner amounts to retrenchment in the facts of the case. It is further submitted that absence without leave is misconduct and, therefore, an enquiry ought to have

been held and the services of the petitioner could not have been terminated on the ground of abandonment of the services. It is also submitted that automatic termination of services of the petitioner under Standing Order without holding departmental enquiry is violative of principles of natural justice. In support of his submissions, learned senior counsel has placed reliance on the decisions in *The State Bank of India Vs. Shri N. Sundara Money*, *Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others*, , *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, , *D.K. Yadav Vs. J.M.A. Industries Ltd.*, *All India Trade Union of Food Corporation Employees and Workers and Another Vs. Food Corporation of India and Another*, , *Uptron India Limited Vs. Shammi Bhan and Another*, , *Lakshmi Precision Screws Ltd. Vs. Ram Bahagat*, and *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, , It is further submitted that the Industrial Court grossly erred in holding that in the absence of an application for condonation of delay, the delay in filing the application u/s 31 of the Act could not have been condoned. It is further submitted that there was only a delay of five months and the Labour Court had power to condone the delay by taking into account the material on record even without an application for condonation of delay was filed. In support of the aforesaid proposition, learned senior counsel has placed reliance on the decisions in 2004 (103) FLR 32 and *State of Haryana Vs. Chandra Mani and others*, and *Joy Xavier vs. Madmaloots*, 2000(1) Current Labour Reports 451. It is also submitted that the petitioner in the facts of the case is entitled to backwages. In this regard reference has been made to the decisions in *U.P. State Brassware vs. Udai Narayan*, (2006) SCC (L and S) 250.

5. On the other hand, learned counsel for the company submitted that the petitioner was given notice to join the duty but despite notice the petitioner neither explained his unauthorized absence nor joined the duty therefore, as per standing order applicable to the company, the services of the petitioner were terminated. It is further submitted that no enquiry was required to be held in the facts of the case and the order of termination of employment does not amount to retrenchment as the action against the petitioner has been taken as per standing order. It is further submitted that in any case, the Company cannot be saddled with the liability to pay backwages. In support of his submissions, learned counsel for the Company has placed reliance on the decisions in *Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another*, , *Punjab and Sind Bank and Others Vs. Sakattar Singh*, , *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others*, *Mohd. Sagir (supra)*,

6. I have considered the respective submissions made by learned counsel for the parties. In *Syndicate Bank (supra)* the Supreme Court was dealing with clause 16 of the bipartite agreement which provided that if a workman remains absent from the work for a period of ninety days or more consecutive days thereafter the Company shall serve a notice calling upon him to report on duty within thirty days of the notice. If the employee on receipt of aforesaid notice, fails to explain his absence or to join the duty, the employee shall be deemed to have voluntarily

retired from the services of the bank. It was held that principles of natural justice are inbuilt in clause 16 of the bipartite settlement and since the employee neither explained his unauthorized absence nor reported on the duty, therefore, the bank rightly came to the conclusion that the employee voluntarily retired from the services of the bank and, therefore, no enquiry was necessary to be held. Similar view was taken in Punjab and Sindh Bank (supra). In Viveka Nand Sethi (supra), the Supreme Court while considering the scope and ambit of. clause 2 of the bipartite settlement, held that it is a complete code by itself and lays down a complete machinery as to how and in what manner employer can arrive at satisfaction that the workman has no intention to join the duty. Clause 2 of the bipartite agreement raises a legal fiction. Once the action on the part of the employer is found to be fair, no interference in the matter is called for.

7. Before proceeding further it is appropriate to notice clause 42(10) of the Standing Order which reads as under:

42 (10) An employee who remains absent from duty without leave, or permission 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 30 days, the employee shall be presumed to have left the service of the company of his own accord without notice and shall be liable to deduction of wages for the notice period. In case of overstay of leave without competent sanction and authority, the period of such overstay should be treated as leave on half pay to the extent such leave is due and as extraordinary leave i.e. leave without pay to the extent of the period of half pay leave is not due or falls short of the period of overstay. The employee will not be entitled to leave salary during such overstay of leave nor covered by an extension of leave by the competent authority. In other words, though the period will be debited to the half pay leave account of the employee (if he is due leave, on half pay), no leave salary will be paid for the full period of overstay of leave.

8. The aforesaid clause is clear and unambiguous. The first part of the clause provides that an employee who remains unauthorisedly absent from the duty without leave or overstay the leave, 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 thirty days, the employee shall be presumed to have left the service of the company on his own accord without notice. Thus, the presumption with regard to abandonment of services arises only after a period of thirty days. This Court is conscious of the fact that the language employed in clause 2 as well as clause 16 of the bipartite agreement with which the Supreme Court was dealing in Viveka Nand Sethi (supra) and Syndicate Bank (supra) and in clause 42 (10) of the Standing Order, are different.

9. Now, I may advert to the case at hand. Admittedly, the petitioner was employed in the company on 9-6-1977 as medical attendant grade-II on

probation for a period of six months. The period of probation was extended for a period of three months each twice. By letter dated 6-12-1977, the petitioner was warned with regard to his unauthorized absence. The petitioner, absented himself from the duty with effect from 15-4-1978 without leave. Thereupon, the notice dated 4th May, 1978 was sent by registered post by the Company to the petitioner by which the petitioner was informed that he is unauthorizedly absent from the duty w.e.f. 15-4-1978 and in case he remains absent for a period more than thirty days the presumption shall arise under clause 42 (10) of the Standing Order that he has abandoned the services. The petitioner was further advised that he should join his duty within three days failing which his services shall be terminated. However, despite the receipt of the aforesaid notice, the petitioner neither joined the duty nor submitted any explanation for his unauthorized absence. Thereafter, the then Labour Welfare Supervisor was deputed to visit the petitioner who met the petitioner on 30-5-1978 at his residence and persuaded him to join the duty. However, the petitioner did not resume the duty. Thereafter the presumption was drawn by the Company under clause 42 (10) of the Standing Order that the petitioner has voluntarily abandoned his services. Accordingly, the name of the petitioner was struck off from the roll of the company w.e.f. 15-4-1978. The intimation was sent to the petitioner vide letter dated 4-6-1978 by registered post. However, the petitioner refused to accept the aforesaid letter. The petitioner thereafter approached the company only on 21-9-1978 i.e. after a period of three months with a request to supply copy of the order dated 4-6-1978 which was supplied to him on the same day. Thus, in the facts of the case, the principles of natural justice were complied with and the action of the employer in dispensing with the services of the petitioner is found to be fair which does not call for any interference.

10. For yet another reason, no relief can be granted to the petitioner. Section 2(oo) (bb) of the 1947 Act provides that if the services of a workman are terminated as a result of non-renewal of contract of employment or such a contract is terminated under stipulation on that behalf contained therein, the same would not amount to retrenchment. The services of the petitioner have been terminated in accordance with the stipulation contained in the Standing Order which admittedly applies to him. Therefore, the same does not amount to retrenchment. In view of the preceding analysis, the order passed by the Industrial Court neither suffers from any error apparent on the face of the record nor any jurisdictional infirmity warranting interference by this Court in exercise of power under Article 227 of the Constitution of India. In the result, the writ petition fails and is hereby dismissed.