

(2013) 07 AHC CK 0204

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41394 of 2012

M/s. R.P.G. Life Sciences Ltd. and Others

APPELLANT

Vs

Presiding Officer, Industrial Tribunal III and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 139 FLR 90 : (2013) 3 UPLBEC 2462

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Chanda Bhan Gupta, for the Appellant; B. Pant, J. Nagar and Pratik Nagar, for the Respondent

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—Heard Sri C.B. Gupta, the learned Counsel for the petitioner and Sri Pratik Nagar, the learned Counsel for the workman-respondent and the learned Standing Counsel. The workman was appointed as a Medical Representative in the petitioner's pharmaceutical company. The first posting of the workman was Jaipur and, subsequently, after a couple of years the workman was transferred to Kanpur. The appointment letter specifically contended that the area of operation of the workman would be the entire dominion of India and that he could be posted in any part of the country. Further, depending upon the exigencies of the business of the Company, the workman could be transferred to any place in India. With these clear stipulation contained in the appointment letter, the workman joined the services.

2. It transpires that some incident took place, in which some Officers got beaten up and the workman was a mute spectator and did nothing in the matter. The management was aggrieved by the conduct of the workman and instead of initiating disciplinary proceedings, considered his long length of service and chose to transfer him from Kanpur to Ballia within the State of Uttar Pradesh. The management accordingly, transferred the workman to Ballia by its order on 8th August, 1999. This order was duly served upon the workman. The workman

did not comply with this order and it is alleged that he initiated conciliation proceedings under the U.P. Industrial Disputes Act for conciliation of his dispute. It is alleged by the management that several letters and telegrams were sent including a bank draft of Rs. 3000/- towards travelling expenses and inspite of the receipt of the letters and telegrams, the workman did not join the place of transfer.

3. On the other hand, it was contended by the workman that he had given suitable replies and gave reasons for not joining and further contended that he did not receive the bank draft of Rs. 3000/-. Eventually, the management took a decision and, by an order dated 17th November, 1999 terminated the services of the workman on account of not joining the place of transfer. There was no inquiry, no charge-sheet and only a simplicitor order of termination was passed on the ground that it appears that the workman was not interested in working with the company.

4. The workman, being aggrieved by the order of termination, raised an industrial dispute and, upon submission of a failure report by the Conciliation Officer, the matter was referred to the State Government and ultimately a dispute was referred to the Industrial Tribunal for adjudication. The terms of the reference order was "Whether the employers were justified in terminating the services of the workman with effect from 17th November, 1999? If not to what relief was the workman entitled to."

5. Before the Tribunal parties filed their pleadings and evidences. The petitioner in particular submitted in its written statement that in the event, the Tribunal comes to the conclusion that the order of termination was in violation of the principles of natural justice then in that event, the employer should be given an opportunity to lead evidence and prove the charge against the workman.

6. The Tribunal, after considering the material evidence on record held that the order of termination was in violation of the principles of natural justice, inasmuch as the employers terminated the services of the workman without giving any notice and without issuing any charge-sheet and without holding any domestic inquiry. The Tribunal accordingly, directed reinstatement of the workman with continuity of service and with full back wages.

7. The employers, being aggrieved by the said award, has filed the present writ petition.

8. This Court while entertaining the writ petition passed an interim order directing the petitioner to reinstate the workman pursuant to which the workman has been reinstated in service and is working with the petitioners" company at Kanpur and is being paid his monthly wages. Nothing has come on record to indicate that the workman"s performance pursuant to the interim order was unsatisfactory and, consequently, it can be presumed safely that the petitioners" have no quarrel with the performance of the workman.

9. Once a finding has been given by the Tribunal that the order of termination was in violation of the principles of natural justice it became imperative for the Tribunal to give an opportunity to the petitioners" to prove the charge against the workman. This view of the Court is no longer res integra as it has been settled by the Supreme Court in a catena of cases, namely, Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, State Bank of India Vs. R.K. Jain and Others, Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . The Cooper Engineering Limited Vs. Shri P.P. Mundhe, Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, , Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, .

10. In the light of the aforesaid decision, the Court has no hesitation in holding that the award of the Tribunal could not be sustained any further and the Court would be constrained to allow the writ petition and remit the matter to the Tribunal to decide the matter afresh and give opportunity to the employers to led the evidence and prove the charge against the workman but the Court is of the opinion that by doing so it would not be doing substantial justice. The incident and the termination of the service of the workman is of the year 1999. We are now in the year 2013. Fourteen years have gone by and remitting the matter to the Tribunal would unnecessarily entail further time and energy. The Court has already opined earlier that pursuant to the interim order, the workman has been reinstated and is working to the satisfaction of the employers. In the light of the aforesaid, the Court is of the view that the matter should be finally decided so that the litigation comes to an end once and for all.

11. In the instant case, the order of termination is based on the ground of non-compliance of the transfer order. Admittedly, the workman received the transfer order but did not join the place of transfer for reasons best known to him. The workman did not like the transfer order. To him, it was a punitive order but then he could protest by making a representation or approaching a higher authority but did not do so. It is alleged that he raised a dispute before the Conciliation Officer but nothing is known nor there is any material evidence before the Court to show the fate of this proceeding. The fact remains that till date, the order of transfer has not been questioned in any Court of law or before an appropriate forum. If an order of transfer is not complied, the management was at a liberty to proceed against the workman for the alleged misconduct for not joining. At the same time, by not joining, the workman becomes liable for disciplinary action and entering into unnecessary correspondence, does not behave good conduct on the part of the workman. For this misconduct, the workman has to be punished but the management cannot unilaterally take a decision punishing the workman by terminating his services in contravention to the certified standing orders of the Company and/or the service conditions relating to the Medical Representatives. Admittedly, no inquiry or charge-sheet was issued.

12. Consequently, the Court is of the opinion that the order of termination passed by the employer was in violation of the principles of natural justice and that the order of termination cannot be sustained. The Tribunal, in the ultimate analysis, was justified in reinstating the workman. The Court is of the opinion that in the given circumstances and considering the length of service, the order of termination does not commensurate with the misconduct.

13. The Tribunal while reinstating the workman has also granted continuity of service, the Court is of the opinion that the said direction is perfectly justifiable, which requires no interference. The Court, however, finds that the award of the Tribunal directing payment of full back wages is arbitrary. There are a number of factors, which are required to be considered as held by the Supreme Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, . Kanpur Electricity Supply Co. Ltd. Vs. Shamim Mirza, wherein the Supreme Court held that the order of the back wages should not be passed mechanically and other factors, namely, the nature of appointment, length of service, whether he is in a position to get another employment etc. are some of the factors, which are required to be considered.

14. These factors has not been considered by the Tribunal, the mere fact that the workman contends that he has remained unemployed during the interim period is by itself not sufficient to grant full back wages. The Tribunal has also lost sight of the fact that the workman did commit a misconduct as he did not accept the transfer order and disobeyed the orders of the management. By reinstating the workman and giving him full back wages, the workman would go scott free for the misconduct, which he had committed and this Court cannot allow it to happen. In the light of the aforesaid, the Court is of the view that on the principle of "no work no pay", coupled with the fact that a misconduct was committed by the workman, the Court finds that the award of the Tribunal directing payment of full back wages cannot be sustained and, consequently, to that extent, the award is quashed. The writ petition is partly allowed and the Court directs that in the given circumstances the petitioner would pay a composite amount of Rs. One lac towards back wages and cost of the litigation. The said amount shall be paid within six weeks from the date of the production of a certified copy of this order.