
(2015) 07 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (C) No. 13814 of 2006

Nimai Charan Rout

APPELLANT

Vs

General Manager, Utkal Asbestos Ltd.

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F

Citation : (2015) 147 FLR 171

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.R. Dash, J.

1. The petitioner workman has assailed the award dated 30.06.2006 passed by learned P.O., Labour Court, Bhubaneswar in I.D. Case No. 3 of 1998 refusing any relief in favour of him (workman).

2. The service of the petitioner workman was terminated on 15.01.1996. He moved the Labour Machinery, but in vain. Ultimately, reference was made for adjudication of the following question:--

"Whether the termination of service of Sri Nimai Charan Rout, Steno-Typist with effect from 15.1.96 by the Management of M/s. Utkal Asbestos Ltd., Dhenkanal is legal and justified? If not, what relief Sri Rout is entitled to?"

The petitioner workman filed Statement of Claim before the Labour Court. In the Statement of Claim it is averred that the petitioner workman was appointed as a Steno-Typist under the Management of the Company w.e.f. 10.08.1982. He was confirmed in the said post on 22.08.1984. According to him, he had rendered continuous service with much sincerity, devotion and to the utmost satisfaction of the authorities of the Management. During his employment he submitted Leave Application on the ground of his illness and, in fact he was under the medical

treatment in the E.S.I. Dispensary, Dhenkanal from 20.11.1995 to 20.01.1996. Without any rhyme and reason however the Management terminated the service of the workman with effect from 15.01.1996 without giving any prior Notice on the ground of his unauthorized absence from 15.12.1995. It is alleged that, termination of service of the petitioner workman with the stigma of unauthorized absence without conducting any enquiry is violative of the principle of natural justice and, otherwise it is also violative of the mandate in Section 25-F of the Industrial Dispute Act, 1947 ("the Act" for short).

3. The Management on the other hand entered appearance and filed written statement denying the claim of the opposite party workman. According to the Management, the petitioner workman being a Steno-Typist was holding a post of trust and confidence, but he was remaining on unauthorized absence frequently. Owing to such unauthorized absence on the part of the petitioner workman, he was warned several occasions by the Management. But, every occasion the petitioner workman used to beg apology and the Management, taking a lenient view, used to allow him to work. It is further asserted by the Management that on 20.09.1993 the petitioner workman tendered his resignation and the Management had also accepted his resignation with effect from the said date. But, subsequently the petitioner workman begged apology in writing and requested the Management to withdraw his resignation and let him allow to work. This time also the Management taking a lenient view allowed the petitioner workman to withdraw his resignation and allowed him to work. During the period of his service in 1995 the petitioner workman had served for 89 days only by the time of termination of his service and with effect from 20.11.1995 he again remained absent and for that he was asked to submit explanation within a stipulated time. The petitioner workman did not submit any explanation by the time stipulated and the Management was constrained to terminate his service w.e.f. 15.01.1996. The order of termination was sent to the petitioner workman by Registered Post and the petitioner has also received the Notice Pay for one month. The Management has denied violation of the principle of natural justice, as the action is a termination simplicitor in accordance with the Certified Standing Order of the Company and it has further been asserted that provision of Section 25-F of the Act has been complied with.

4. Both the parties adduced oral as well as documentary evidence to substantiate their respective claim.

5. Learned P.O., Labour Court, after going through the evidence on record, disbelieved the medical evidence adduced by the petitioner workman and held that in view of the provisions contained in Clause-19 of the Certified Standing Order of the Company, there is no necessity of any enquiry and there has been no violation of the principle of natural justice. Learned P.O., Labour Court further found that the petitioner workman has received the Notice Pay and in that view of the matter it was held that there is no violation of the provision of Section 25-F of the Act.

6. From the submission advanced by learned counsel for the parties and the findings arrived at by the learned P.O., Labour Court, Bhubaneswar, it is clear that while the petitioner workman is relying heavily on the Medical Certificate issued by the Medical Officer of the E.S.I. Dispensary, Dhenkanal vide Ext. 4, the Management is relying on Clause-19 of the Certified Standing Order of the Company.

7. Learned counsel for the petitioner workman relies on a catena of decisions to substantiate his contention that the termination of service of the petitioner workman is bad for violation of the principle of natural justice. It is specifically submitted that, as there is stigma of unauthorized absence against the petitioner workman, which amounts to a misconduct, the Management would have done well to initiate a Disciplinary Proceeding against the petitioner workman and the termination of service simplicitor in absence of any enquiry is bad in the eye of law.

I shall refer to the decisions relied on by the learned counsel for the petitioner workman, if they are held to be applicable in the facts and circumstances of the present case in view of the Certified Standing Order on which much reliance is placed by learned counsel for the Management.

8. It is an admitted fact that the petitioner workman was absent in duty from 20.11.1995 to 20.1.1996. Learned P.O., Labour Court, in paragraph-20 of the impugned order has specifically held that, "nowhere it has been elicited that the workman had applied for leave from 20.11.1995 to 20.01.1996 and that the above leave period has been sanctioned by the competent authority.....". Neither it has been proved by the petitioner workman that he had applied for leave for the above period nor such a fact was suggested to the witness for the Management anywhere, as I understand from the above finding of the learned Labour Court.

9. So far as the Medical Certificate vide Ext. 4 is concerned, it is a Certificate issued by the Medical Officer-in-Charge, E.S.I. Dispensary, Dhenkanal on 20.01.1996. The petitioner workman as a witness before the Labour Court had ipse dixit stated that during the aforesaid period he was admitted twice in the E.S.I. Hospital, Choudwar for treatment of his disease, i.e. amoebic colitis and dysentery. The Medical Certificate vide Ext. 4 does not indicate the nature of the treatment given to the petitioner workman nor it reveals for what disease the petitioner was undergoing treatment and the period of treatment mentioned in the Certificate is from 13.01.1996 to 20.01.1996. The oral evidence is indicative of the fact that the petitioner was admitted twice in the E.S.I. Hospital, Choudwar in between 20.11.1995 to 20.1.1996 for treatment of his disease. But the Medical Certificate, vide Ext. 4 had been issued by the Medical Officer-in-charge of the E.S.I. Dispensary, Dhenkanal showing the period of treatment from 20.11.1995 to 20.01.1996 without indicating the nature of the disease and the nature of treatment given to the patient. All the aforesaid features in the evidence, inter alia, prompted the learned P.O., Labour Court to doubt the

genuineness of the Medical Certificate vide Ext. 4 and the veracity of the assertions made by the petitioner workman so far as his disease and treatment is concerned.

I do not find any justification to take a different view, especially in view of the nature of evidence adduced by the parties. From the materials on record it is therefore clear that the petitioner workman remained absent without applying for any leave and without sanction of such leave by the authority concerned. The forceful assertion of his illness during the period from 20.11.1995 to 20.01.1996 is belied by the nature of evidence adduced, as discussed supra, which the learned P.O., Labour Court has seriously suspected and doubted, and I am one in my view with him. In view of such evidence and especially the findings of the learned P.O., Labour Court on the issue, it is now apposite to find out whether there was any necessity of a domestic enquiry.

10. When the petitioner workman remained absent from service without any leave application and sanction of such leave, the Management waited for some days and called for an explanation from the workman regarding his unauthorized absence vide Ext. P on 01.12.1995. The petitioner workman did not respond to the said Notice and the Management was constrained to terminate his service w.e.f. 15.01.1996 in accordance with Clauses 17 and 19 of the Certified Standing Order.

11. Learned counsel for the petitioner workman submits that when the petitioner being a regular employee submitted the leave application and was admitted as an in-door patient for his ailment, the Management would not have acted on the basis of explanation called for in the Home Address of the petitioner workman. Such a submission of the learned counsel for the petitioner has no basis in view of the evidence adduced and the findings arrived at by the learned P.O., Labour Court. There is nothing on record to prove that the petitioner workman had submitted leave application for sanction of his leave from 20.11.1995. There is nothing also on record to prove that the petitioner workman was admitted as an in-door patient. There is nothing also on record to suggest that the petitioner workman had conveyed the Management during the period of his absence, regarding his whereabouts or about his treatment as an in-door patient. In such view of the fact, it was incumbent on the part of the Management to send the show-cause notice for explanation in the last known address of the petitioner workman, i.e. his Home Address. There is nothing on record to show that the petitioner was away from home during the entire period from 20.11.1995 to 20.01.1996. He could have given reply, or at least about his ailment and admission as an in-door patient, in response to the Notice vide Ext. P by the specified date. The petitioner workman having not responded by the date specified in the Notice, the Management had no option than to proceed in the matter.

12. Here we are concerned with Clause-19 of the Certified Standing Order applicable to the Management of the Company. The relevant provision of

Clause-19 is quoted hereunder for ready reference.

"19. ABANDONMENT OF SERVICE

Except as otherwise expressly provided for in these standing orders, no workman shall be allowed to absent himself from work without the previous sanction of the authority competent to grant him leave. Whenever during a period of twelve months, if any employee remains absent from his duty on two occasions without intimation or permission from the management, he shall be given a notice by the letter and in the event of such employee repeating such conduct thereafter shall forfeit his lien in his service and his name will be removed from the rolls of the Company. Besides, absence from duty without permission shall also be treated as misconduct and dealt with accordingly. When the unauthorized absence in respect of an employed person exceeds eight consecutive days excluding any intervening declared holidays, the said employed person shall be deemed for all purposes to have voluntarily abandoned his employment whereafter his name will be removed from the Company's rolls....."

From the above Standing Order it is seen that, it contains four parts. Part-1 relates to the general provision that, except as otherwise expressly provided for in the standing orders, no workman shall be allowed to be absent himself from work without the previous sanction of the authority competent to grant him leave. This relates to general provision regarding unauthorized absence.

Part-2 relates to absence of a workman from duty on two occasions during a period of twelve months, without intimation or permission from the Management.

Part-3 deals with absence from duty without permission and it speaks that such a conduct shall be treated as misconduct and shall be dealt with accordingly. So, it is clear from Part-1 and Part-3 that, absence from duty without permission is a misconduct, and a misconduct shall be dealt with accordingly means in accordance with the rules.

Part-4 deals with the situation when the unauthorized absence of the workman exceeds eight consecutive days excluding the intervening declared holidays. If such an occasion arises, the said employed person shall be deemed for all purposes to have voluntarily abandoned his employment, whereafter his name will be removed from the Company's Rolls.

13. In the present case, Part-1, Part-3 and Part-4 are applied to the facts of the case. Firstly, the petitioner workman has remained absent from duty without previous sanction of leave by the competent authority. In the fitness of things, such absence should have been treated as misconduct, if the petitioner workman would have joined in duty shortly or would have sought for permission of his leave, giving justifiable grounds of acceptance by the Management. The petitioner workman has however exceeds eight consecutive days excluding the intervening declared holidays, so far as his absence in duty is concerned, and the Management in such a situation invoked Part-4 of Clause 19 of the Certified

Standing Order and issued a letter seeking explanation from the petitioner workman vide Ext. P, within a specified time. When the petitioner workman did not respond to the letter, the Management had no scope/option except to treat the petitioner workman to have abandoned his service voluntarily. In such situation it was justified and proper for the Management to issue a letter of termination of service simplicitor without going for a full-fledged disciplinary enquiry. In the present case, issuance of letter vide Ext. P seeking explanation from the petitioner workman is sufficient compliance of the principle of natural justice in view of the provision contained in the Certified Standing Order, which is equally applicable to the Management and the workmen of the Company.

14. So far as compliance of Section 25-F of the I.D. Act is concerned, learned P.O., Labour Court has specifically held that the provisions of Section 25-F have been complied with and the petitioner workman has been paid one month's Notice Pay.

15. Without referring to the catena of decisions cited by learned counsel for the petitioner for the sake of brevity, it would suffice to say that those decisions are not applicable to the facts of the present case, as they relate to absence of enquiry in a given case and the observance of the principle of natural justice and for general rules of the principles of natural justice.

16. In view of the above discussions, I do not find any merit in the contentions raised by learned counsel for the petitioner workman. None of the decisions relied on by the learned counsel for the petitioner has any application to the facts of the present case.

Accordingly, the writ petition is dismissed.