
(2012) 12 DEL CK 0178

In the Delhi High Court

Case No : Writ Petition (C) No. 1134 of 2008 and CM No. 2200 of 2008

N.T.P.C. Ltd.

APPELLANT

Vs

Jagdish Chander

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2013) 4 AD 873 : (2013) 196 DLT 696

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : S.K. Taneja with Mr. Puneet Taneja and Mr. Rajesh Mahendra, for the Appellant; Som Dutta Sharma with Mr. Gaurav Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner challenges the award dated 19th November, 2007 whereby the learned Tribunal held that the termination

of the Respondent without holding an enquiry is neither legal nor justified and thus directed reinstatement of the Respondent without back wages

and granted liberty to the Petitioner to conduct an inquiry regarding the unauthorized absence of the Respondent and take appropriate action

thereon. Learned counsel for the Petitioner contends that the Respondent unauthorizedly absented himself and in a case of abandonment, if show

cause notice is given, no enquiry is required to be conducted. Adverting to Clause 12 of the Certified Standing Order and Clause 25 of the Leave

Rules of the Corporation, it is contended that in case of loss of lien, the workman is deemed to have voluntarily left the services without notice to

the Corporation. The Respondent has taken contrary stands in his claim and in

the appeal filed before the Appellate Authority. Even as per the Tribunal, no leave application was filed and only intimation was given. Further there is no proof that the Respondent actually sent the alleged intimation to the Petitioner. The learned Tribunal accepted the contention of the Petitioner that the Respondent has been continuously misconducting and was a habitual absentee due to which he was awarded warnings and various punishments repeatedly. Thus, no back wages was granted to the Respondent. In the alternative it is submitted that even if no enquiry has been held by the Petitioner, the Tribunal has held an enquiry and thus no order for reinstatement could have been passed. Reliance is placed on *The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema and Others, , Surendra Kumar Tiwari Vs. National Thermal Power Corporation and Ors. W.P.(C) 762/2011* decided by the Division Bench of this Court on 1st June, 2012 and *V.R. Vellore Vs. NTPC Ltd. Writ Petition No. 26555/1997* decided by the Karnataka High Court.

2. Learned counsel for the Respondent relying upon *Harjinder Singh Vs. Punjab State Warehousing Corporation*, contends that where two views are possible and the Tribunal takes one view, this Court in exercise of its supervisory jurisdiction would not interfere in the same. Further, there is neither any jurisdictional error nor any perversity in the impugned award and hence no case for interference is made out. Since no show cause notice was given to the Respondent, the learned Tribunal was justified in holding that the services of the Respondent could not be terminated without an enquiry. The order of termination is wholly non-speaking as neither the details nor the date on which the letter is issued has been mentioned. Leave Rule 25 as canvassed by the learned counsel for the Petitioner does not apply in the present case and applies only if earlier leave is granted and thereafter the workman does not report back to duty. The interpretation of Rule 25 as given by the learned Tribunal is correct. The case of the Respondent is not covered under Clause 12 of the Standing Order. Further the Tribunal did not hold any enquiry as no charge-sheet has been issued to the Petitioner. Since abandonment is misconduct, for terminating the services of the Respondent on the ground of abandonment, an enquiry was required to be held. The past conduct of the Respondent could

not absolve the Petitioner of conducting an enquiry to prove the misconduct of abandonment. Reliance is placed on Clause 21(7) of the Standing Order. As regards the claim of the Petitioner regarding belated reference, it is stated that the reference was made without any delay and hence the learned Tribunal did not commit any error in dismissing the claim in this regard.

3. I have heard learned counsel for the parties and perused the record. Briefly the facts giving rise to the filing of the present petition are that the

Respondent joined as a Security Guard with the Central Electricity Authority on 23rd October, 1973 and was absorbed with the Petitioner with

effect from 1st April, 1978. Due to the continuous absence of the Respondent, he was issued warning on 1st March, 1974 and 17th July, 1974.

Again on 28th September, 1974 he was suspended and finally a minor penalty and stoppage of one increment with cumulative effect was awarded

vide letter dated 27th August, 1975. Thereafter again the Petitioner was warned on 15th May, 1976 and his services were terminated on 27th

July, 1976. On 21st January, 1978 the Respondent was re-employed on the same post but again he misconducted and warnings were issued and

several times penalties were imposed on him including stoppage of two increments vide letter dated 30th May, 1989, reduction in lower stage in

time scale on pay by two increments for a period of two years vide letter dated 12th October, 1996, thereafter from 10th November, 1996 the

Respondent again absented from duty. On 20th November, 1996 and 2nd December, 1996 letters were issued to the Respondent asking him to

report for duty. On 23rd December, 1996 the management passed the order whereby the Respondent was deemed to have voluntarily abandoned

the services of the Corporation without notice as per Clause 12 of Certified Standing Order and Clause 25 of Leave Rules of the Petitioner. On a

dispute being raised by the Respondent the following terms of reference were sent for determination on 16th June, 2003:

Whether the action of the management of Badarpur Thermal Power Station/ National Thermal Power Corporation, New Delhi in terminating the

services of Shri Jagdish Chander, Security Guard w.e.f. 23.12.96 is legal and justified? If not, to what relief he is entitled to?

4. The Respondent filed the claim statement wherein he stated that he was

employed as Security Guard since 23rd October, 1973 and he was stabbed by some miscreants due to which he had to apply for medical leave with effect from 10th November, 1996. 24th and 25th December, 1996 being holidays, he reported for duty on 26th December, 1996. However, he was not allowed to join the duties. The workman submitted a medical certificate issued by a Government dispensary at the time of reporting for duty, however the same was not considered. A letter of termination of service was received by the Respondent under protest on 2nd January, 1997. The Respondent preferred an appeal before the General Manager, NTPC which appeal was not disposed of despite several reminders. The Respondent issued a legal notice, however since no conciliation took place, the terms of reference as aforesaid were referred to the learned Tribunal for adjudication. In the written statement filed by the Petitioner it was stated that the reference was filed after a delay of 7 years. No effort was made to approach the conciliation officer and it was stated that the Respondent had deemed to have voluntarily abandoned the services of the Petitioner/corporation without notice as per Clause 12 of the Certified Standing Orders and Rule 25 of the Leave Rules of the Corporation. The track record of the Respondent with regard to continued absence resulting in number of warnings being issued and minor and major penalties being imposed on him was placed before the learned Tribunal. It was stated that the Respondent was issued two letters asking for joining the duty immediately, however he did not respond to the same and thus the order dated 23rd December, 1996 was passed. The management was left with no option but to have passed the order dated 23rd December, 1996.

5. As regards the contention of the Petitioner regarding a belated claim, it may be noted that the termination order was passed on 23rd December, 1996 which was received by the Respondent on 2nd January, 1997. The Respondent filed an appeal against the said order before the GM NTPC on 15th January, 1997 which was not disposed of despite repeated requests. Thereafter, a legal notice was sent on 24th July, 2000. When no response was received, he approached the Labour Commissioner/Conciliation Officer on 2001 and finally a reference was made in 2003. Hence there is no delay in raising the dispute and it cannot be said that the claim of the

Respondent was a state claim. The issue in the present case is whether Rule 25 of Leave Rules would apply to the facts of the present case.

6. Learned counsel for the Respondent has vehemently based his arguments on Harjinder Singh (supra) wherein it was held that in case there is a jurisdictional error then the High Court will interfere under Article 226 of the Constitution. An interpretation of Rule 25, if erroneous, as contended

by the learned counsel for the Petitioner is certainly a jurisdictional error which requires to be gone into by this Court. The emphasis of the

Respondent was that Rule 25 has application only when the workman is on leave and he does not report back even after the expiry of the leave

granted to him. The Division Bench of this Court in Surendra Kumar Tiwari (supra) while dealing with Rule 24.9 of the NTPC Conduct, Discipline

and Appeal Rules, the Division Bench of this Court held:

8. We have considered the aforesaid submissions. Before we deal with these submissions, we reproduce the relevant provisions of the NTPC

Service Rules as well as NTPC Conduct, Discipline and Appeal Rules:

24.9. Termination on account of unauthorized absence:

An employee who remains unauthorizedly absent from duty or place of work either without sanction of any leave or after expiry of sanctioned

leave, if any, and does not report for duty for any reason whatsoever within 90 (ninety) consecutive days from the date of his/her unauthorized

absence, shall automatically lose lien on his/her post and he/she shall be deemed to have voluntarily abandoned and left the service of the

corporation, without notice.

Provided, however, if the employee subsequently substantiates and accounts for his/her unauthorized absence from duty within 90(ninety)

consecutive days from the date of the termination order to the entire satisfaction of the Management, the Management may regularize his/her period

of unauthorized absence on such terms and conditions as it may deem fit and proper.

2. (s) ""Unauthorized Absence"" means absence by an employee from his/her duty or place of work without authority either without sanction of any

leave or after expiry of sanctioned leave, if any.

9. Pertinently, Rule 23 of the NTPC Conduct, Discipline and Appeal Rules was also

amended and after the insertion of the aforesaid amended

Rule, this Rule is to the effect that termination on account of unauthorized absence will not be deemed as a penalty. This Rule reads as under:

Rule 23.0

Rule 23 Penalties

10. Explanation to Rule 23 of the Rules provides certain contingencies as not penalties and Clause (vi)(e) thereof reads as under:

(e) of an employee consequent upon abandonment of employment due to overstaying his sanctioned leave beyond the period originally

granted/subsequently extended or absenting unauthorizedly ab initio, for a period of more than 90 consecutive days.

11. From the conjoint reading of the aforesaid two Rules, viz., Rule 24.9 of the NTPC Service Rules and Rule 23(vi)(e) of the NTPC Conduct,

Discipline and Appeal Rules, it becomes clear that when an employee remains unauthorizedly absent from the duty for 90 consecutive days either

without sanction of leave or even when the leave is sanctioned and the period of leave is expired after a period of 90 days thereafter, he is deemed

to have voluntarily abandoned and left the service of the corporation. Such deemed abandonment is not to be treated as penalty. The validity of

similar provisions has come up for consideration in various cases. Both the parties have referred many case laws. It is not necessary to take note of

all such judgments, as these are taken note of and considered by the Supreme Court in Hindustan Paper Corporation Vs. Purnendu Chakrobarty

and Others, and U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, . Therefore, discussions of

these two judgments would be sufficient as it would provide the answer to the question posed.

16. We may refer to the judgment of the Karnataka High Court (in Writ Petition No. 26555/1997, decided on 15.5.2000) in the case of V.R.

Vellore Vs. NTPC Limited. That case pertains to the same employer and Rule 25 of the National Thermal Power Corporation Rules relating to the

voluntary abandoned of service and the validity of Rules was challenged as violative under Article 14 of the Constitution of India. The Court

repelled the arguments that this Rule was unconstitutional. It was specifically held that there was no need to hold a departmental inquiry and once

principles of natural justice was followed by giving notices to the petitioner in the said case to join the duties and the petitioner had not responded

to the call, it was open to the employer to invoke their powers under Rule 25 of the Rules deeming that the petitioner has voluntarily abandoned

service. This is clear from the following observations made by the Karnataka High Court, as under:

6. The question would be whether an enquiry should have been held by the respondent authorities before issuing the impugned communication.

Rule 25 of the Rules is as under:

An employee who remains unauthorisedly absent and does not report for duty within 15 days (8 days for workman) from the date of expiry of

leave granted to him shall lose lien on his post and shall be deemed to have voluntarily left the service of the Corporation, without notice. However,

if the employee is subsequently able to account of his unauthorized absence to the satisfaction of the management the latter may regularize the

period of absence in a manner deemed fit and covered by the rules.

17. One of us (Rajiv Sahai Endlaw, J.) in *Syndicate Bank Vs. B.N. Pandey* [171 (2010) DLT 760], *Anil Chuttani Vs. The Oil and Natural Gas*

Corporation [2010 (117) DRJ 433] and *Canara Bank Vs. Union of India* [2010 (118) DRJ 103] had occasion to deal with the case law in this

regard. This Bench also in *Sukhdev Singh Vs. Delhi Development Authority*, revisited the said question. The conclusion each time has been that a

permission of standing order of the employer providing for dismissal from service for unexplained delay is valid, prescribed the action taken under

such a Rule/provision in fair, reasonable and in compliance of principles of natural justice.

18. We, thus, are of the opinion that the issue is no more res integra and the validity of such Rules has already been upheld.

7. A perusal of the impugned award shows that the learned Tribunal accepted every contention of the Petitioner. However, in view of the

interpretation given to Rule 25 of the Leave Rules, it came to the conclusion that the same was not applicable in the case of the Respondent as he

did not over-stay the leave but absented himself from 10th November, 1996. A perusal of judgment in *Surender Kumar Tiwari* (supra) shows that

in the said decision besides Rule 24.9 of the NTPC Conduct, Discipline and Appeal

Rules, Rule 23 thereof was also under consideration before this Court which provided that an action taken on abandonment of employment due to over-staying sanctioned leave beyond a period already granted or subsequently absented or absenting unauthorizedly for a period of 90 consecutive days was not to be treated as penalty. However, Rule 25 of the Leave Rules did not come up for consideration before the Division Bench of this Court.

8. In the present case, though the Respondent was repeatedly misconducting, however, lastly he unauthorizedly absented from duty from 10th November, 1996 and on 23rd December, 1996 the management passed the order that the Respondent had deemed to have abandoned the job after giving two notices. Though the principles of natural justice were met with in the form of show cause notices, however, the other necessary requirement of Rule 24.9 NTPC Conduct, Discipline and Appeal Rules regarding unauthorized absence for a continuous period of 90 days or overstaying the leave in terms of Rule 25 of the Leave Rules was not fulfilled. Rule 25 of Leave Rules on which the learned counsel for the petitioner relies reads as under:-

25.0 OVERSTAYAL OF LEAVE:

An employee who remains unauthorisedly absent and does not report for duty within 15 days (8 days for workmen) from the date of expiry of leave granted to him shall lose lien on his post and shall be deemed to have voluntarily left the service of the Corporation, without notice. However, if the employee is subsequently able to account for his unauthorised absence of the satisfaction of the Management and latter may regularize the period of absence in manner deemed fit and observed by Rules.

9. A perusal of Leave Rule 25 shows that the same relates to overstayal of leave and is applicable in case if after expiry of the sanctioned leave, the employee remain unauthorizedly absent and does not report for duty within 15 days (8 days for workmen) in which case he would lose lien on the post. In the present case, the Respondent unauthorizedly absented from duty from 10th November, 1996 and since 90 days of unauthorized absence was not complete, Rule 24.9 of the NTPC Conduct, Discipline and Appeal Rules would be applicable.

10. As regards the contention of learned counsel for the Petitioner that in the

alternative instead of reinstatement with back wages, adequate compensation could have been granted, it may be noted that the Respondent-workman had joined the Petitioner as Security Guard in October, 1973 and despite the fact that he had misconducted himself, he was reemployed on 21st January, 1978 and thereafter he continued till 23rd December, 1996 with habitual absenteeism in between for which charge sheets were issued and minor/major penalties imposed. In view of the length of service of the Respondent, the Respondent cannot be denied an opportunity to present his defense which can only be considered by way of disciplinary inquiry wherein the Petitioner would also be at liberty to consider all his previous misconduct in case it deems fit to award punishment to the Respondent. In view of the aforesaid discussion, I find no reason to interfere with the impugned award. Petition and application are dismissed.