

(2012) 03 CHH CK 0029
In the Chhattisgarh High Court
Case No : Writ Petition No. 1795 of 2003

O.S. Vasukuttan

APPELLANT

Vs

Industrial Court Chhattisgarh and Another

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Industrial Relations Act, 1960 — Section 31(2), 61

Citation : (2012) 03 CHH CK 0029

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Shri Satish K Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the order dated 12.08.2002 (Annexure-P/10) passed by the Industrial Court in Appeal No.39/M.P.I.R. Act/96 (Shri O.S. Vasukuttan vs. Managing Director, SAIL) & Appeal No. 40/M.P.I.R. Act/96 (Steel Authority of India Limited vs. Shri O.S.Vasukuttan).

2. The facts, in brief, as projected by the petitioner for adjudication of the case, are that the petitioner was employed as Scale Car Operator, in the Blast Furnace Department of Bhilai Steel Plant and the petitioner's token number was 24031 and P. No. was 68711. On 23.01.1985, a charge sheet was issued to the petitioner stating that he was absenting from his duties since 13.10.1983 unauthorizedly without assigning sufficient and cogent reasons. However, in the said charge sheet it was mentioned that the petitioner has sent leave application from his home State i.e. Kerala.

3. Thereafter, by letter dated 18.12.1984, the Superintendent, Blast Furnaces asked the petitioner to report for duties. In compliance of the said order, the petitioner joined his duties on 18.02.1985 (Annexure-P/3). According to the petitioner, the petitioner was not allowed to perform his duties, therefore, he made a representation on 20.03.1985 (Annexure-P/4) before the Superintendent

and informed that he is not being allowed to join his duties and further informed that on account of receipt of some urgent message from his home town, he proceeded to Kerala.

4. According to the petitioner, a departmental enquiry was initiated against the petitioner vide order dated 20.03.1985 (Annexure-P/5). Since on the said date the petitioner was at Bhilai, he immediately approached the Superintendent, where he was not informed about institution of Departmental Enquiry.

5. In the enquiry, the Enquiry Officer held that the charge of remaining absent w.e.f. 13.10.1983 is not established and at the most the petitioner could be held absent from 01.08.1984. In spite of the said fact, the Enquiry Officer passed the order for removal of the petitioner from the service vide order 29.07.1985 (Annexure-P/6).

6. Being aggrieved by the said order, the petitioner filed an application u/s 31(2) read with Section 61 of the M.P./C.G. Industrial Relations Act, 1960 (Annexure-P/7). In the said case, the respondent No.2 filed its written statement (Annexure-P/8). Labour Court after hearing the parties decided the application by order dated 19.11.1990 (Annexure-P/9) in case no. 155/M.P.I.R./85 holding that the punishment of removal from services was harsh. Therefore, the Labour Court set aside the order of removal and reinstated the petitioner without the back wages.

7. Thereagainst, the respondent No.2 filed an appeal before the Industrial Court in Appeal No.40/M.P.I.R.Act/96. The petitioner also filed an appeal, bearing No.39/M.P.I.R.Act/96, against the order of denial to grant back wages. Both the appeals were decided by the Industrial Court by the impugned order dated 12.08.2002, whereby, the appeal of the respondent No.2 was allowed and set aside the order passed by the Labour Court. In the same order, the appeal preferred by the petitioner claiming back wages was rejected. Thus, this petition.

8. Shri Shrivastava, learned counsel appearing for the petitioner, would submit that the Industrial Court while passing the order failed to appreciate that ex parte enquiry has been conducted against the petitioner by the respondent No.2 and no opportunity of hearing was afforded to the petitioner. The copy of enquiry report was never supplied to the petitioner and without supplying the same the petitioner was removed from the services. Learned counsel would further submit that the impugned order of termination has been passed without following the basic principles of natural justice. There is no previous bad record of the petitioner and, therefore, such harsh punishment should not be imposed on petitioner. The Industrial Court ought not to have interfered with the quantum of punishment awarded by the Labour Court merely on the ground of change of opinion. The quantum of punishment awarded to the petitioner is highly disproportionate to the misconduct of the petitioner, the quantum of sentence awarded by the Labour Court was not shockingly disproportionate to the alleged misconduct committed by the petitioner. The Industrial Court was not justified in interfering with the quantum of punishment merely on the ground of change of

opinion.

9. Shri Shukla learned counsel appearing for the respondent No.2, would submit that the conclusion of the Industrial Court is based on finding of facts, reached on the basis of evidence and the same may not be interfered by this Court in a petition under Article 226/227 of the Constitution of India. After initiation of the departmental enquiry, several messages were sent to the petitioner on his home address and advised him to appear before the enquiry officer, in spite of the said fact, the petitioner never participated in the enquiry proceedings. Under these circumstances there was no other option except to proceed ex parte against the petitioner. Therefore, the order of removal has been passed by the disciplinary authority in accordance with law, which has been confirmed by the learned Industrial Court after setting aside the order passed by the Labour Court. Therefore, the petitioner is not entitled to any relief and the petition may be dismissed.

10. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

11. A charge sheet, vide memorandum dated 23.1.1985 (Annexure - P/1), was issued calling upon the petitioner to respond asto whether the petitioner was guilty of "willful unauthorized absence without sufficient cause", as he remained absent from duties w.e.f. 13.10.1983. Along with the charge sheet, statement of allegations was also given to the petitioner. Before issuance of charge sheet, letter dated 18-12-1984 (Annexure - P/2) was sent to the petitioner on his home town (Kerala) address, calling upon the petitioner to join the duties immediately, but not later than 7 days from the date of receipt of the letter. Pursuant thereto, the petitioner, after a period of two months reported on duty and made an application accordingly to the Superintendent on 18.2.1985 (Annexure - P/3).

12. It appears that the petitioner was not permitted to join the duty, as the time prescribed in the show cause notice to join duty within 7 days was over and the petitioner neither joined the duty nor made any representation within a period of 7 days. Thereafter, he made a representation to the Superintendent, Blast Furnace requesting again to permit him to join the duty on 20.3.1985 (Annexure - P/4 page 16). Enquiry Officer and the Prosecution Nominee were appointed. The petitioner did not file any reply to the charge sheet. Thereafter, all the records, connected documents, proceedings, etc. were examined carefully and the order dated 29.7.1985 (Annexure - P/6) was passed by which the petitioner was removed from the service after recording the finding that the petitioner was guilty of the charge of willful unauthorized absence from duties w.e.f. 1.8.1984 without sufficient cause.

13. Being aggrieved by the said order, the petitioner preferred an application before the labour Court on several grounds, inter alia, that the officer holding the enquiry was not competent, assistance of an Advocate was not provided to the petitioner, no response was filed to the various applications sent by registered

post and the petitioner was not supplied with the proceedings or findings.

14. The respondent No.2 in its written statement submitted that the petitioner has not submitted any explanation to the charge sheet. The enquiry was fixed on 9.4.1985, 26.4.1985, 1.6.1985 and 17.6.1985 and for which notices were sent to the petitioner by registered post at his local address as well as permanent address. Telegram was also sent for the hearing fixed on 9.4.1985. Some of the letters received back undelivered with a remark that "addressee left India". There was no request for permitting assistance of an Advocate. The case of the respondent No.2 was that there was no provision in the Standing Order to supply copy of finding of enquiry. It is also submitted that all the registered notices sent to the petitioner were received back undelivered. The petitioner was advised to submit the medical fitness certificate, which he had failed to do.

15. The labour Court having considered the rival contentions of the parties held that the petitioner remained absent unauthorisedly, however, imposition of punishment i.e. removal from service was shockingly disproportionate, thus directed to reinstate the petitioner in service without backwages.

16. The Industrial Court in appeal by order dated 12.8.2002 held that the labour Court has interfered with imposition of punishment without assigning reasons after holding that the petitioner remained absent unauthorisedly, willfully and without sufficient cause. Thus, the punishment imposed by the authorities was just & proper. Accordingly, the appeal filed by the respondent No.2/ Management was allowed and the appeal, against refusal of backwages, filed by the petitioner/ employee was dismissed.

17. A constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad and Others v. B. Karunakar and Others, while considering the effect of non-supply of the enquiry report by the disciplinary authority, held as under :

30. Hence the incidental questions raised above may be answered as follows :

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules

of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

18. The aforesaid decision was subsequently reiterated by the Supreme Court in Haryana Financial Corporation and Another v. Kailash Chandra Ahuja and held as under :

21. From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

19. The question involved in the instant case is asto whether non-supply of enquiry report by the enquiry officer causes prejudice to the petitioner. The petitioner has not responded to several notices. In one of the notices, it was remarked that the petitioner had left India and also despite a notice the petitioner declined to join the duties within the stipulated time. The petitioner has not pointed out anything, which would make a difference had a copy of the enquiry report been supplied to him.

20. Notices were sent to the petitioner at local address as well as the permanent address at Kerala. The contention of the petitioner that he was present at Bhilai at 20.3.1985 and when he approached the Superintendent, Blast Furnace, he was not informed about initiation of departmental enquiry does not appear to be correct, as the notices were sent at both the addresses and the petitioner failed to respond to any of the notices.

21. The petitioner had full opportunity before the labour Court. The labour Court had examined the case and thereafter, the Industrial Court had also examined all the facts in detail and came to the conclusion that there was no error or

irregularity in coming to the finding that the petitioner was guilty of `willful unauthorized absence from duties w.e.f. 13.10.1983 without sufficient cause". Thus, non-supply of enquiry report would not cause any prejudice or change the finding.

22. So far as quantum of punishment is concerned, the labour Court has not examined the facts in proper context, as admittedly the willful unauthorized absence for a long period amounts to relinquishing the job and, as such, it cannot be held that the punishment imposed upon the petitioner is shockingly disproportionate. Thus, the Industrial Court was just & proper in setting aside the order passed by the labour Court and allowing the appeal of the employer/ respondent No.2.

23. As an upshot, the writ petition sans merit is liable to be and is hereby dismissed, leaving the parties to bear their own costs.