

(2023) 05 CHH CK 0053
In the Chhattisgarh High Court
Case No : Writ Appeal No. 242 Of 2021

Rahul Kumar Ramteke

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Chhattisgarh Industrial Relations Act, 1960 — Section 31(3), 65
Industrial Employment (Standing Orders) Act, 1946 — Section 7

Citation : (2023) 05 CHH CK 0053

Hon'ble Judges : Sanjay K. Agrawal, J; Arvind Singh Chandel, J

Bench : Division Bench

Advocate : Shashi Kumar Kushwaha, P.R. Patankar

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This writ appeal is directed against the impugned order dated 05/04/2021 (Annexure A/1) passed by the learned Single Judge in WPL/7730/2011 (Managing Director, Bhilai Steel Plant v. Industrial Court and another) whereby order dated 05/07/2011 (Annexure P-1) passed by the Industrial Court has been set aside and order dated 11/01/2011 (Annexure P-16) passed by the Labour Court has been affirmed by which appellant's claim has been dismissed.

2. The aforesaid challenge has been made on the following factual backdrop :-

2.1. The appellant herein was appointed as Technical (Mechanical) in the S-3 Grade in respondent No. 1 company on 21/01/1998. He was subjected to charge-sheet for remaining unauthorizedly absent for 183 days in between April, 2006 to June, 2007 on 26/07/2007 (Annexure P-9) and thereafter, Enquiry Officer was appointed on 01/09/2007 and during the course of the enquiry, the appellant is said to have admitted the charge of remaining unauthorizedly absent for a period of 183 days. Based on the unconditional acceptance of the charge by the appellant, enquiry report was submitted on 26/09/2007 (Annexure P-12) and

consequently, by order dated 05/02/2008 (Annexure P-14), the appellant was inflicted with penalty of removal from service with immediate effect.

2.2. The said order of removal dated 05/02/2008 (Annexure P-14) was put to challenge by the appellant before the Labour Court in an application filed by him under Section 31(3) of Chhattisgarh Industrial Relations Act, 1960 (hereinafter, "the Act of 1960") seeking reinstatement with back wages, however, the Labour Court did not interfere with the order of removal and vide order dated 11/01/2001 (Annexure P-16) rejected the said application filed by the appellant herein.

2.3. Thereafter, the appellant preferred an appeal before the Industrial Court under Section 65 of the Act of 1960 which was allowed vide order dated 05/07/2011 (Annexure P-1) and the order of the Labour Court was set aside and appellant was directed to be reinstated but without back wages.

2.4. Feeling aggrieved by the order of the Industrial Court, the respondent No. 1 company i.e. Bhilai Steel Plant filed WPL/7730/2011 before this Court wherein learned Single Judge set aside the order of the Industrial Court and restored the order of the Labour Court against which this writ appeal has been preferred by the appellant.

3. Mr. Shashi Kumar Kushwaha, learned counsel for the appellant, would submit that learned Single Judge is absolutely unjustified in granting the writ petition filed by the respondent No. 1 company thereby holding the appellant guilty of misconduct and justifying the order of removal from service ignoring the fact that the charge-sheet was served to the appellant for alleged misconduct under Section 29(v) of the Standing Orders (Plant) applicable to the employees/workmen employed at the Bhilai Steel Plant which were determined in accordance with the provisions of Section 7 of the Industrial Employment (Standing Orders) Act, 1946 stating that he remained unauthorizedly absent for certain days totalling a period of 183 days from April, 2006 to June, 2007 without prior information/permission/sanction. As per Section 29(v) of the Standing Orders, the act of habitual late attendance and willful or habitual absence from duty without leave or without sufficient cause would be treated as 'misconduct', however, in the charge-sheet served to the appellant, it was nowhere alleged that absence of the appellant was deliberate or habitual, therefore, even if the misconduct is said to have been admitted by the appellant, but no misconduct in terms of Section 29(v) of the Standing Orders would be made out, as such, the order of learned Writ Court deserves to be set aside and the order of the Labour Court be restored.

4. Mr. P.R. Patankar, learned counsel for respondent No. 1 company, would submit support the impugned order passed by learned Single Judge and submit that appellant himself has admitted the fact of misconduct during the course of departmental enquiry and therefore, order of the Industrial Court has rightly been set aside by learned Single Judge.

5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. Admittedly, appellant remained absent from service without leave or without prior permission or sanction for a period of 183 days from April 2006 to June 2007 for which he was served with charge-sheet on 26/07/2007 (Annexure P-9) alleging misconduct under Section 29(v) of the Standing Orders.

7. At this stage, it would be relevant to notice Section 29(v) of the Standing Orders (Plant) which were determined in accordance with the provisions of Section 7 of the Industrial Employment (Standing Orders) Act, 1946 and which came into force w.e.f 28/02/1965. It provides as under :-

"29. ACTS OF MISCONDUCT :

Without prejudice to the general meaning of the term, "Misconduct", the following acts and omissions shall be treated as Misconduct :

XXX XXX XXX

(v) Habitual late attendance and willful or habitual absence from duty without leave or without sufficient cause."

8. Now it would be pertinent to look into the charge levelled against the appellant herein by way of charge-sheet dated 26/07/2007 (Annexure P-9), which has been reproduced herein-below for the sake of convenience :-

9. Pursuance to issuance of charge-sheet, departmental enquiry was initiated against the appellant herein and his statement was recorded on 18/09/2007, which states as follows :-

10. In view of the aforesaid statement made by the appellant herein, further enquiry was not conducted and no evidence was led on behalf of the respondent No. 1 company (employer) in the departmental enquiry to hold that appellant's absence was willful or habitual and on 26/09/2007 (Annexure P-12), the Enquiry Officer submitted his report to the Disciplinary Authority stating that since the workman (appellant) has admitted the charge levelled against him, therefore, no further enquiry is necessary and pursuant thereof, order of removal from service was passed against the appellant herein on 05/02/2008 (Annexure P-14) for remaining absent for 183 days without prior information or permission or sanction, which was challenged by the appellant in a proceeding before the Labour Court, wherein the following four issues were framed for consideration :-

11. After framing of issues, statement of appellant was recorded with regard to issue No. 1 and thereafter, statement of Shri R.K. Jha working as Personnel Manager at respondent No. 1 company was recorded on 18/01/2010 wherein he has clearly stated in paragraph 2 that the appellant Rahul Kumar Ramteke remained absent on different dates in between April 2006 to June 2007, which totals to 183 days, without any prior information or permission or sanction and it

is misconduct under Section 29(v) of the Standing Orders, which states as follows :-

12. Thereafter, no evidence was led by both the parties and the Labour Court, vide order dated 14/06/2010 firstly adjudicated issue No. 1, as to whether the domestic enquiry conducted against the appellant herein was illegal and invalid, and held that the said domestic enquiry is in accordance with law and then vide order dated 11/01/2011 held that the punishment of removal of service inflicted upon the appellant herein is in accordance with law. However, in the appeal preferred by the appellant, the Industrial Court did not find favour with the findings recorded by the Labour Court and allowed the appeal preferred by the appellant by setting aside the order passed by the Labour Court.

13. Section 29(v) of the Standing Orders clearly provides that habitual late attendance and willful or habitual absence from duty without leave or without sufficient cause amounts to misconduct. However, the charge framed against the appellant, as noticed above, would show that no such charge has been framed against him that his absence was willful or habitual rather he has only been charged with absence of 183 days without prior information/permission/sanction.

14. "Habitual" means repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts (see: *Vijay Amba Das Diware v. Balkrishna Waman Dande* (2000) 4 SCC 126). The meaning given in Law Lexicon (3rd Edn.), by P. Ramanatha Aiyar, of 'habitual' relied upon by Supreme Court viz.: constant; customary; addicted to a specified habit (see: *State of Maharashtra v. Mehamud* (2007) 12 SCC 358). Similarly, an act is said to be willful if it is intentional, conscious and deliberate (see: *Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao* (1989) 4 SCC 255). To be "willful", act must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. It excludes casual, accidental, involuntary, negligent, unintentional acts or genuine inability (see: *State of Orissa v. Mohd. Illiyas* (2006) 1 SCC 275).

15. "Willfull absence" has been considered by the Supreme Court in the matter of *Krushnakant B. Parmar v. Union of India* (2012) 3 SCC 178 wherein it has been held that for sustaining allegations of failure to maintain devotion to duty due to absence and conduct unbecoming of government servant and dismissal based thereupon it must be proved that unauthorized absence was wilfull. If absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be wilfull and employee guilty of misconduct. Their Lordships have further held that absence from duty without any application or prior permission may amount to unauthorized absence, but it would not be willful. Paragraphs 17 and 18 of the report read as under:-

"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful.

18. Absence from duty without any application or prior permission may amount

to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty of behavior unbecoming of a Government servant."

16. Similarly, in the matter of Chhel Singh v. M.G.B. Gramin Bank, Pali and others 2014 AIR SCW 6539, the Supreme Court has held that in order to hold a person guilty for unauthorized absence from duty, the unauthorized absence from duty must be willful and deliberate. In paragraph 15 of the report, their Lordships of the Supreme Court observed as under :-

"15. ... There was no allegation that the appellant's unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the doctors without any valid reason on the ground of 24 days delay."

17. In the matter of Ahmedabad Municipal Transport Service v. Dashrathbhai Balubhai Brahmakshatriya 1996 II LLJ 544, the Gujarat High Court has held that notwithstanding the past record of similar misconduct, once the Tribunal came to the conclusion that there was justifiable cause for the unauthorized absence for which charge-sheet was served and penalty was imposed, the past record of unauthorized absence would lose its significance.

18. Reverting to the facts of the present case in light of the principles of law laid down by the Supreme Court in the aforesaid judgments (supra), it is quite vivid that in order to punish an employee for misconduct under Section 29(v) of the Standing Orders, the employee concerned must be charged elaborating thereby that his unauthorized absence was willful or habitual. Simple absence from duty would not amount to misconduct within the meaning of Section 29(v) of the Standing Orders. In the instant case, the appellant herein was only charge-sheeted for remaining unauthorizedly absent for 183 days without prior information, permission or sanction. There was no such charge framed or put to the appellant that his unauthorized absence was willful or habitual and in absence of that, even if the appellant has admitted that he remained unauthorizedly absent for 183 days without prior information, permission or sanction, he could not have been punished for misconduct as provided under Section 29(v) of the Standing Orders, particularly when no such finding has either been recorded by the Enquiry Officer or by the Disciplinary Authority that appellant's absence for 183 days was willful or habitual and more particularly, when the evidence led by respondent No. 1 company/employer before the Labour Court also does not say so anywhere that appellant's unauthorized

absence was willful or habitual. Moreover, no such explanation was either called for from the appellant against the allegation that his absence for 183 days was willful or habitual. In that view of the matter, the interference made by the Industrial Court in setting aside the order of the Labour Court was strictly in accordance with law and in accordance with the decision rendered by the Supreme Court in the matters of Krushnakant B. Parmar (supra) and Chhel Singh (supra).

19. In view of the aforesaid legal discussion, we are of the considered opinion that the interference made by learned Single Judge to the order of the Industrial Court is in teeth of the decisions rendered by the Supreme Court in Krushnakant B. Parmar (supra) and Chhel Singh (supra) and thus, we are unable to uphold the order passed by the learned Single Judge. Accordingly, impugned order dated 05/04/2021 (Annexure A/1) passed in WPL/7730/2011 is hereby set aside and order dated 05/07/2011 (Annexure P-1) passed by the Industrial Court is restored. Appellant is directed to be reinstated without back wages as directed by the Industrial Court.

20. Accordingly, this writ appeal stands allowed leaving the parties to bear their own cost(s).