
(2006) 10 JH CK 0035
In the Jharkhand High Court

Raj Kumar Singh @ R.K. Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Heavy Engineering Corporation

RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (2007) 1 BLJR 708

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The petitioner has filed this Writ Application, challenging the Award dated 26.07.1997, passed by the Presiding Officer, Labour Court, Ranchi, in Reference Case No. 1 of 1993; as contained in Annexure 9 to the Writ Application; whereby the Presiding Officer, Labour Court, Ranchi answered the reference made to him in negative and held that the concerned workman i.e. the petitioner herein, was not entitled to any relief.

2. The following reference was made to the Labour Court for adjudication:

Whether not giving work after rejecting joining report of Shri R. K. Singh, personnel number 50502 - Inspector, Heavy Machine Tools Plant, H.E.C., Dhurwa, Ranchi is proper? If not what relief the workman is entitled to?"

3. The facts which are not in dispute are that the petitioner (hereinafter referred to as the concerned "workman") was an employee under the Management of M/s. Heavy Engineering Corporation (hereinafter referred to as M/s. H.E.C.) and was posted as Inspector in Heavy Machine Tools Plant, a Unit of M/s. H.E.C. Dhurwa, Ranchi. He remained absent from his duties from 14.01.1990 to 28.07.1990. He came to join his duties on 30.07.1990 with a fitness certificate issued by one Dr. A.K. Sinha, Civil Assistant Surgeon, Ranchi but he was not allowed to join and was asked to bring the fitness certificate from the Medical

Officer, H.M.T.P and from the Industrial Medical Officer, H.M.B.P namely Dr. G.C. Mishra The workman contacted Dr. G.C. Mishra but he referred him to Dr. R.R. Bhattacharjee, Sr. Physician-, Plant Hospital, H.E.C. Dr. Bhattacharjee examined the concerned workman on 31.07.1990 and thereafter, directed him to undergo ten types of different tests

4. The case of the concerned workman (petitioner) is that he became sick on 14.01.1990 and he was under treatment of Dr. T.C.Das, the former Medical Officer, In-charge of I.C.C. Unit of M/s H.E.C. who examined him clinically and came to the conclusion that the sickness was due to heart trouble and in such situation, he was advised to take complete bed rest. The workman was lastly examined by Dr. Das on 21.04.1990. This fact was informed by the workman to the management of M/s. H.E.C. (Respondent No. 2) through his department. The workman was further attacked with some other trouble like serious weakness, loss of appetite and loose motion, then the workman consulted Dr. A.K. Sinha, M.D. Civil Assistant Surgeon, who was the authorised Medical Practitioner/ attendant and upon medical examination, it was found that the workman was suffering from acute Jaundice and as per the suggestion of Dr. Sinha, he was advised to take complete bed rest. This fact was also intimated to the management.

On 28.07.1990, Dr. Sinha issued a fitness certificate to the workman to resume his normal duties/work. Accordingly, in this way, the workman was compelled to remain absent from his duties with effect from 14.01.1990 to 28.07.1990 due to his sickness and this fact was intimated to the management of M/s. H.E.C. (Respondent No. 2) from time to time.

5. Further case of the workman is that after recovery from his long sickness, he reported for his duty along with the fitness certificate issued by Dr. A.K. Sinha, but he was not allowed to join and he was asked to get the fitness certificate from the Medical Officer, H.M.T.P. (First Aid Post). But the Medical Officer, H.M.T.P. (First Aid Post), before issuing fitness certificate to the workman, sought for clarification from the Manager of the concerned Department of the workman as to whether the workman was in the roll of M/s. H.E.C. or not. Under such circumstances, the workman met the Manager of his concerned Department who, without giving any clarification to the Medical Officer, H.M.T.P., referred the matter to the Junior Manager, Service Book/H.M.T.P. to confirm the position. But, the said Junior Manager also without responding to clarification sought for by the Medical Officer, H.M.T.P., further advised to get the Medical fitness from Industrial Medical Officer of H.M.B.P.

Again the workman, having no other way, contacted the I.M.D./H.M.B.P., who in turn, referred the petition to Dr. R.R. Bhattacharya, Sr. Physician Plant Hospital, M/s. H.E.C. Limited for having fitness Certificate. In this way, the joining report of the workman was not accepted and was not allowed to join his duties on 30.07.1990.

Thereafter, on 31.07.1990, the workman met Dr. R.R. Bhattacharya at Plant Hospital, H.E.C., who clinically examined the workman and directed to undergo ten types of tests ranging from Pathological, Biochemical, Ultra Sonography, X-Ray, Radiology etc., which were not at all relevant without finding any disease. The prescription issued by Dr. Bhattacharya suggested such tests and on the other hand, it implicitly showed the normal health of the workman and nothing adverse was diagnosed from such tests. Meaning thereby, the workman was found medically fit on clinically examining to resume his duty but even then, the workman was compelled to remain out of his duty unwillingly and under the circumstances beyond his control due to laches, negligence and inaction on the part of the management of M/s. H.E.C (Respondent No. 2).

6. Further case of the workman is that the Management (Respondent No. 2), vide its letter dated 15.07.1991, asked the workman to join immediately under the threat of the disciplinary action and in response thereof, the workman reported for his duties on 25.07.1991 but on that day, one another letter was issued under the signature of the Management I.O.C./H.M.B.P. stating therein that since the Medical Certificate of fitness from the competent authority was not accompanied with the joining report and therefore, the joining report was not accepted and the workman was asked to get the Medical Certificate of fitness from the competent authorities.

7. On the other hand, the case of the Management (Respondent No. 2), as it appears from the counter affidavit is that the workman was in the habit of absenting himself from duties unauthorisedly. He (workman) further started absenting himself from duties with effect from 15.01.1990. On receipt of the intimation that the workman was sick, the Deputy Manager, I.O.C. H.M.T.P., vide Registered Letter No. H.T.P./imp./CONF/74/90-587, dated 16.04.1990, asked him to intimate the name and address of the treating physician, the disease he was suffering from and probable day of joining alongwith physician's certificate. The workman, vide his application dated 28.04.1990, informed that he was under the treatment of a private physician Dr. T.C. Das, but he neither sent any certificate from treating physician nor mentioned the disease he was suffering from. It is further submitted that from the various communications, it transpired that the statement regarding the disease was not correct. The workman suffered from heart ailment from 14.01.1990 and he contacted Dr. T.C. Das on 19.01.1990 i.e. after 6 days from the day he fell sick.

It has further been submitted by the Management of M/s. H.E.C. that it is having its own well equipped Hospital commonly known as Plant Hospital within Intensive Care Unit which functions round the clock. It is also stated that the official residence of the workman was in the Township of M/s. H.E.C. provided by the Management. The workman finally turned up after remaining absent for 191 days with the medical certificate granted by one Dr. A K Sinha, Civil Assistant Surgeon, Ranchi.

8. It has further been submitted in the counter affidavit that in the aforesaid

facts and circumstances and in view of the long absence of the workman on medical ground, his case was referred to the Industrial Medical Officer/H.E.C. for investigation and issuance of necessary fitness certificate. It was done as per the normal procedure based on the provision contained in Clause 15 (viii) of the Certified Standing Orders of the H.E.C. The Industrial Medical Officer, H.E.C., after examining the workman, referred him to Dr. R.R. Bhattacharya, Sr. Physician of H.E.C. for examination and expert opinion vide letter No. H.M.T. / IMU/viii(i)/90-371 dated 30.07.1990, but the workman did not appear before him and as such, opinion could not be given by the physician. It has further been submitted that the workman came to join his duties on 30.07.1990 and on the same day, his case was referred for medical examination in terms of Clause 15 (viii) of the Certified Standing Orders.

Considering the nature of disease the workman had suffered, as per his own statement and in view of the certificate granted by his attending physician, the Industrial Medical Officer felt it necessary to obtain the specialist opinion regarding his fitness. The question of allowing the workman to join the duty would have arisen only on production of "fitness certificate? from Authorised Medical Attendant", which was pre-requisite) for those who availed leave on medical ground or remained absent and desired leave on medical ground for remaining absent for a period exceeding 14 days. Thereafter, the workman never turned up before the aforesaid Sr. Physician and as such, he failed to join his duties following the procedure laid down in Clause 15(viii) of the Certified Standing Orders. Due to the non-cooperation of the workman, the Sr Physician could not give his opinion.

It has further been submitted that due to non-cooperation, the authorities of the Respondent No. 2 (M/s. H.E.C.) were compelled to take the view that the workman was engaged in some other job also and he, somehow or the other, tried to retain the job of M/s. H.E.C. also by doing overt act. It has further been submitted that taking the wrong view of the matter, the workman raised an Industrial Dispute which was referred to the Labour Court. Ranchi for adjudication u/s 10 of the Industrial Disputes Act, 1947.

9. Mr. Babban Lal, learned Counsel appearing for the workman (petitioner) submitted that the Award of the Labour Court suffers from non application of mind and non consideration of the materials on record and therefore, the same is liable to be set aside By referring paragraph-5 of the impugned Award, he submitted that specific point was raised before the Labour Court on behalf of the workman (petitioner) that since he was not allowed to resume his duties by the Management and therefore, the same amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and the provisions of Section 25F of the Industrial Disputes Act was not complied with by the Management. Neither one month's notice nor pay nor compensation was paid to the workman but the Labour Court did not give any finding either this way or that way on the said point. It has further been contended that the materials on

record have not been properly considered and scrutinised before arriving at the decision that the workman (petitioner) was not entitled to any relief.

10. Nobody has appeared on behalf of the Respondent No 2 (M/s. H.E.C.) though a counter affidavit has been filed by the Respondent No. 2 which has already been noticed above.

11. From the impugned Award, it appears that the contention of the workman that the Labour Court did not give any finding on the point as to whether the action of the Management in not allowing the duties amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and whether its was incumbent to comply Section 25F of the Industrial Disputes Act and whether the same was complied or not.

I further find from the impugned Award that the Labour Court has not discussed in details and has not scrutinised the evidence of the workman witness as well as the management's witness and the documents on record and without examining them critically and without giving any finding on the above facts, he has passed the Award declining to give any relief to the concerned workman. Therefore, I am of the view that the impugned Award of the Labour Court suffers from non application of the judicial mind and as such it cannot be sustained and it requires to be reconsidered

12. Accordingly, this writ application is allowed. The impugned Award as contained in Annexure-9 is hereby quashed and the matter is remanded back to the Labour Court, Ranchi for giving a fresh Award in accordance with law after careful consideration and critical examination of the materials already on record without being prejudiced by any observation made in this Judgment.

Since the matter is quite old and as such, the Labour Court is directed to decide the matter within a period of three months from the date of receipt/production of a copy of this Judgment after hearing both the sides.