

(2003) 10 AHC CK 0047

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3296 of 2003

Ram Bihari Yadav

APPELLANT

Vs

Managing Director, U.P. State Handloom Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Uttar Pradesh State Handloom Corporation Ltd. (Officers and Staff) Service Rules,
1981 — Rule 63A

Citation : (2003) 6 AWC 5232 : (2004) 1 UPLBEC 152

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Pradeep Chandra, for the Appellant; V.K. Birla, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri Pradeep Chandra for petitioner and Sri Vivek Birla, for respondents.

2. Brief facts, giving rise to this writ petition, are, that petitioner was appointed an attendant on daily wages in the office of General Manager Cantt, U.P. State Handloom Corporation Ltd., G.T. Road, Kanpur on 15th October 1987. His services were extended from time to time. On 12th January, 1990, he was appointed on probation for a period of one year and was thereafter confirmed. Petitioner was thereafter transferred to Bahraich on 29th January, 1990. He also received the benefit of annual increments. The Joint Director of U.P. State Handloom Corporation, Kanpur issued a show cause notice to petitioner on 13.8.2002 for explaining his absence since 7.8.2002. It has been explained in Para 16 of the writ petition that he submitted the joining report on 17.8.2002 along with an application for medical leave. On 7.9.2002, he was again asked to explain his absence since 7.8.2002. Petitioner submitted an explanation on 9.9.2002, stating that on account of his illness, he was not able to join. On 27.9.2002, a notice was given to him by registered post for explanation of his

absence from duties upto 27.9.2002. On 30.9.2002, petitioner submitted his explanation to the Director of Management, U.P. State Handloom Corporation, Kanpur in writing, that he submitted his joining report on 11.9.2002, which was not accepted by dealing official Shri Ram Kumar Shukla, on the ground that he should first resume his duties at the residence of Managing Director otherwise he be treated absence from duties.

3. By the impugned order dated 20.11.2002, the Managing Director, U.P. State Handloom Corporation Ltd., Kanpur terminated the lien of his service with effect from 9.9.2002, in exercise of his powers under Chapter VIII, Rule 63-A of U.P. State Handloom Corporation Limited (Officers and Staff) Service Rules, on the ground of his continuous absence without leave.

4. Sri Pradeep Chandra, Counsel for petitioner, submits that petitioner was on medical leave upto 11.9.2002 and that when he requested for joining on that day, he was not allowed to join until he reports for work at the residence of Managing Director. Petitioner is a confirmed employee and he could not be detailed for domestic duties. He requested for being taken on the strength at the office, but his request was refused by Sri Ram Kumar Shukla and under the circumstances his lien in service could not have been terminated under Rule 63-A of the Service Rules. Counsel for petitioner further submits that in the impugned order, the Managing Director referred to petitioner's application dated 11.9.2002, but accepted an incorrect report of Sri Ram Kumar Shukla, and submits that the petitioner was not allowed to join. It is submitted that the respondents have not only acted arbitrarily and unreasonably but have also acted in violation of Service Rules.

5. Sri Vivek Kumar. Birla, on the other hand, submits that petitioner was absent from duties without any information since 7.8.2002. He was warned on a number of occasions to join the duties but he did not choose to join and in the circumstances, the Corporation was not left with any option except to terminate the services of petitioner under Rule 63-A of the Service Rules. He states that although the petitioner moved an application for joining but he was not physically present to join the duties and continued to be absent without leave.

6. A perusal of impugned order shows that initially petitioner was absent without applying for leave. The respondents, however, did not deny the fact that petitioner had made an application on 11.9.2003 for joining. Sri Ram Kumar Shukla, reported that petitioner did not physically present himself for duties. The report of Sri Ram Kumar Shukla was accepted without giving any opportunity to the petitioner or calling for his explanation. It is apparent from these documents and averments in writ petition that petitioner did not like to serve as domestic employee at the residence of Managing Director and that Sri Ram Kumar Shukla, the person concerned, refused to accept his joining report until he reports for duty at. Managing Director's residence.

7. Rule 63-A in Chapter VIII of the Service Rules is quoted below :--

"If any employee remains absent from his duty without information or prior approval of his absence or over stays after expiry of the leave period originally sanctioned or subsequently extended, thereby in time, he will lose lien on his appointment if he does not report for work within 15 days from the date of the beginning of such unauthorised absence. However, lien may be restored at any time subject to discretion of the management after submission of satisfactory explanation to the management by the employee concerned."

8. A similar rule, as aforesaid, came up for consideration by Apex Court in *Hindustan Paper Corporation v. Purnendu Chakraborty and Ors.* (1996) 2 SCC 404. It was held by Supreme Court in the said decision that rule must be read and given effect to, subject to the compliance of the principles of natural justice and thus, it cannot be said that the rule is arbitrary or unreasonable or violative of Articles 14 and 16 of the Constitution of India. Before taking action under the said clause, an opportunity should be given to the employee to show cause against the action proposed and if the cause shown by the employee is good and acceptable, it follows that no action in terms of the said clause will be taken. In that sense, it cannot be said that the said clause is either unreasonable or violative of Article 16 of the Constitution of India.

9. Any procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. It must be right, just and fair and not arbitrary, fanciful or oppressive. The principles of natural justice require that a person must be informed of the allegations against him. He must be given full opportunity to submit his explanation and that the authority concerned must cause an enquiry and arrive at a just decision. In all the circumstances, miscarriage of justice must be avoided.

10. Taking the aforesaid decision into consideration, I find that initially by letter dated 7.9.2002, the Managing Director relieved the petitioner from petty job of the Corporation and directing him to report in the office of U.P. State Handloom and also issued a warning that if he does not submit his explanation for unauthorised absence, disciplinary proceedings be taken against him. Thereafter by letter dated 27.9.2002, the Managing Director issued a notice to the petitioner informing him that he has failed to report to his duty at the directed place and petitioner was further required to join his duty in the Camp Office of Managing Director forthwith otherwise his services would be terminated under Chapter VIII, Rule 63-A of the Service Rules. The Managing Director has taken into account the office letter dated 11.9.2002, in which Sri Ram Kumar Shukla, reported that petitioner reported but on being detailed to work at M.D.'s residence, absented himself. This clearly infers that the petitioner was willing to work but was not allowed to join until he reported to work at a particular place. These facts would go to show that petitioner's services were not terminated on

account of his absence without information or failing to report for work. The petitioner was willing to join but was not prepared to work at a particular place. The question whether petitioner could have been required to join at M.D.'s residence is entirely a different matter and may have called for a disciplinary enquiry. Rule 63-A of the Service Rules was not attracted at all. Petitioner's services, as such, could not have been dismissed on the purported ground of his continuous absence. It is not a case, where the petitioner was not responding to the show cause notice or was not reporting without any cause. Petitioner's services, as such, could not be terminated without initiating and concluding a disciplinary enquiry.

11. For the aforesaid reasons, the writ petition succeeds and is allowed. The impugned order dated 20.11.2002 (Annexure-7 to the writ petition) passed by the Managing Director is set-aside. Petitioner shall be reinstated in service with all consequential benefits. It will be open to the respondents to take disciplinary action against the petitioner in accordance with Service Rules.