
(2008) 12 AHC CK 0346
In the Allahabad High Court
Case No : Writ Petition No. 8156 of 1993 (SS)

Ram Byas Rai

APPELLANT

Vs

Scooters India Ltd. and another

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226(1), 226(3)

Citation : (2008) 12 AHC CK 0346

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Disposed Of

Judgement

Rajiv Sharma, J.

1. Heard learned Counsel for the petitioner and Sri R.C. Tiwari, learned Counsel for the opposite parties.

2. By means of this petition, the petitioner has challenged the order dated 3.7.1993 passed by the Senior Manager (Personnel and Administration), striking off the name of the petitioner from the roll of the company with effect from 6.7.1993, who was working on the post of Assistant Engineer (SIII).

3. According to the learned Counsel for the petitioner, with mala fide intention, the petitioner was transferred from Lucknow to Calculate by the order dated 24.10.1991, which was challenged in Writ Petition No. 7583 (SS) of 1991. The aforesaid writ petition and the review petition filed by the petitioner were dismissed by this Court. Against the order passed by the Single Judge, the petitioner filed Special Appeal and during the pendency of appeal, the Management was insisting the petitioner to join the transferred place and as such, the petitioner gave an application for sanction of advance T.A. in order to enable him to join at the transferred place, but the amount was not sanctioned. In the meantime, the services of the petitioner were terminated by the impugned order dated 3rd July, 1993 for not reporting duty.

4. It is relevant to mention that this Court by an ad interim order dated

5.10.1993, after hearing the parties" Counsel, stayed the operation of the impugned termination order dated 3.7.1993 and it was directed that the petitioner shall be allowed to work and paid salary.

5. Learned Counsel for the petitioner has submitted that in order to maintain cordial relation with the Management, the petitioner withdrew the Special Appeal No. 29 of 1993 and requested the opposite parties to permit the petitioner to join his duties anywhere in India. In this regard, several letters were written and the petitioner also met personally, but the Management did not permit the petitioner on the pretext that the Company is sick, although the same was running in profits in the year 199899. He further submitted that opposite parties showed scant respect to the order dated 5.10.1993 passed by this Court and did not allow the petitioner to resume duties.

6. Counsel for the petitioner has also submitted that the impugned order dated 3.7.1993 is a nonspeaking order as it does not disclose the provision of law under which the services of the petitioner have been terminated. Only this much is alleged that the petitioner did not report for duty at Calcutta and as such, it is presumed that the petitioner has abandoned his employment. Before termination of the services, neither any notice was issued to the petitioner nor any charge sheet was given to the petitioner, therefore, the impugned order is in violation of the principles of natural justice. It has been also pointed out that the Management was also well aware that the petitioner was on sick leave which would also apparent from the order dated 18.6.1993.

7. Counsel for the opposite parties has submitted that in the interest of work the petitioner was transferred from Head Office at Lucknow to Regional Office at Calcutta vide order dated 24.10.1991. Instead of joining at the transferred place, the petitioner filed writ petition, which was dismissed. Subsequently, the review petition filed by him was also dismissed. This petitioner has been threatened by the letter dated 18.6.1993, but when the petitioner did not report for duty, a notice was issued requiring him to report for duty on or before 2.7.1993. As the petitioner failed to join by the said date, the impugned order was passed, striking off the name of the petitioner from the rolls of the company w.e.f. 6.7.1993. The petitioner was directed to collect retrenchment benefit, notice pay and other legal dues. The allegation of harassment levelled by the petitioner is unfounded.

8. It was also added by the learned Counsel for the opposite parties that certified Standing Orders as also the Conduct, Discipline and Appeal Rules of the Company provide for provisions for taking action in the cases of abandonment of employment and the opposite parties have taken action under the provisions of the Rules applicable to his category of employees.

9. Counsel for the opposite parties placing reliance on Nath Eastern Kamataka R.T. Corpn.. v. Ashappa and another, 2006 (110) FLR 80, contended that there is no illegality in the order of termination which has been passed as the petitioner remained absent from duty deliberately.

10. He further argued that the petitioner was performing supervisory nature of duties and is not covered under the provisions of Industrial Disputes Act, but as an abundant precaution the requirement of Section 6(1) was also followed.

11. Counsel for the petitioner has vehemently argued that opposite parties have no right to be heard when they have showed scant respect to the order passed by this Hon'ble Court and have not complied with the order dated 5.10.1993 during the pendency of the writ petition.

12. It is not in dispute that Special Appeal filed by the petitioner against the order of the learned Single Judge dismissing the writ petition preferred against the order of transfer was pending, when the impugned order of termination was passed. Furthermore, the petitioner himself, in order to end the litigation, withdrew the Special Appeal and requested that he may be allowed to work at any place in the country. Needless to point out that the order of termination dated 3.7.1993 was already directed to be kept in abeyance by this Court vide order dated 5.10.1993 and the petitioner shall be allowed to work.

13. It has also been argued by the Counsel for the opposite parties that the opposite parties have moved an application for vacation of interim order along with the counter affidavit and in view of the provisions of Article 226 (3), the interim order deemed to have been vacated after expiry of two weeks" as the application for vacation was not disposed of within the aforesaid period. Refuting the above argument, it has been argued on behalf of the petitioner that the order dated 5.10.1993 was not an ex parte order but was passed in presence of Sri S.C. Mishra, Advocate, who has put in appearance on behalf of the opposite parties and at his request, four weeks" time was allowed to file counter affidavit. I find force in the submission of the learned Counsel for the petitioner that the Article 226(3) is not applicable in this case as the interim order dated 5.10.1993 is not an ex parte order. Lastly, it has been submitted that the petitioner is still ready, as was ready earlier, to join at the transferred place of posting or any where in the country provided he is paid back wages.

14. In *Prestige Lights Ltd. v. State Bank of India*, 2007(8) SCC 449, the Hon'ble Supreme Court observed as under :

"An order passed by a competent Court interim or final has to be obeyed without any reservation. If such order is disobeyed or not complied with, the Court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a "drastic step" and such a serious penalty not be imposed on him except in grave and extraordinary situations, but sometimes such an action is needed in the larger interest of justice....."

15. In the present case, from the facts disclosed in the affidavits it clearly comes out that the opposite parties deliberately and intentionally flouted the interim order and have made a bald attempt to take the advantage of Article 226(3) of the Constitution in justifying their action of disobedience. Thus it is clear that the

order of this Court has been flouted with impunity. If such a scant respect is shown by the State authorities, then there will be no result of passing interim orders, which are passed after considering the attending circumstances, balance of convenience and prima facie case.

16. Undisputedly, the services of the petitioner were terminated on account of noncompliance of the order of transfer but when this Court had directed as an interim measure for keeping the order dated 3rd July, 1993 in abeyance and the petitioner shall be allowed to work and paid salary. The said order was passed by the Court after hearing the parties Counsel and applying its mind to the facts and circumstances of the case. Therefore, it was the onerous duty of the opposite parties to have complied the said order. It may be pointed out that that no disciplinary enquiry was conducted against the petitioner prior to passing of the impugned order of termination. Further the Senior Manager (Personal and Administration) while passing the impugned order has not mentioned the provisions under which he was exercised such a power. Thus the action of the opposite parties part from being unjustified, is contumacious and highly condemnable. For the reasons aforesaid, the impugned order cannot be sustained.

17. Accordingly, the writ petition is partly allowed. The order dated 3.7.1993, as contained in Annexure 1 to the writ petition, is hereby quashed. The petitioner shall be allowed to resume charge at the transferred place of posting or at any place as directed by the Management, within fifteen days from the date of presentation of certified copy of this order. As regard the payment of back wages, it would be open for the petitioner to make appropriate application to the Management, which shall be considered by the Management. However, the opposite parties are directed to count all the period of absence from duties for other service benefits.

18. Since the writ petition has been partly allowed, as such, all the pending applications stated disposed of. Writ petition partly allowed.