

(1997) 03 AHC CK 0221
In the Allahabad High Court
Case No : C.M.W.P. No. 2356 of 1983

Satna Cement Works and Another	Vs	APPELLANT
Bachhan Lal Srivastava and Others		RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Citation : (1997) 03 AHC CK 0221

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : V.R. Agrawal, for the Appellant;

Judgement

M. Katju, J.—This writ petition has been filed against the impugned award of the Labour Court, Allahabad, dated 12.1.83.

2. I have heard learned Counsel for parties.

3. The Petitioner No. 1 is a public limited company which manufactures cement at Satna in Madhya Pradesh. It has a godown in Naini, Allahabad and a sales depot at Bansidhar Market, Unchamandi, Allahabad. The Petitioner No. 2 was the depot incharge of the Naini Godown. Respondent No. 1 was employed in the Naini Godown. On 14.12.80 hundred bags of cement were removed from the Naini Godown unauthorisedly. It is alleged that Respondent No. 1 Bachhan Lal Srivastava was one of the persons who was involved in the unauthorised removal of 100 bags of cement. He was given a show cause notice dated 16.1.81 alleging his involvement and stating that the management has lost confidence in him and asking him to show cause, true copy of the notice is Annexure 1 to the petition. By the order dated 23.2.81 his services was terminated vide Annexure 2. It is alleged in Para 5 of the writ petition that out of the three employees involved in the incident of removal of 100 bags of Cement, Tarkeshwar Nath abandoned his employment after being arrested by the police and L.P. Gupta and Sumer Chand Jain resigned on receiving the show cause notice. In Para 7 of the petition it is alleged that the procedure for issue of cement from Naini godown was that the

District controlling authority used to send a list of allottees to the sale depot of the Petitioner at Unchamandi. On production of the allotment order and tendering the purchase amount, the sale depot used to issue delivery orders to the Petitioner's godown. These delivery orders were signed by either the Petitioner No. 2 or the office accountant Bothra or his assistant P. R. Sharma. Cement was delivered against delivery orders and challans were issued by the godown Incharge S.C. Jain or the deliveryman on duty in four copies. The original challans were handed over to the trucks taking the cement bags. No cement or challans were authorised to be issued without a delivery order. Respondent No. 1 was also authorised to issue challans in the absence of the godown incharge. On 14.12.1980 hundred bags of cement were removed from the Naini godown without any delivery order. The cement was removed in a truck of Laxmi Transport Company, a regular transporter of cement from the Naini Godown, and the truck with the cement from the Naini Godown, was apprehended by the police in the night of 14/15 December, 1980 in Jangiganj police thana area. The truck was seized by the police and the truck driver and Tarkeshwar Nath, an employee of the Petitioner, were arrested. The challan with the driver was found to be of Naini Godown. When the above matter came to the knowledge of the Petitioner No. 2, enquiries were made and the management was satisfied about involvement of the aforesaid persons. The stock in the godown was found to be correct and the question arose as to how these employees managed to manipulate excess cement bags In the godown.

4. It is alleged in Para 12 of the petition that that during the course of preliminary investigation, Respondent No. 1 submitted two written explanations dated 17.12.80 and 29.12.80, in which he admitted having made out a challan for 100 bags of cement unauthorised, true copies of which are Annexures 3 and 4 to the writ petition. After calling for his explanation from Respondent No. 1, the Petitioner terminated his service under clause 11 (e) of the Standing Orders of the company. The Respondent No. 1 raised a dispute which was referred to the Labour Court which decided in his favour. Hence this petition.

5. From the facts stated above, it is evident that no enquiry was held against Respondent No. 1. In my opinion, an enquiry should have been held so that the employee concerned could have been given an opportunity of hearing.

6. In my opinion, when an allegation of misconduct is made against a "workman, he should be given a charge-sheet and a domestic enquiry should be held against him giving him full opportunity of hearing. This is a basic principle of industrial law vide *The Provincial Transport Service Vs. State Industrial Court*, ; *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, etc. It is also open to the management to suspend the workman pending the enquiry.

7. Learned Counsel for the Petitioner contended that this was a case of a termination simpliciter for loss of confidence which was permissible under the Standing Orders of the Establishment. I do not agree with this submission. No doubt in certain earlier rulings, the Supreme Court had upheld termination

simpliciter orders on the ground of loss of confidence, e.g., *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, ; *Air India Corporation v. V.A. Rebellow and Anr.* 1972 (II) LLJ 501 ; *The Workmen of Sudder Office, Cinnamara Vs. Management of Sudder Office and Another*, . However, in *Chandu Lal Vs. Management of Pan American World Airways Inc.*, , the Supreme Court held that termination for loss of confidence casts a stigma on the employee and this view has been followed in *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, . It follows that an enquiry must precede such termination vide *A. Ram Mohan Vs. Labour Court, Bangalore and Another*, .

8. In *D.K. Yadav Vs. J.M.A. Industries Ltd.*, , the Supreme Court observed that even if there is a Standing Order providing for automatic loss of lien for 8 days absence without leave, yet an opportunity of hearing must be given to the employee before terminating his service. It can thus be seen that the trend in recent Supreme Court decisions is to insist on giving a hearing despite any provision in the Standing Orders. It is no doubt true that even if no enquiry was held before the termination of service, the employer can lead evidence before the Tribunal to justify its action, but In this case it appears that this point was not pressed by the Petitioner at any stage. Copies of the statements of the Petitioner's witnesses have not been annexed to the writ petition. A perusal of the written statement filed by the Petitioner before the Labour Court, true copy of which is Annexure 7 to this petition, shows that the Petitioner never prayed for opportunity to lead evidence to Justify its action. In *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, , it was held by the Supreme Court that the employer must seek opportunity to lead evidence in the written statement or at an early stage. Since this was not done, I cannot permit this argument to be raised now.

9. As regards the plea of the Petitioner that the workman had admitted his guilt, a perusal of the workman's statements, true copies of which are Annexures 3 and 4 to the writ petition, shows that there is no clear admission of his guilt. Unless there is clear admission of guilt, an enquiry must be held vide *Panitola Tea Estate v. Conciliation Officer* AIR 1966 GAU 138 (Para 13); *Ramlal Vs. Union of India (UOI) and Another*, ; *State Bank of Bikaner v. Jagdish Chandra* 1987 LIC 112.

10. Thus, there is no force in the arguments raised by learned Counsel for the Petitioner. However, in view of the fact that a very long time has expired since the termination of service of the Respondent and in view of the special facts of the case, I am of the opinion that the ends of justice would be served by directing compensation instead of reinstatement. Hence I modify the award and direct that the Respondent will get compensation of Rs. 50,000 (Fifty thousands) from the Petitioner within three months from today which will be in addition to whatever amount he has received (or was entitled to receive) under the interim order of this Court.