
(2010) 01 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3592 of 1996

Shiv Shanker Sharma

APPELLANT

Vs

Rajasthan Rajya Vidyut Prasaran Nigam Ltd.

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 01 RAJ CK 0010

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Mathur, for the Appellant; Saugath Roy, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner Shiv Shankar Sharma challenging the order dated 15.7.1993, by which he was deemed to have abandoned the services of the respondent from the forenoon of 27.11.1990 and thus his services were terminated. The petitioner has also challenged the letters dated 9.7.1991 (Annexure-1) and 14.12.1992 (Annexure-3).

The petitioner was appointed in the services of R.S.E.B. as Junior Engineer in the year 1972. The petitioner was on privilege leave with effect from 20.4.1988 to 31.5.1988. While on privilege leave, he fell sick and remained under medical treatment at Medical College Hospital, Bikaner and only on becoming fit that he was offered to join services at the new place of his posting at Gird Sub-Station Churu on 26.10.1988. According to the petitioner, he attended the duties at that time from 26.10.1988 to 26.11.1990 and on 27.1.1990, he applied for casual leave, which was duly sanctioned by the controlling authority. In the meantime, he again became ill and due to sudden illness, he could not join back his duties and applied for extension of leave, but the leave was not sanctioned to him. The respondents impressed upon the petitioner to resume the duties forthwith. Eventually, on 2.7.1991, the petitioner joined back his duties and attended his

evening shift duty as per the duty chart on 3.7.1991. He submitted his joining report along with sickness-cum-fitness certificate issued by competent medical practitioner. Subsequently, on 9.7.1991, the Assistant Engineer, Gird Sub Station, Churu issued a letter whereby petitioner was refused to resume his duties in the absence of sickness/fitness certificate given by a Government Doctor. The Assistant Engineer did not allow the petitioner to discharge the duties from 9.7.1991 onwards. The petitioner submitted a representation to Chief Engineer on 13.7.1991 followed by other representations on 21.8.1991 and 5.9.1991. Eventually, on 14.12.1992, the Joint Secretary (General Administration), R.S.E.B: issued a notice to the petitioner stating therein that the petitioner was willfully absent from duty from 27.11.1990 and asked him to show cause as to why his services may not be terminated. The petitioner submitted his reply on 18.12.1992, denying the charge that he was willfully absent from his duties. Vide another letter dated 15.7.1993, the petitioner was informed that in terms of the provisions of Regulation 21 of R.S.E.B.E.S.R., 1964, the petitioner shall be deemed to have left the services without notice and, therefore, his services were terminated. Feeling aggrieved thereby, the petitioner has filed the present writ petition.

2. Shri H.O.P. Mathur, the learned Counsel for the petitioner has argued that even as per letter dated 9.7.1991, it would be evident that petitioner had actually resumed the duties on 2.7.1991 and was not only allowed to discharge his duties, but also marked his attendance upto 7.7.1991. It was thereafter, that on 5.7.1991, he was asked not to come on duty on the plea that the fitness and sickness certificates were not issued by a Government Doctor. Learned Counsel submitted that the willful absence of duty is one of the misconducts as enumerated in Regulation 21 of the Employees Service Regulations, 1964 (for short the Regulations of 1964) and R.S.E.B. Employees (Classification, Control & Appeal), Regulations, 1962 (for short-the Regulations of 1962) in its Regulation 21 and the services of the petitioner could not be dispensed with without a full fledged enquiry and without providing him an opportunity to defend himself. The learned Counsel submitted that an employee possess the right to livelihood and that the petitioner could not be deprived of his right to livelihood in such an arbitrary manner. The action of the respondent is violative of Articles 14, 16 and 21 of the Constitution of India. The learned Counsel submitted that the fact that the petitioner applied for leave in the meantime would be substantiated from the letter dated 20.2.1991 which was addressed to him by the Assistant Engineer who was his controlling authority, whereby the petitioner was required to send sickness certificate after receipt of the letter. Again thereafter on 10.4.1991, the Assistant Engineer wrote a letter to the petitioner to the same effect. He appeared to resume the duties and produced sickness as well as fitness certificate. It is argued that when the petitioner had requested the controlling authority to grant him leave, his case cannot be taken to be a case of willful absence and abandonment of service. Learned Counsel submitted that Regulations 21 of the ESR Regulations of 1964 have been misconstrued and

misapplied in the case of the petitioner. He relied on the judgment of Supreme Court in *Jai Shanker v. State of Rajasthan* 1966 (13) FLR 133 , *D.K. Yadav v. J.M.A. Industries Ltd.* 1993 (67) FLR 111 , and *Uptron India Limited Vs. Shammi Bhan and Another* , and argued that the Supreme Court in these cases held that in spite of there being provision in certified Standing Orders for automatic termination on absence without or beyond the period of sanctioned leave for more than 8 days, principles of natural justice would still be applicable and duty to act in just, fair and reasonable manner must be read into the Standing Orders.

3. Dr. Saugath Roy, learned Counsel for the respondent opposed the writ petition and submitted that the petitioner proceeded on leave for 10 days with effect from 27.11.1990, but he did not come to attend his duties after completion of period of 10 days. He remained absent without seeking extension of his leave, When the petitioner did not join, letters were issued to him on 14.10.1990, 27.10.1990 and 18.1.1991. Learned Counsel submitted mat he never submitted sickness certificate of the authorized registered doctor. Lie was further issued letters on 2.2.1991, 4.3.1991, 8.3.1991, 10.4.1991, 9.7.1991, 26.1.1992 and 6.7.1992 by his controlling authority and the Executive Engineer also issued letters dated 20.9.1991, 1.10.1991 and 24.7.1992 to him, but he did not come forward. Since the petitioner did not report on duty in spite of the several reminders sent to him time and again, a notice was published in the daily newspaper *Dainik Navjyoti* dated 21.9.1992 and in *Rajasthan Patrika* dated 23.9.1992 advising him to attend the duty within 15 days, otherwise a presumption would be drawn that he had left the job/service on his own. But still the petitioner did not join. Learned Counsel in support of his arguments relied on the judgment in *Punjab and Sind Bank and Others Vs. Sakattar Singh*, and argued that principles of natural justice in such a fact situation would not be attracted.

4. I have given my anxious consideration to the rival submissions and perused the material on record.

5. What is borne out from the facts noted above is that even the respondents do not dispute that the petitioner applied for extension of leave which is evident from their letter dated 20.2.1991 (Annexure-24) and 10.4.1991. (Annexure-25). They, however, submit that such a request should have been accompanied by sickness certificate of a prescribed medical authority. The letter dated 9.7.1991 issued to the petitioner clearly shows that petitioner was allowed to mark his attendance on attendance register and log sheet from 2.7.1991 to 7.7.1991, which the respondents subsequently disowned on the plea that when the petitioner joined duty, he did not produce the sickness and fitness certificate issued by a Government Doctor. The respondents issued by a notice in the newspaper on 21.9.1992, in which it was clearly stated that absence of the petitioner from duty was a misconduct as provided by Regulation 28(a) of the Regulations of 1962. The question that arises for examination is whether in the case of this nature, the respondents could proceed on the assumption that the

petitioner had abandoned his services and, therefore, in terms of Regulation 21 of Regulations of 1964, take his service to have been terminated/discontinued. The Constitution Bench of Supreme Court in the case *Jai Shanker*, supra held that a discharge from service of an incumbent by way of punishment amounts to removal from service and that the constitutional protection of Article 311 cannot be taken away from him by contending that under the Service Regulations the incumbent himself gives up the employment and all that the Government has done, is not to allow the person to be reinstated. A person is entitled to continue in service if he wants, until his service is terminated in accordance with law. Discharge in such circumstances tantamounts to termination of service when the incumbent is willing to serve. It was held that such Regulation involves a punishment for overstaying one's leave and the burden is wrongly thrown on the incumbent to secure reinstatement by showing cause. The Government may visit the punishment of discharge or removal from service on a person who has absented himself, but it cannot order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. The Supreme Court in *D.K. Yadav*, held that the certified Standing Orders have statutory force and, therefore, same must be in consonance with principles of natural justice and mandates of Articles 14 and 21. Automatic termination under certified Standing Order on absence without or beyond the period of sanctioned leave for more than 8 days, was held to be illegal. It was held that principles of natural justice and duty to act in just, fair and reasonable manner must be read into such Standing Orders. Termination under the Standing Order without holding any domestic enquiry and without affording any opportunity to the workman, was held to be violative of principles of natural justice, and Articles 14 and 21 of the Constitution of India. In *Upton India Ltd.*, supra again the same view was reiterated by Supreme Court. It was held that automatic termination could not be made in a capricious and unreasonable manner. The principles of natural justice have to be read into the relevant clause and, therefore, circumstances leading to unauthorized absence have to be ascertained before resorting to termination.

6. The contrary judgment which has been relied on by the learned Counsel for the respondent arises out of a case in which there was a bipartite settlement between the management and the union of employees. Respondent in that case proceeded on sanctioned leave for days, but remained absent for a continuous period of 190 days. The respondent did not submit any explanation regarding his unauthorized absence and did not place any material before the Court that he did report on duty, but was not allowed to join duty and, therefore, it was held that inquiry was not necessary. Here in the present case, the respondents themselves in their letter dated 9.7.1991 admitted that petitioner marked his attendance and also filled in the log sheet from 2.7.1991 to 7.7.1991. They also admit that he submitted leave application and also produced sickness and fitness certificate. The respondents however submitted that such fitness and sickness certificate were not issued by a Government Doctor, but the petitioner in the *Sakattar*

Singh, supra on which the respondent relied, did not at all apply for extension of leave and did not join and mark his attendance. In that case, the Employees Union was also party and they also conceded to the futility of; continuing with such a situation where he remained absent. The judgment is, therefore, distinguishable.

7. In the facts of the case, therefore, the action of the respondent in presuming that the petitioner abandoned his services and, therefore, terminated his contract of service, is held to be illegal and unconstitutional. Such an order has been passed without any opportunity being afforded to the petitioner to prove his view point or defend himself. No domestic enquiry was held to ascertain whether the absence of the petitioner was willful or for genuine reason of his sickness. Even though, the respondents in the notice, that was published in the newspaper intended to proceed as per Rule 28(a) of the Regulations of 1962, but eventually they adopted a short cut method to get rid of the petitioner and thus the action of the respondent is clearly arbitrary, capricious, unreasonable and violative of Articles 14 and 21 of the Constitution of India.

8. In the result, the writ petition is allowed. The impugned orders/letters dated 9.7.1991, 14.12.1992 and 15.7.1993 are quashed and set aside and the petitioner is held entitled to all the consequential benefits together with interest at the rate of 6% per annum. However, if in the meantime, the petitioner has attained the age of superannuation, he would be deemed to have served the respondents upto the date of his retirement and would be entitled to all the consequential benefits, which would have accrued to him, had he continued in service.

Compliance of the judgment be made within a period of three months from the date its copy is produced before the respondents.