
(2002) 09 JH CK 0061

In the Jharkhand High Court

Case No : CWJC No's. 2174 and 3418 of 1995 (R)

Smt. Sushila Prasad and Ferro Scrap Nigam Ltd.

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 09 JH CK 0061

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Banerjea and A.K. Das, for the Appellant; A.R. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Both the writ applications have been taken up together as the parties thereto are aggrieved by one or other part of the same order dated 23-6.1995 passed by the respondent No. 1 (Presiding Officer, Labour Court, Jamshedpur [hereinafter referred to for the sake of brevity as the learned Labour Court]) in B.S.E. Case No. 6 of 1987. While the petitioner of CWJC No. 3418 of 1995(R) Smt. Sushila Prasad v. The Presiding Officer and Anr., is aggrieved by the refusal to reinstate her, the Management (Ferro Scrap Nigam Limited) which also happens to be the petitioner of CWJC No. 2174 of 1995(R) is aggrieved by that part of the order by which a compensation has been awarded to extent of 3.33 years' salary including admissible allowances on the basis of the last pay and the allowances drawn by Smt. Sushila Prasad. For clarity the parties herein shall now be referred hereinafter by their individual names instead of being referred to as the petitioner of respondents.

2. The case of Smt. Sushila Prasad is" that she was appointed in September, 1984 in M/s. Ferro Scrap Nigam Limited as a Junior Assistant Grade III. Subsequently, on 26.5.1996, she applied for earned leave for ten days. According to her, she fell ill and remained under treatment from 10.6.1986 to 21.9.1986

and during this period, she also states that, she had intimated the Management.

3. On 22.9.1986 she reported to the Tata Main Hospital where she was declared fit on 31.10.1986. Since 1.11.1986 and 2.11.1986 were not working days, she accordingly reported for her duties on 3.11.1986 and worked up to 5.11.1986. Again, on 6.11.1986 she fell ill and therefore, she remained under medical treatment up to 3.2.1987 and when she went to join her duties on 4.2.1987 after having been found to be medically fit, she was discharged on and from 5.2.1987.

4. According to Smt. Sushila Prasad she informed the Management about her sickness by forwarding medical unfit certificates from time to time and also produced documents to show that she was sick and therefore was prevented by sufficient reasons to resume her duties. According to her, she was punished on account of a criminal case which had been lodged by her against the Managing Director of M/s. Ferro Scrap Nigam Limited in which the police had submitted a charge-sheet.

5. The reference of the aforementioned criminal case is to be found in Annexure 8 which is the judgment of this Court delivered in Criminal Miscellaneous No. 3317 of 1986(R) by which the Managing Director of Ferro Scrap Nigam Limited (ASN Rao) moved this Court for quashing the order dated 15.7.1986 passed by the Additional Chief Judicial Magistrate, Jamshedpur in G.R. No. 625(A) of 1986 by which cognizance had been taken. The aforementioned criminal case related to an alleged occurrence said to have taken place at 4.45 p.m. on 9.4.1986. Narration whereof is to be found at running page 111 of CWJC No. 2174 of 1995(R) and which reads as follow :--

"At 6.45 p.m. on 10.4.1986 the informant, Miss. Sushila Kumar Thakur, filed a written report at Bistupur police station alleging therein that at about 4.45 p.m. on 9.4.1986 she had been called by the petitioner in his office chamber and when she went there, the petitioner tried to outrage her modesty. She has alleged that he caught hold of her hand with his own hand and advanced the other hand for catching of her breast but she saved herself and ran out of the office chamber. On the basis of this written report the police at Bistupur police station instituted a case and submitted a charge-sheet on the basis of which the learned Magistrate took cognizance."

6. The aforementioned criminal case was quashed by this Court and at paragraph 7 some of the observations which led to the quashing of the criminal case are (a) that no other witnesses were present in the office chamber of ASN Rao at the time of the alleged occurrence; (b) that Smt. Prasad did not speak about the occurrence to any person of the office when she said to have come out of the chamber of ASN Rao and; (c) there were no eye-witnesses to support the allegation of Smt. Sushila Prasad except hearsay witnesses.

7. Considering the aforementioned facts and circumstances the learned Single Judge recorded the following finding at paragraph 10 and was pleased to set aside the criminal case against ASN Rao.

"The examination of the materials on record, thus clearly goes to show that the allegation leveled by Miss. Sushila Kumari Thakur against the petitioner is highly improbable and incredible. The petitioner's contention that the allegation is motivated and totally false gets ample support from the attending circumstances, namely inordinate and unexplained delay in lodging the FIR absence of support from other employees of the office who were the natural and probable witnesses, absence of disclosures by the informant to anybody either on the date of occurrence or on the following day, absence of any protest or raising of alarm at the time of the alleged occurrence. The submission on behalf of the petitioner is that the prosecution story is not only highly improbable but also absurd because an officer occupying a responsible position of a Managing Director, can not be imagined to indulge in the alleged act and this submission cannot be said to be devoid of substance. In the context of the facts and circumstances of the case I am, therefore, inclined to agree with the contention on behalf of the petitioner that the continuation of the prosecuting against him would amount to an abuse of the process of the Court and it will not only cause the hardship and harassment but may unnecessarily result in lowering his reputation and social prestige."

8. From a perusal of the aforesaid findings, it is apparent therefore that the criminal case lodged by Smt. Sushila Prasad could not be proved. Had the Management therefore, retaliated and proceeded to punish Smt. Sushila Prasad by issuing a charge-sheet as to why she had instituted a false case, perhaps Smt. Sushila Prasad might have had a case to support her contention that she was punished for aforementioned reason. The instant case leading to the passing of the impugned order cannot be connected/linked with the criminal case and therefore the contention of Smt. Sushila Prasad to the effect that she was punished for having lodged the aforementioned criminal case is not acceptable and it is accordingly rejected. However, what has to be seen is the order of the Labour Court in relation to the charges levelled against Smt. Sushila Prasad. It is the admissible case of the parties that on 26.5.1986 she applied for earned leave and remained absent till 21.9.1986. Thereafter she reported at the Tata Main Hospital on 22.9.1986 and was declared fit on 31.10.1986 whereafter she was allowed to work from 3.11.1986 to 5.11.1986. She again fell ill on 6.11.1986 and remained under medical treatment till 3.2.1987 and when she went to join on 4.2.1987, she was discharged from service on and from 5.2.1987.

9. In the backdrop of aforementioned facts, the 3 (three) charge- sheets will perhaps be necessary to be looked into. According to the parties, during this period three charge-sheets were served upon Smt. Sushila Prasad, the first being dated 29.5.1986 the second on 8.9.1986; and the third on 6.12.1986. These three charge-sheets are Annexure 1, 2 and 3 to CWJC No. 2174 of 1995(R) and they read as follows :--

1st Charge-sheet dated 29.5.1986 2nd Charge-sheet dated 8.9.1986 3rd charge-sheet dated 6.12.1986

"You are charged with having committed the following acts of misconduct:

You are charged with having committed the following acts of misconduct.

You are charged with having committed the following acts of misconduct;

"Disorderly or indecent behaviour in the office premises or any act subversive of discipline."

1) Willful insubordination or disobedience to any lawful and reasonable order of a superior"

1) Willful insubordination or disobedience to any lawful and reasonable order of superior."

On 28th May, 1986 at about 2.30 p.m. you came rushing into the P&A Deptt. of Corporate Office and gave a hand written leave application for "10 days E.L. from 28.5.1986 to 14.6.1986". This application was dated 26th May, 1986 and was signed by Dy. GM (0) on 26th May, 1986 sanctioning the leave on a ruled sheet of paper and not on the prescribed leave application. Secondly the application was not routed through P&A Deptt. for giving the leave position, which is the usual practice before the leave application is given to controlling officer. Since M(P&A) was on leave, the Executive (S&T) asked you to fill up the prescribed leave application and get it approved by G.M. (Opr). On this, you got into a furious mood and used abusive language and also demanded a written reply from M.D. or M(P&A) as you would not accept anybody else's letter. Since you were creating lot of disturbance in the office by your indecent behaviour,, you were requested to leave the application and leave the office but instead of leaving the office premises,, you started abusing the M.D.,, Personnel Deptt and the employees/staff at large. On much persuasion,, you left the application with Executive (S&T) and left the office.

Clause No. 25(i) of Co."s Certified Works Standing Order)

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2) "Habitual absence from duty without leave or without sufficient cause."

2) "Habitual absence from duty without leave or without sufficient cause."

Clause No. 25(v) of Co."s certified Works Standing Order.

Clause No. 25 (v) of Co." certified Works Standing Orders)

Since you have been absenting from your duty w.e.f. 25.5.1986 on medical ground, you were directed vide our letter Jo. FC/4509/86 dated 16.8.1986 to report at counter No. 3 of the Tata Main Hospital on 19.8.1986 at 9.30 a.m. alongwith all relevant medical papers, if any, for your medical check up by a Medical Board to find out your fitness to carry out your duties as Asstt. Ill in the company. This letter was sent to you :

You were directed vide our letter No. FC/6166/ 86 dated 29.11.1986 to appear before the Medical Board at Mercy Hospital Baridh

(a) thru Reg. post on 16.8.1986.

a) thru Regd. A/D post at your local and home address on 29.11. 1986

(b) thru a Spl. Messenger on 18.8.1986.

(b) displayed on the notice board of the company on 29.11. 1986

(c) displayed on the notice board of the company on 16.1986.

(c) was published in the local newspaper "Uditvani" on 3.12.1986.

(d) was published in the local newspaper "Uditvani" on 18.8.1986 and 19.8.1986.

In spite of this intimation of you did not report for yog medical check up as advised which amounts to willful insubordination and disobedience to a lawful order of your superior.

The Regd. Letter came back to us undelivered

intimation sent thru spel. messenger was not received by anybody in your house.,

Since the letter was displayed on notice board and it was published in local newspaper, you are deemed to have received the above intimation to appear before the Medical Board as mentioned above as per law. Inspite of this intimation to you, you did not report for your medical check up as advised which amounts to willful insubordination and disobedience to a lawful order of your superior.

Further, you were informed vide our above letter No. FC/6166/86 dated 29.11.1986 that in case of failure to report for medical check up as advised, it would be deemed that you are not interested in the job of the company and your absence from 4.12.1986 would be treated as unauthorized. Since you did not report for medical check up, your absence from duty from 4.12.1986 is unauthorized, without leave or without sufficient cause."

Further you were informed vide our letter No. FC/4637/86 dated 26.8.1986 that your absence on medical ground from 19.8.1986 would be treated as unauthorized unless and until your absence from duty from 19.8.1986 is recommended on medical ground by the Medical Board of Tata Main Hospital. This letter was sent through Regd. A/d post at your local and home address and thru Spl. Messenger which was not received by anyone in your house.

We have not received any information from you as yet. which amounts to your absence from duty without leave or without sufficient cause from 19.8.1986 The above letter was also displayed on Co's notice board,"

10. Thus from a perusal of all the charge-sheets read together and in juxtaposition to each other, what appears is that Smt. Sushila Prasad was

proceeded against departmentally for the charges of (a) disorderly or indecent behaviour in the office premises on 28.5.1986; (b) for willful insubordination or disobedience, i.e., for not having reported for medical check up at Tata Main Hospital on 19.8.1986 at 9.30 a.m. and; (c) for not having presented herself before the Medical Board on 4.12.1986 at the Mercy Hospital, Baridih, Jamshedpur and for habitual absence from duty without leave or without sufficient cause.

11. So far as the first charge-sheet of disorderly and indecent behaviour is concerned, the learned Labour Court has given following finding at para 14 of the order :--

"From the statement of O.P.W/2, 5 and 6 it is clear that on 28.5.1986 at about 2.30 p.m. the complainant went to P&A department and gave a hand written leave application to Shri G.A. Rathan. When Shri G.A. Rathan asked her to give it in proper form she became furious and started abusing the Managing Director and staff of the department. These witnesses were present when the alleged incident took place. The allegation mentioned in the charge-sheet dated 28.5.1986 has been supported by the statement of these opposite party witnesses. On the basis of evidence available on the record as discussed above, I have come to the conclusion that the complainant behaved in a disorderly and indecent manner and she abused Managing Director and staff of the department in the office premises of the opposite party. When which amounts to an acts of misconduct. Hence the allegation of disorderly and indecent behaviour in the office premises has been established against the complainant and she is found guilty of misconduct."

12. So far as the second charge-sheet is concerned, the Labour Court has given a finding at paras 17 and 18 of the impugned order that the question of absence from duty without leave does not arise but because she did not report at Counter No. 3 of the Tata Main Hospital on 19.8.1986, therefore she was found guilty of disobedience of lawful order of her superior.

13. So far as the third charge-sheet is concerned, that again relates to habitual absence from duty without leave and not appearing before the Medical Board on 4.12.1986 to ascertain her fitness. So far as this charge is concerned findings of the Labour Court at para 20 are necessary to be looked into :--

"The complainant admitted in para 13 of her cross- examination that she had knowledge of the order of the company to appear before Medical Board at Mercy Hospital on 4.12.1986 but she did not go to Mercy Hospital due to illness. She did not send any letter to opposite party through Regd. Post about her ability to appear before Medical Board on that date. If the complainant was not in a position to go to Mercy Hospital as directed, she should have informed the opposite party about her illness by sending letter through Regd. Post. But no such letter was sent to the opposite party through Regd. Post. Though several photo copy of medical certificates and prescriptions are filed on behalf of the

complainant but no medical officer has been examined. There is no evidence on the record to show that the complainant was confined to bed on that particular date. The complainant was informed vide letter dated 29.11.1986 that in case of failure to report for medical check up as advised, her absence from 4.12.1986 would be treated as unauthorised. The complainant had knowledge of the direction of the company to appear before the Medical Board at Mercy Hospital but she did not report for medical check up. It amounts to disobedience to a lawful order of a superior and her absence from duty from 4.12.1986 is unauthorised."

14. On the basis of the aforesaid, the learned Labour Court came to a conclusion at para 21 of the impugned order that Smt. Sushila Prasad was guilty of indecent behaviour in the office premises which was subversive of discipline, of willful disobedience to a lawful order of her superior and absence from duty without leave.

15. Having so held, the learned Labour Court thereafter took into consideration the submissions made by Smt. Sushila Prasad to the effect that the punishment of discharge awarded to her was extremely harsh and disproportionate.

16. While dealing with the aforementioned submissions the reasonings of the learned Labour Court is to be found at para 26 which reads as follows :--

"It is well recognised principles of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged. The complainant has been found guilty of disorderly and indecent behaviour in the office premises. She is also found guilty of disobedience of lawful order of her superior and absence without leave. But the circumstances which led to this incident should also be kept in mind. Admittedly the complainant gave hand written leave application from 28.5.1986 to 14.6.1986 duly sanctioned by Dy. General Manager Operation. Leave Application was not on the prescribed form and it was not routed through P&A Department for giving the leave position. If there was any prescribed form for leave application, Dy. General Manager (O) should not have signed and sanctioned leave on hand written application. When the complainant was asked to fill up the prescribed leave form and get it approved, she became agitated which was natural. The complainant has filed photocopy of several medical certificate and prescriptions which have been marked exhibits but no Medical Officer has been examined. From perusal of Medical Certificate and prescriptions, it appears that the complainant was ill for sometime in the relevant period. Considering all these things, punishment of discharge passed against the complainant appears to be harsh and disproportionate to the charges proved. If the workman is reinstated without back wages it would meet the ends of justice."

17. On the basis of the aforesaid reasonings, the learned Labour Court came to a conclusion that if the workman was reinstated without back wages it would meet the ends of justice and therefore ultimately what was awarded was compensation

equivalent to 3.33 years" salary including admissible allowance on the basis of last pay and allowances drawn instead of reinstatement.

18. From what have been stated above, it is apparent that refusal on the part of the Labour Court to reinstate Smt. Sushila Prasad was not justified for the following reasons :--

(a) So far as disorderly indecent behaviour in the office premises is concerned, the Labour Court at para 26 has himself stated that "when she was asked to fill up the prescribed leave form and get it approved, she became agitated which was natural".

(b) So far as disobedience of lawful order is concerned, it cannot be disputed that there were several medical certificates and prescriptions which were marked exhibits and which at least proved that Smt. Sushila Prasad was ill. In fact the learned Tribunal has at para 26 recorded as follows :--

"From perusal of medical certificate and prescriptions it appears that the complainant was ill for sometime in the relevant period."

19. After having given the aforementioned findings that the complainant was ill for some time during the relevant period [meaning thereby the period between 26.5.1986 to 4.2.1987 (seven months nine days)] and that too when there were documents to prove that Smt. Sushila Prasad was in fact ill and the Labour Court having himself come to the conclusion that Smt. Sushila Prasad was in fact ill during the relevant period, there is nothing on record to show, save and except the aforementioned period of seven months and four or five days, that Smt. Sushila Prasad was a habitual absentee during other periods. Therefore, the words "habitual offender" could not have been applied upon her and that too when the finding is that she was in fact ill during the relevant period.

20. From the facts narrated above, it is therefore apparent that due to her illness, she was absent during sporadic intervals between May 1986 to February 1987. So far as disobedience is concerned, the only allegation is that she did not report before a particular prescribed counter on a particular date. Before the Management, she had explanations to offer that she was not well. When the Labour Court himself gives a finding that from the perusal of medical certificates and prescriptions it appears that the appellant (Smt. Sushila Prasad) was ill for some time, then there was no justification as to why her explanation that she could not present herself as she was ill for the same period was not accepted and was treated to be an offence.

21. It appears that the Labour Court perhaps had this in mind because he does record a finding in the same para 26 stating that "considering all these things, punishment of discharge passed against the complainant appears to be harsh and disproportionate to the charges proved."

22. For the aforementioned reasonings this Court therefore feels that the order of the Labour Court in the instant case is grossly disproportionate and also

perverse because he has not taken into consideration that none of the charges warranted the upholding of the punishment of discharge. In that view of the matter, by refusing to reinstate and instead by ordering compensation, the Labour Court definitely committed a gross illegality and thereby perpetrated a gross miscarriage of justice.

23. In that view of the matter and for the reasons stated above, both the writ applications, namely. CWJC No. 3418 of 1995(R) Smt. Sushila Prasad v. The Presiding Officer, Labour Court and Anr., and CWJC No. 2174 of 1995(R) Ferro Scrap Nigam Ltd. v. The Presiding Officer, Labour Court and Anr., are allowed and the impugned order is set aside. The matter is remanded to the said Labour Court for rehearing the matter and for giving a fresh award in accordance with law after giving adequate opportunity to all the parties concerned. The entire exercise must be completed not later than six months from the date of receipt of a copy of this order.

There shall however be no order as to costs.