

(1988) 03 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 127 of 1984 (r) with Civil Writ Jurisdiction Case No. 461 of 1984 (r)

Sri Sao

APPELLANT

Vs

Presiding Officer, Labour Court, Ranchi, and Another

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26, 26(1), 26(2)

Citation : (1989) PLJR 810

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : C.B. Mitter, for the Appellant; T.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—These two applications involving common questions of law and fact and as they arise from the same order were taken up for hearing together and are being disposed of by this common judgment,. The impugned order in these writ applications has been passed by the Presiding Officer, Labour Court, Ranchi, dated the 1st October, 1983, in B.S. Case No 7 of 1982 and B.S. Case No. 8 of 1982. The aforementioned B.S. Case No. 7 of 1981 arose out of a complaint petition filed by the petitioner of C.W.J.C. No. 4G1 of 1984 (R); whereas, B.S. Case No. 8 of 1982 arose out of a complaint filed by the petitioner of C.W.J.C. No. 117 of 1984 (R). The aforementioned order is contained in Annexure-13 to the writ application in C.W.J.C. No. 127 of 1984 (R) and Annexure-14 to the writ application in C.W.J. C No 451 of 1984 (R). Both the aforementioned complaint petitions were filed by the petitioners purported to be u/s 26(2) of the Bihar Shops and Establishment Act, 1953 (hereinafter referred to as "the said Act").

2. The facts of the case are as follows. Both the petitioners admittedly were employees within the meaning of the provisions of the said Act and have been working under the respondent No. 2. Admittedly, the petitioners of both the writ

petitions had completed more than six months" employment. The petitioners were charge sheeted by the respondent No. 2 and were also put under suspension. According to the petitioners, no departmental proceeding was initiated against them and they took it that their services had been terminated and as such they filed two complaint petitions before the respondent No. 1 purported to be u/s 26 (2) of the said Act which were registered as B.S. Case No. 13 of 1976 and B.S. Case No. 14 of 1976.

3. In the aforementioned cases, the respondent No. 2 contended that the complainants-petitioners were dismissed from their services with effect from the 31st August, 1976, and in view of the fact that the said complaint petitions were filed prior to that date, the complaint petitions being premature were dismissed.

4. According to the respondent No. 2, the complainants were served with charges framed against them and they also submitted then show cause which having been found to be not satisfactory, a domestic enquiry was initiated against them. Petitioner Krishna Sao was charged for disobeying the lawful direction of the employer in refusing to accept the service card and also for making interpolation in the entries of 24.12.1975 to 26.12.1975 in the Attendance Register, whereas Sri Sao was charge sheeted for striking work from 1.10.1976 for more than 10 days at the instance of Krishna Sao and secondly he along with other employees had assaulted the Manager and the witnesses of the respondent No. 2 on the 17th January, 1976, while they were returning back after holding the conciliation meeting in the office of the Labour Superintendent, Ranchi.

5. According to the management one Mahesh Thakur who was appointed as an enquiring officer had submitted his resignation on account of frivolous allegation of partiality made by these employees and the Union Leader wherefor the management had to appoint another enquiry officer being Sri Satya Narain Singh, Advocate. It is further alleged that fresh notices under registered cover were sent to the concerned workmen and ultimately notice was published in the local weekly fixing 14.7.1976 as the date of hearing. On that date, some employees of the Union leader ultimately appeared before the Enquiring officer but they refused to participate on the ground that they had already filed a complaint petition before the Labour Court at Ranchi. In the circumstances, the aforementioned enquiry was conducted ex parte and upon receipt of the report submitted by the Enquiring officer the services of the petitioners were terminated by an order dated the 31st August, 1976.

6. As the management in the earlier cases i.e., B.S. Case No. 13 of 1976 and B.S. Case No. 14 of 1976 contended that the order of termination has been passed on the 31st August, 1976, in view of the fact that the aforementioned complaint petitions were filed some time in 1982 and the same being barred by limitation the complainants filed application for condonation of the delay. The issue with regard to limitation was heard as a preliminary issue and by an order dated the 28th May, 1982, it was held that both the cases were filed within time, alternatively, it was held therein that the delay of four days in filing the complaint

case in both the cases was fit to be condoned and the same was accordingly condoned.

7. Before the respondent no. 1, the only plea raised by the respondent no. 2 was that services of the petitioners were terminated on the sole ground that they had been found guilty of misconduct after holding a domestic enquiry in this regard.

8. Before the respondent no. 1, both the parties filed their respective written-statements, and examined their witnesses. The respondent no. 1 framed the following issues for determination:--

(i) Whether domestic enquiry conducted against both the complainants was legal and valid?

(ii) Whether the charges framed against Krishnadeo Prasad are proved as held by the enquiry officer?

(iii) Whether the charges framed against Sri Sao are proved as held by the enquiry officer?

(iv) Whether they are entitled to reinstatement?

(v) Any other relief?

9. Mr. C.B. Mitter, learned counsel appearing for the petitioner, in both the writ petitions, raised three fold contentions Firstly, he submitted that no order of dismissal having been served upon the petitioners, they would be deemed to be in service and in that view of the matter, the impugned order passed by the respondent no. 1 is wholly illegal and without jurisdiction and is liable to be quashed by this Court. Mr. Mitter submitted that the communication of the order of termination is a sine qua non for a valid termination. According to Mr. Mitter, the order of termination itself must ex facie disclose a reasonable cause. It has further been contended by the learned counsel that unless the order of dismissal is communicated the same cannot be given effect to.

In this connection, the learned counsel has referred to the decision in the case of Management of Ritz Theatre (P) Ltd. Vs. Its Workmen, ; Management, Shahdara (Delhi) Saharanpur Light Railway Co. Ltd Vs. S.S. Railway Workers Union (7 S.C.L.J. 635 at page 646) and Krishna Kumar Shanna Vs. State of Bihar and others (1984 LIC 1427 at page 1430 : 1984 PLJR 832).

10. There is no doubt that an order of termination must be communicated to the concerned employee. In some cases, the order takes effect from the date when the same is communicated.

11. However, in the instant case, the concerned workmen had never raised the plea that the order of termination dated the 31st August 1976, was not served upon them. Even in these writ applications, except taking the points in grounds the foundational facts have not been pleaded at all. Neither before the respondent no. 1 nor before this Court the petitioners even made an attempt to

call for the said letter dated the 31st August, 1976.

12. In this situation, in my opinion, it is not permissible for this court to permit the petitioners to raise the aforementioned question for the first time in these writ applications. In *Sohan Singh and Others Vs. General Manager, Ordnance Factory, Khamaria, Jabalpur and Others*, , it has been held that, in absence of such a plea, the High Court should not entertain the point of jurisdiction urged on behalf of the respondents. In this view of the matter, the first contention of Mr. Mitter fails.

13. Mr. Mitter thereafter contended that the enquiry was defective in view of the fact that no notice was published in the newspapers.

14. However, from the finding arrived at by the Presiding Officer, Labour Court, it is absolutely clear that not only the notices were served upon the concerned employee but even they appeared on the first date but they refused to take part therein on the ground of pendency of the earlier complaint petitions u/s 26 of the said Act.

15. In view of the fact the employees themselves have refused to participate in the enquiry, in my opinion, it does not lie in the mouth of the concerned employee to contend that it was obligatory on the part of the management to issue notices upon them for each and every date of hearing of the domestic enquiry.

16. Mr. Mitter thereafter submitted that reasonable cause for termination of services must be made to appear in the order of termination itself. In the case of *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. (supra)*, the Supreme Court was dealing with a different situation. In that case, it was observed by the Supreme Court that reasons for termination should appear on the letter of termination itself so that the concerned employee might know the same. However, in the instant case, as noticed hereinbefore, both the parties adduced their respective evidence before the Labour Court and as such it must be presumed that the parties concerned knew about their respective cases and they had full opportunity to place all the materials before the court below. In such a situation, as the reasons for termination of services of the concerned employees were known to the petitioners, in my opinion, that point does not arise in the instant case.

17. Mr. Mitter further submitted that there has been violation of the principles of natural justice in the domestic enquiry and as the enquiry was itself defective, the same was no enquiry at all in the eye of law and as such the termination of services of the petitioners without complying with the provisions of section 26(1) of the Act makes the order of termination wholly illegal.

It may be mentioned here that in terms of section 26(2) of the said Act, the compliance of the sub-section (1) thereof is not required where an employee has been found guilty of misconduct in a domestic enquiry as held by the employer.

In terms of sub-section (2) of section 26 of the said Act, what is required is a factual enquiry and a factual finding of guilt of misconduct on the part of the concerned employee. The question as to whether the enquiry was defective or not may itself be a subject matter of the determination in a complaint petition u/s 26(2) of the Act but only because, in my opinion, there is some defect in the enquiry itself, the same would not require the conditions laid down under sub-section (1) of section 26 of the said Act to be fulfilled.

18. Mr. Mitter further submitted that the issues which have been framed by the respondent no. 1 do not fulfill the requirement of sub-section (2) of section 26 of the Act. True it is in terms of sub-section (2) of Section 26 of the Act, the issues which were required to be framed are as to whether there has been a reasonable cause for determination of the services of the employee or not; but in the instant case the employees have not been prejudiced in any manner by reason of non-framing of proper issues. In para 14 of the impugned order, the respondent no. 1 has held that the domestic enquiry conducted against both the complainants was legal and valid. Thereafter, he proceeded to consider the materials which were placed before him. As indicated hereinbefore, both the petitioners as also the management examined their witnesses and placed all the documents which were necessary for determination of the real issues involved in the said cases.

19. After discussing all the evidence on the record, the respondent no. 1 in para 30 of the impugned order has come to the conclusion that the charges framed against Krinhna Sao have been proved. The respondent no. 1, however, found that one of the charges against Sri Sao has not been proved by the employer.

20. From the discussions made hereinbefore, in my opinion, there is absolutely no doubt that although the issues were not properly framed but the respondent no. 1 addressed himself correctly with regard to the requirement of the provisions of subsection (2) of Section 26 of the said Act and the parties have not been prejudiced in any manner whatsoever because of non-framing of the aforesaid issues by the respondent no. 1. Accordingly, these writ applications are dismissed but, in the circumstances of this case, there shall be no order as to costs.