
(2004) 09 AHC CK 0072
In the Allahabad High Court
Case No : C.M.W.P. No. 27607 of 1992

Subhash Chandra Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 4K

Citation : (2005) 6 AWC 5473

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.N. Singh, A.P. Sahi and T.N. Porwal, for the Appellant; C.P. Gaur, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—By means of this petition, the workman has challenged the validity and legality of the award passed by the Industrial Tribunal, whereby the order of termination of the service of the Petitioner has been upheld.

2. Briefly stated, the facts of the case is that the Petitioner was working as a Compounder in the Dispensary maintained by the Sugar Company, i.e. Respondent No. 3, The Petitioner was charge-sheeted on 6.3.1987, for being absent on duty at 12.30 a.m. on account of which a patient who was in a critical condition could not be given medical attention immediately and eventually the patient expired during the night. The Petitioner was later found in a state of inebriation. Another charge-sheet was issued on the charges of drunkenness, riotous and disorderly behaviour while on duty.

3. The explanation given by the Petitioner was not found satisfactory and accordingly an enquiry officer was appointed to enquire into the matter. The enquiry officer conducted an oral enquiry and provided full opportunity to the Petitioner to defend himself. The enquiry officer submitted his report on the basis of which the disciplinary authority passed an order of termination.

4. The Petitioner, thereafter, raised an industrial dispute challenging the validity of the termination order. The matter was referred to the Industrial Tribunal for adjudication. The Tribunal after considering the evidence on the record gave an award dismissing the claim of the Petitioner. The Tribunal held that the enquiry was fair and proper and that the principles of natural justice was not violated and that full opportunity was granted to the Petitioner to defend himself. The Tribunal also concluded that the charges levelled against the Petitioner were duly proved. The Tribunal further held that the Petitioner was not required to be given a copy of the enquiry report, nor was required to be given a second show cause notice. The Tribunal further held that the punishment of termination awarded to the Petitioner commensurated with the misconduct and therefore, the Tribunal declined to grant any relief to the Petitioner.

5. Being aggrieved by the award, the Petitioner has filed the present writ petition.

6. Heard Sri T. N. Porwal, the learned Counsel for the Petitioner. No one appeared for the Respondents.

7. Learned Counsel for the Petitioner has raised four points, namely:

(a) the Petitioner was entitled for a copy of the enquiry report ;

(b) the Petitioner was required to be given a second show cause notice before passing the order of termination ;

(c) the enquiry was not fair and proper and no proper opportunity of hearing was provided by the enquiry officer ;

(d) the punishment of termination does not commensurate with the misconduct.

8. With regard to the first and second contention, the learned Counsel for the Petitioner placed reliance on the decision of the Supreme Court in *Union of India v. Mohd. Ramzan Khan* AIR 1991 SC 471, on the proposition, that the delinquent employee was entitled to a copy of the enquiry report before passing the order of punishment. The learned Counsel submitted that the entire object of supplying a copy of the report of the enquiry officer was to enable the delinquent employee to satisfy the disciplinary authority that he was innocent of the charges framed, against him.

9. In my view, the contention raised by the learned Counsel for the Petitioner is devoid of any merit.

10. In *Associated Cement Companies Ltd. v. T. C. Srivastava*, 1984 LIC 864, the Supreme Court held:

It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a standing order may not provide for it but unless the standing order provides for it either expressly or by necessary implication no inquiry which is otherwise fair and valid

will be vitiated by non-affording of such second opportunity.

11. In *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, , the Supreme Court held:

As regards the modification requiring a second show cause notice, neither the ordinary law of the land for the industrial law requires an employer to give such a notice. In none of the decisions given by Courts or the Tribunals such a second show cause notice in case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that has now been removed by the recent amendment of that Article. To import such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants.

12. The judgment of the Supreme Court in *Mohd. Ramzan's case* (supra) was clarified and held to be prospective in nature by the Supreme Court in *Union of India vs. A. K. Chatterjee*, 1993 (2) SCC 191; *Union of India and others Vs. C.L. Verma*, ; *Managing Director, Food Corporation of India and Others Vs. Narendra Kumar Jain*, and in *Joint Secretary to the Home Department, Madras and Others Vs. R. Ramalingam*, , in which it was held that if the order of termination had been passed prior to the judgment given in *Mohd. Ramzan's case*, the order of termination would not be vitiated merely because the copy of the enquiry report was not supplied to the delinquent employee.

13. In the present case, the order of termination was passed on 9.12.1988 and the judgment in *Mohd. Ramzan's case* was delivered on 20.11.1991. Since the order of termination was passed prior to the decision in *Mohd. Ramzan's case*, the termination order is valid and requires no interference.

14. Even otherwise, the principle of giving a second show cause notice to the delinquent employee is not required to be given under the Industrial Law. The requirement of a second show cause notice as contemplated under Article 311 of the Constitution of India is not necessary nor proper otherwise it would be equating industrial workers with civil servants. Service Jurisprudence is entirely different from Industrial Jurisprudence and both should be kept separately and should not be mixed together.

15. It would be a different matter if the standing orders of the Company provided that the delinquent employee was entitled to a copy of the enquiry report and that he should also be given a second show cause notice.

16. In the present case, Clause "M" of the standing orders relating to the employment of workers in Vacuum Pan Sugar Factories states as under:

M. Suspension or Dismissal for misconduct pending enquiry into alleged misconduct and acts or omissions which constitute misconduct:

(1) ???????.

(2) Any workman who is found by the Manager/ Management after proper enquiry, to be guilty of misconduct, will be liable to be dismissed subject to the provisions of Clause M (4) or alternatively to be punished as under either singly or jointly ;

(3) ???????.

(4) No order of dismissal or suspension or withholding of increment shall be made unless the workman concerned is informed of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and a proper enquiry has been made by the manager or any other officer of the factory authorized by him. The workman concerned may require an officer of the union/ Federation to represent his case in such enquiry.

(5) In awarding punishment under this standing order, the Manager shall take into account the gravity of the misconduct and the previous record, if any, of the workman and any other extenuation or aggravating circumstances that may exist.

(6) All orders of dismissal or suspension or withholding of increment shall be made in writing and shall contain full reasons. A copy of the finding of the Enquiry Officer shall be supplied immediately to the worker or his representative Union on demand.

17. From a perusal of the aforesaid provisions it is clear that there is no requirement of furnishing an enquiry report to the Petitioner and the same would be furnished on a demand being made by the Petitioner. Further, there is no provision for giving a second show cause notice.

18. In view of the aforesaid, I hold that the Petitioner was not required to be given a copy of the enquiry report nor was he required to be given a second show cause notice. The contention raised by the learned Counsel for the Petitioner is accordingly rejected.

19. The contention of the learned Counsel for the Petitioner that the enquiry was not fair and proper and that no proper opportunity of hearing was given to the Petitioner is devoid of any merit. The Industrial Tribunal has given a categorical finding of fact that the domestic enquiry was conducted in a fair and proper manner and that full opportunity of hearing was provided to the Petitioner. The findings given by the Tribunal are findings of fact which cannot be questioned in a writ jurisdiction under Article 226 of the Constitution of India. Consequently, the argument of the learned Counsel for the Petitioner fails.

20. The last submission of the learned Counsel for the Petitioner was that the quantum of punishment awarded by the management did not commensurate with the misconduct. The learned Counsel for the Petitioner submitted that a lesser punishment should have been awarded to the Petitioner instead of passing the order of termination. The Tribunal considered this question and found that the order of termination was justified in view of the gravity of the offence. In my opinion, the finding given by the Tribunal does not suffer from any error of law.

Where the enquiry was consistent with the service rules and the enquiry conducted was in accordance with the principles of natural justice, the Court should, not interfere with the quantum of punishment unless it is shown that the penalty awarded was vitiated by mala fides. In the present case, there is no allegation that the order of termination was vitiated by mala fides.

21. Even otherwise, I find from the record that the purpose of manning the dispensary for all the 24 hours was defeated by the disappearance of the Petitioner on that particular date when a sick person was brought and could not be given medical attention immediately, which resulted in the death of that person. The Petitioner was eventually found in a drunken state. If a person is drunk, his presence on duty becomes all the more dangerous. In my view, the management cannot afford to have such a person on duty, who will risk the life of a patient who comes to the dispensary for medical aid. Further, I find that the Petitioner had been threatening other employees and Superior Officers exerting disorderly and riotous behaviour with others. The management also considered the past record and found that he was not a fit person. Accordingly, I am of the opinion that the order of punishment was rightly recorded, which were neither harsh nor excessive.

22. In view of the aforesaid, I find no merit in the writ petition and is dismissed. In the circumstances of the case, there shall be no order as to cost.