

(2010) 10 JH CK 0026
In the Jharkhand High Court
Case No : Writ Petition (L) No. 5191 of 2008

Sukh Ram Manjhi

APPELLANT

Vs

Management Bokaro Steel Plant

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2011) 128 FLR 462

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : A.K. Mehta, for the Appellant; G.M. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the petitioner-workman and learned Counsel for the respondent-Management.

This writ application has been filed by the petitioner-workman, Sukh Ram Manjhi against the Award dated 28.1.2006 passed by the Presiding Officer, Labour Court, Bokaro Steel City, Bokaro in Reference Case No. 2/2001, which is contained in Annexure-1, whereby the said Labour Court in a reference made by the Government of Bihar vide its notification dated 27.9.2000 which is as follows: "Whether the termination from service of workman Sri S.R. Manjhi, khalasi Staff No. 452376 Instrumentation (O) Bokaro Steel Plant, Bokaro Steel City by the management is justified? If not what relief workman is entitled to? came to a finding that the termination from service of workman Sri S.R. Manjhi, khalasi Staff No. 45,2376 Instrumentation (O) Bokaro Steel Plant, Bokaro Steel City by the management is justified?

It is submitted by the learned Counsel for the petitioner that the learned Presiding Officer, Labour Court committed an error of law in coming to a finding that the reference made after 14 years and the workman was terminated as per the Standing Order that he had lost his lien over the service. The loss of lien

being automatic, the workman thereafter did not remain in service, is bad finding, since it has been held by Hon"ble Supreme Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., , that no lien order is bad and in violation of section 25F of the Industrial Disputes Act.

2. On the other hand, learned Counsel for the Management-respondent has submitted that the workman was terminated as per the Standing Orders of SAIL/ Bokaro Steel Plant, S.O. No. 20(xi) and according to the said clause if the workman is absent for more than 15 days he shall be presumed to have left the services of the Company on his own accord without notice. But, in the instant case, when the workman failed to report his duty, the Management of Bokaro Steel Plant waited for about four months and then sent registered notice on 5.10.1985 vide Ext. M-7 at his home address and directed him to report for duty on or before 13.10.1985. But the workman did not appear and ignored the notice and then recourse of Clause 20(xi) was taken and he cannot say that the principle of natural justice has been violated. The Management-respondent has relied upon a judgment in the case of Heavy Engineering Corporation Limited Vs. Lidha Oraon and Others, . It is further submitted that in the Standing Orders of Heavy Engineering Corporation Ltd. similar Clause 15 (x) exists and the same was upheld on the basis of the latest Supreme Court's judgment reported in Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another,

3. With regard to other points taken by the workman-petitioner that in absence of any written statement the Labour Court wrongly considered the fact that the reference was made after a long delay.

4. It is submitted by the learned Counsel for the Management that the question of delay is based on undisputed and admitted case and point of law can be raised at any stage, for this proposition, he has relied upon a decision in the case of U.P. State Road Transport Corporation Vs. Babu Ram, . Lastly, the Counsel for the Management-respondent submitted that the finding of the Labour Court is based on fact and it cannot be reconsidered under writ jurisdiction of Court. He has relied upon a judgment reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, and referred to in (2010) 5 SCC 497 at para 14.

5. After hearing both the parties and going through the record, the main point taken by the Counsel for the "workman-petitioner is that it has been held in the judgment of D.K. Yadav Vs. J.M.A. Industries Ltd., that the rule of loss of lien is bad in law, I find that this Court in the case of Heavy Engineering Corporation Limited Vs. Lidha Oraon and Others, , considering the similar provision of HEC Ltd., came to a finding that the workman was not entitled to be reinstated and Standing Order 15(x) of HEC Ltd. was fully complied and requirement of principle of natural justice was fully complied with.

6. Let us first consider both the Standing Orders of SAIL/Bokaro Steel Plant S.O. No. 20 (xi), which reads as under:

If a workman remains absent without permission or overstays the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment and his service will automatically stand terminated unless he returns within 8 days of the expiry of the leave or the date from which he absented and explains to the satisfaction of the Management his absence without permission or inability to return before the expiry of the leave. Where, however, the period of such absence exceeds 15 days, the workman shall be presumed to have left the service of the Company of his own accord without notice.

The Standing Order of HEC Clause 15 (x), which reads as under;

The workman/employee who remains absent from duty without leave or fails to return to duty after expiry of the leave originally sanctioned or subsequently extended shall be liable to disciplinary action. Where the period of such absence exceeds 15 days the management may terminate his lien on his appointment after giving one month's notice of their intention to terminate his lien, unless the workman/employee returns to duty before the expiry of the period specified in the notice and submits application for regularising his absence.

7. Thus, from reading both Standing Orders, it is apparent that although there is no provision for giving notice in the Standing Order of SAIL/Bokaro Steel Plant, S.O. No. 20(xi) and in the Standing Order of HEC there is a provision of giving one month notice and it was held in the judgment of HEC that if one month notice is not given then the order of loss of lien will be bad in law. The Division Bench of this High Court relying on the judgment of Punjab and Sind Bank and Others Vs. Sakattar Singh, came to a finding that if the Management after absence for more than 15 days from the date of expiry of the period of lien issued notice and even after notice the workman does not appear and filed any explanation for his absence then his services can be terminated. In the instant case, as it appears that the Labour Court has fully considered the case of the workman at paras 10 and 11 of his judgment, he considered the fact that the workman remained absent from his duty right from 11.6.1985 and remained absent till 16.5.1990, a notice was sent to him by the Management vide Ext. M-7 on 5.10.1985 at his home address, directing him to report for duty on or before 13.10.1985 and explanation for such unauthorised absence, but the workman did not report till 16.5.1990 then only the provision of Clause 20(xi) of the Standing Orders was complied, which was similar to HEC case and as such there is no violation of natural justice as has been held in the case of HEC Ltd. (supra) in para 20: "It was not a case of termination of retrenchment, rather in terms of Clause 15(x) of the Standing Orders of the respondent-Company lost his lien on his anointment and he was not entitled to reinstatement." The Hon"ble Division Bench held that the requirement of the principles of natural justice are that the workman should know the nature of the complaint or acquisition (ii) an opportunity to state his case and (iii) the management should act in good faith which means that action of the management was fair, reasonable and just and it was held that all these three criteria have been fully complied in the present

case. In the present case also these three criteria has been complied by giving one month notice to the workman and as such I find no merit in the workman's case on this common. As far as delay is concerned, the point of delay has already been considered by the Presiding Officer, Labour Court, who found that the reference was made after a long delay and as such the reference itself was bad. The Hon''ble Supreme Court has relied by the Management in the case of Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, , reiterated the decision of the Supreme Court and held that reference made after a long delay of 9 years after termination of the service of a workman. The delay is a fatal and relied in earlier decision of the Supreme Court reported in the case of Sudamdih Colliery of Bharat Coking Coal Ltd. In the instant case, the Labour Court has discussed the matter fully and found that although the notice was issued to the workman after he failed to report for his duty for more than 15 days. The Management waited for 4 months and thereafter sent a notice on 5.10.1995 thereafter waiting till 13.10.1885 the provision of Standing Order was revoked and the workman raised the dispute on 24.11.1999 after 14 years after the order of termination by Ext. M-4 dated 25.11.1985, the copy of the said order was handed over to the workman admittedly on 17.5.1990 and he came to join the Department of Management Company, but in spite of that he raised the dispute after nine and half years and as such rightly held that the reference was also bad only on the ground of delay.

I find no merit in the writ application, the same is accordingly dismissed.