
(2012) 06 DEL CK 0004
In the Delhi High Court
Case No : LPA No. 896 of 2011

Suman Tuteja

APPELLANT

Vs

Hindalco Industries Ltd

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 12(3)

Citation : (2012) 4 LLJ 557 : (2012) LLR 902

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.L. Hans, for the Appellant; Sayed Shahid Hussain Rizvi, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. The appellant herein (hereinafter referred to as the workman) had challenged her termination from services by the respondent (hereinafter referred to as the management) by invoking the machinery provided under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Conciliation proceedings started which ended in failure and the Government of NCT of Delhi, as "appropriate Government", referred the dispute vide orders dated 14.7.1987 for adjudication to the Labour Court, Tis Hazari, Delhi. This reference was decided in favour of the workman as vide award dated 25.11.1999, the learned Labour Court held the termination to be illegal and unjustified and directed reinstatement back in service with continuity of service

and full back wages including intervening increments and all other attendant benefits. The management challenged this award by filing writ petition under Article 226 of the Constitution of India and vide impugned judgment dated 8.9.2011, the learned Single Judge has allowed the writ petition thereby setting aside the award and holding that the termination was valid and justified. This LPA is preferred by the workman against the judgment dated 8.9.2011 passed by the

learned Single Judge. Now the facts in detail.

FACTS IN DETAIL

The workman was appointed as a Stenographer with the management with effect from 16.07.1974 at New Delhi in its Head Office. One of the terms of her appointment stipulated in the appointment letter was that her services could be transferred anywhere in India. She worked in the Head Office at Vandana Building, Tolstoy Marg, New Delhi till 01.07.1978. On 01.06.1978, she was transferred from the post of Stenographer to that of Receptionist-cum-Telephone Operator on her own request. The management has a staff house at 69, Ring Road, Lajpat Nagar III, New Delhi. Vide order dated 13.02.1986, she was transferred to the said Staff House as according to the management, there was a requirement of Receptionist-cum-Telephone Operator there. At that time, she was on maternity leave. Therefore, this transfer order was sent to her by registered post. Subsequent reminders were also sent to her by UPC or by hand. According to the workman, she did not receive any of these orders except letter dated 27.02.1986 which was received by her maid when she was not at home. In the meantime, she had sought extension of leave up to 28.02.1986 which was granted by the management. On 01.03.1986, the workman reported for duty at the Head Office. However, she was not taken on duty as she was told that her place of posting, now, was Staff House at Lajpat Nagar. 02.03.1986 being Sunday, she went to Head Office again on 03.03.1986. Now she was handed over transfer orders dated 03.03.1986. Next day, i.e. on 04.03.1986, she returned for duty at Staff House and requested for re-transfer to Head Office on the ground that Staff House was used as Guest House for outsiders and marriage parties etc. On the following day, i.e. 05.03.1986, she did not join duties. On 06.03.1986, she submitted a leave application for three days which was granted to her. She joined duties on 08.03.1986 till 10.03.1986 at Staff House. However, from 11.03.1986, she again started absenting. During this period, she submitted another representation to the management on 08.03.1986 requesting it to review the transfer order and post her back to the Head Office. This request was specifically rejected on 11.03.1986. She however refused to join the duties at Staff House and vide her letter dated 12.03.1986, she specifically alleged that she was smelling some wrong motives of some of the officials by posting her in the Staff House.

2. The management sent letters dated 15.03.1986, 20.03.1986, 24.03.1986 and 27.03.1986 asking her to join duties failing which suitable action would be taken against her. She did not comply with the mandate of those letters and responded vide letter dated 24.03.1986 reiterating that it was not possible for her to report for duty at Staff House. On 25.03.1986, she again made a request that she should be transferred back to the Head Office. This request was again specifically turned down vide letter dated 27.03.1986 and she was asked to join duties within three days of receipt of this letter. The workman did not budge and remained absent. On 09.04.1986, she submitted medical leave for the period

from 11.03.1986 to 15.04.1986 enclosing therewith medical certificate dated 31.03.1986.

4. When this kind of correspondence was exchanged between the parties both sticking to their respective stands, the workman approached the Conciliation Officer challenging her transfer as malafide. Conciliation proceedings started by the Conciliation Officer. Management was summoned. On 15.04.1986, which was one of the dates fixed, the Conciliation Officer was not present. The case was adjourned to 30.04.1986. However, the note sheet that was recorded on 15.04.1986 by the clerk of the Conciliation Officer reads as under:

...Both parties are present. The management and the workman side filed authority letter. The next date is fixed for 30.4.86 at 11.30 a.m. On the joining after leave she will remain in the Head Office till pendency of the case." Sd/- Sd/- Avdhesh Kumar H.L. Hans

4. It would be pertinent to point out at this stage that the management specifically took a stand before the Labour Court that the words "on the joining after leave she will remain in the Head Office till pendency of the case" were added wrongly by the clerk of the Conciliation Officer and Mr. Avdhesh Kumar, representative of the management could not have given any such statement because he had simply gone there to collect the papers relating to the case. There is much controversy about the validity of these proceedings to which we would advert to at the appropriate stage.

5. Proceeding with the narration of facts, when the case was taken up by the Conciliation Officer with the senior executive "for finding out the solution about the settlement dated 15th April, 1986", the next date was fixed for 5th May, 1986. However, no amicable solution could be found thereafter and the conciliation proceedings ended in failure on 08.09.1986.

6. While the aforesaid conciliation proceedings were taking place, in the meanwhile, the management served charge-sheet dated 29.04.1986 to the workman. Charge levelled was that the workman was unauthorizedly absent from duty from 11.03.1986 onwards despite having received number of communications directing her to join the duties. The workman replied to the same on 12.05.1986. As per the management, even thereafter on 30.05.1986, she was asked to resume duties. However, as she failed to do so, inquiry proceeded. She participated in the inquiry along with her lawyer. After the conclusion of the departmental inquiry, the inquiry officer submitted a report dated 25.09.1986 holding that charge was proved. On that basis, order dated 01.10.1986 was passed terminating her services with immediate effect. The workman approached the Conciliation Officer again questioning the validity of termination from service. Conciliation proceedings ended in failure whereafter following disputes was referred vide order dated 14.07.1987:

Whether the termination of services of Smt. Suman Tuteja is illegal and/or unjustified and if so, to what relief is she entitled and what directions are

necessary in this respect?

7. The Labour Court framed preliminary issue as to whether the inquiry was held in a fair manner. On this issue, order dated 20.03.1997 was passed holding that the inquiry was unfair and not in accordance with the principle of natural justice. The management filed W.P. No.3653/1997 questioning the aforesaid order. This writ petition was disposed of by this Court permitting the management to raise the issue after the final award is passed.

8. In the meanwhile, after the issue of the inquiry was decided in favour of the workman, she moved an application for interim relief which was allowed vide order dated 20.10.1997 by the Labour Court. This order was also challenged by the management by filing W.P. No.1797/1998. On 16.04.1998, this Court granted stay in the said writ petition. This interim order was further modified on 14.07.1998. While the writ petition was pending, final award dated 25.11.1999 was passed by the Labour Court holding the termination to be bad in law. As W.P. No.1797/1998 became infructuous, it was permitted to be withdrawn with liberty to challenge the final award.

AWARD OF THE LABOUR COURT

9. The Labour Court had framed the following issues on 01.03.1990:

1. Whether the staff house situated at 69, Ring Road, was an establishment under the Delhi Shops & Estt. Act? If not, to what effect?
2. Whether the dismissal of the workman was made during the pendency of the conciliation proceedings before the conciliation officer? If so, its effect?
3. Whether the inquiry conducted by the management against the workman was fair and proper?
4. As in terms of reference.

10. As pointed out above, issue regarding validity of inquiry was decided on 20.03.1997. Thereafter, the Labour Court gave an opportunity to the management to prove charge of misconduct levelled against the workman by adducing evidence before the Court. The management produced one witness Sh. Sanjeev Narain who filed his affidavit in evidence and was cross-examined on behalf of the workman. The workman herself appeared as witness and filed her affidavit in defence. She was cross-examined on behalf of the management. First issue was decided by the Labour Court holding that Staff House was an establishment under Delhi Shops and Establishment Act, 1954. We need not discuss this issue in detail as that no longer remains the subject matter of challenge. The finding of the Labour Court on Issue No.2 was as under:

The first part of the issue is decided in favour of workman and against the management, and with regard to second part of the issue, i.e., effect of dismissal of workman during pendency of conciliation proceedings, both parties are evenly placed and it has no effect in the facts and circumstances of the case.

11. With this, the Labour Court addressed issue No.4 which was the core issue as entire case of the workman is on the charge of unauthorized absence and consequential punishment order which was challenged on the ground that against the transfer order, not only conciliation proceedings were pending, the management had even given a statement before the Conciliation Officer on 15.04.1986 that she would remain in the Head Office till the pendency of the case. On that basis, submission of the appellant was that when she was to be allowed to join the duties at the Head Office which was not done and in view of that settlement she could not be forced to join the duties at Staff House, it could not be said that she was unauthorizedly absent.

12. The Labour Court, in the first place, pointed out that vide charge sheet dated 29.04.1986, the workman was directed to explain the charge of disobedience of the transfer order. This according to the Labour Court was defective charge as she had in fact joined the duties at Staff House on 04.03.1986 and, therefore, transfer order stood complied with and there was no question of disobedience of the transfer order. Thereafter, the Labour Court addressed the other allegation, which is the main one, regarding the absence of the workman from duty without any cause or information. In view of this nature of charge, as per the Labour Court, what was to be seen was as to whether the workman was absent from duty after joining at the Staff House "without any cause or information or justified reasons and whether the management had been able to prove the same". The Labour Court divided the alleged period of absence into two, namely, 11.03.1986 to 15.04.1986 and period from 15.04.1986 till the order of termination. As far as the first period is concerned, the Labour Court took note of the fact that the workman had applied for leave with effect from 11.03.1986 to 15.04.1986 along with medical certificate dated 31.03.1986 of Dr. R.A. Garg from Holy Family Hospital, Okhla Road, New Delhi certifying that baby of the workman had been suffering from whooping cough for the last one month and required intensive maternal care as well as continuous attention of the mother. The Labour Court observed that validity of this medical certificate was never questioned by the management and in the absence of any evidence produced by the management that the medical certificate was not genuine, nor even plea taken in this behalf and in the absence of any evidence that the request of the workman for leave for the said period was declined, workman could not be treated as absent for the period from 11.03.1986 to 15.04.1986.

13. Coming to the second period of 15.04.1986 onwards, as per the Labour Court, the position materially changed in view of the

conciliation proceedings dated 15.04.1986 when it was agreed by the management's representative that "on the joining after leave she will remain in Head Office till the pendency of the case". The Labour Court further noted that even on 30.04.1986 when Shri Sanjeev Narain, Marketing Executive of the management appeared, he "agreed to discuss the matter with senior executive and finding out the solution to the settlement dated 15.04.1986". On the basis of

the aforesaid, the Labour Court concluded that vide oral settlement dated 15.04.1986, it was agreed on behalf of the management that the workman was to remain in the head office even when no memorandum of settlement under sub-section (3) of Section 12 of the Act was signed, but this would not deprive the workman the benefits thereof on account of admission on behalf of the management on 15.04.1986 and 30.04.1986 in the conciliation proceedings. These proceedings are nothing but consent/admission of the management allowing the workman to join the duties at the head office. The workman had specifically stated that in view of the aforesaid order sheet dated 15.04.1986, she reported for duty at head office on 15.04.1986 onwards but was not permitted to mark attendance even though she was present there throughout. On this basis, the Labour Court held that it could be concluded that she was not unauthorizedly absent. It was more so when no evidence was led by the management after the decision of preliminary issue No.3 on 20.03.1997, wherein aforesaid observations were made. Thus, no charge of misconduct was proved.

ORDER IN THE WRIT PETITION

14. The learned Single Judge has not agreed with the Labour Court that first spell, i.e. from 11.03.1986 to 15.04.1986 can be treated as condoned in view of the leave application submitted by the workman. According to the learned Single Judge, after 11.03.1986, the workman submitted application for leave only on 09.04.1986; in the meanwhile, the management had categorically replied to her on 27.03.1986 rejecting her request and calling upon her to resume duty at Staff House within three days of the receipt of the said letter failing which action would be taken against her. Consequently, there was no implied acceptance of the leave application. In respect of second period between 16.04.1986 to 29.04.1986, the learned Single Judge has observed that Labour Court wrongly went by the conciliation proceedings dated 15.04.1986, as that was the noting by the clerk of the Conciliation Officer which was without jurisdiction as conciliation proceedings could only be drawn by the Conciliation Officer. It is further observed that Section 12(3) of the Act mandates that report of settlement of a dispute arrived at during the conciliation proceedings has to be sent by the Conciliation Officer to the appropriate Government and nothing of that sort had happened. Therefore, there was no such settlement, more so when ultimately in the conciliation proceedings which concluded on 08.09.1986, it was recorded that no settlement could be arrived at. The position is summed up by the learned Single Judge in the following words:

"16. Having held the SH to be a part of the establishment of HIL, the Labour Court ought to have held the continued absence of Respondent No. 1 by refusing to report for duty at the SH, despite being directed to do so by the management, constituting unauthorised absence without sanctioned leave. There was no implied sanction of leave by the management. The correspondence placed on record substantiates this conclusion. It also shows that even after the chargesheet, the management by the letter dated 30th May 1986 required

Respondent No. 1 to report for duty at the SH. This was also disobeyed by Respondent No. 1. In the circumstances, the fact that she remained continuously absent from her place of work stood proved. The conclusion to the contrary arrived at by the Labour Court cannot be sustained in law.

THE APPEAL

15. At the time of hearing of this appeal whereas learned counsel for the appellant relied upon the findings of the Labour Court and his submission was that these findings were recorded on the proper appreciation of the factual matrix and there was no reason to come to the contrary conclusion, that too in exercise of powers under Article 226 of the Constitution as the scope of judicial review was very limited, it was argued that the learned Single Judge could not sit in appeal over the findings and re-appreciate the evidence for itself which was outside its jurisdiction, unless it could be shown that the findings of inferior tribunal suffered from error of jurisdiction or from breach of principle of natural justice or is vitiated by manifest or apparent error of law, relying upon the judgment of the Supreme Court in *Harbans Lal Vs. Jagmohan Saran*, . Learned counsel for the management, per contra, argued that the entire order of the learned Single Judge was based on legal position and the facts appearing on record were appreciated having regard to the correct position in law and, therefore, it was a valid order.

16. We have minutely gone through the orders both of the Labour Court as well as the learned Single Judge and given our thoughtful consideration to the submissions made by counsel for both the sides. At the outset, we would like to point out that this is a case where on the charge of unauthorized absence, the services of the workman were terminated by the management. Facts noted above would show that the workman was transferred from Head Office to Staff House. She initially joined the said place of transfer. Thereafter, she made request to re-transfer her back. This request was specifically declined and she was asked to resume duties at Staff House only. She submitted leave application seeking leave from 11.03.1986, though on 09.04.1986, on the ground that her new born baby was sick and this application was supported by medical certificate. In the meantime, she approached the conciliation machinery challenging the transfer on the ground that it was malafide and the conciliation proceedings commenced thereupon. It is during the conciliation proceedings that charge sheet for unauthorized absence was served upon her.

17. Since the inquiry was held to be vitiated and the management was given an opportunity to prove the charge before the Labour Court, the matter is to be examined on the basis of evidence produced before the Labour Court about the alleged misconduct of the workman, namely, unauthorized absence from 11.03.1986 onwards. No doubt, merely because workman has raised the industrial dispute regarding transfer would not mean that there is an automatic stay on transfer and even when the conciliation proceedings are pending, the workman is supposed to join the transfer place of posting unless there is a

specific stay order passed by a court of competent jurisdiction. However, in view of the nature of the charge, the focus has to be on the issue as to whether the workman remained unauthorizedly absent from duty without any cause or information or justified reasons as that was the thrust of the charge.

18. In the instant case, first period of the absence is from 11.03.1986 to 15.04.1986. The workman had submitted leave application for this period supported by medical certificate. It cannot be said that the leave application is automatically sanctioned. It is also correct that the management had written letter dated 27.03.1986 asking the appellant to join the duties within three days. However, application was submitted subsequently, i.e. on 09.04.1986. Thereafter, there is no communication of the management turning down this request for leave specifically. There is no letter also, after 09.04.1986, asking her to join duties at the Head Office. Therefore, we are of the opinion that even when there was no overt act on the part of the management in sanctioning the leave, since this leave was supported by medical certificate, it cannot be stated that she was absent for this period without any sufficient cause. This conclusion of ours get strengthened when we find that in the evidence produced before the Labour Court there is no whisper by the management witness about this leave application and how it was treated. We state at the cost of repetition that Labour Court was to examine the matter on the basis of evidence produced before it on record. Thus, we find that Labour Court was right in concluding that in the absence of any evidence produced by the management that the medical certificate was not genuine or that the leave application was specifically denied, the charge of willful unauthorized absence for the period from 11.03.1986 to 15.04.1986 is not made out. This conclusion gets further support from the proceedings dated 15.04.1986 before the Conciliation Officer. Though we would consider the validity of these proceedings in detail hereinafter, what we are emphasizing at this stage is that it was recorded that "on the joining after leave she will remain in the Head Office till the pendency of the case". The parties at least agreed on that date, that she was on leave.

19. Coming to the period after 15.04.1986, we are of the opinion that matter cannot be looked into from the narrow angle as to whether recording of 15.04.1986 amounts to "settlement" under the Act and such a settlement is not valid as it is not in conformity with Section 12 of the Act. The focus cannot be on this aspect, i.e. whether it is a settlement or not. On the contrary, focus is to be on the issue as to whether the workman can be treated as unauthorizedly absent after 15th April, 1986 in view of the said recording in the order sheet of 15.04.1986. Shorn of any technicalities, fact remains that Sh. Avdhesh Kumar was the representative of the management who appeared in the conciliation proceedings on 15.04.1986. Even when conciliation officer was on leave, a statement is recorded that the workman would remain in the head office till the pendency of the case which is signed by Sh. Avdhesh Kumar. It is not to be treated as order of the clerk of the Conciliation Officer or that he had no authority to pass such an order. It is to be treated as statement of the parties.

More importantly, from this statement, the question of conduct of the workman is to be decided. Obviously when such a settlement is recorded, the workman could legitimately infer that she is treated on leave at present and thereafter she has to report to the Head Office for duty. She had said so specifically in her statement that she returned for duty after 15.04.1986.

20. When we see the proceedings of 15.04.1986 in conjunction with proceedings of 30.04.1986, a distinctive feature which needs to be noted is that the statement of 15.04.1986 is discussed on 30.04.1986. On that date, Conciliation Officer was present. From the side of management, it is the marketing executive, i.e. a senior officer was present. He agreed to discuss the matter with senior executive for "finding out the solution about the settlement dated 15.04.1986". Thus, he agreed that matter would be discussed with the higher management and solution would be found out pertaining to the settlement recorded on 15.04.1986. In such a state of affairs, can it be said that the absence of the workman from Staff House was willful. Could not she presume, on the basis of these proceedings before the Conciliation Officer, that the matter is under consideration and is being sorted out and, therefore, she could report to the Head Office. In any case, it would be difficult to hold that she was willfully and unauthorizedly absent from duty.

21. We agree with the submission of learned counsel for the workman that when the Labour Court had appreciated the facts in a broad manner and arrived at the aforesaid findings, which were not perverse and view taken by the Labour Court was plausible, the learned Single Judge while examining this award in judicial review under Article 226 of the Constitution could not have interfered with these findings.

22. We thus set aside the impugned order of the learned Single Judge and hold that the termination of the services of the workman was not proper. We would now revert back to the question of relief. The Labour Court has granted reinstatement with continuity of service and full back wages. Having regard to the fact that there are strained relationship between the parties coupled with the fact that termination took place way back in the year 1986, we are of the opinion that a relief of reinstatement would not serve any purpose. Instead, it is a case where lumpsum compensation should be awarded. Having regard to the totality of circumstances, namely, the number of years of service which

was rendered by the workman before her termination, the intervening period etc., we are of the view that interest of justice would be sub-served if we award compensation of Rs.5 Lakhs. The award of the Labour Court is modified to the aforesaid extent holding that on the payment of the said compensation, the appellant shall have no right to claim reinstatement or re-employment with the management and the management shall be in full and final satisfaction of all her claims. The appellant shall also be entitled to costs quantified at Rs.25,000/-.