
(2001) 04 AHC CK 0091
In the Allahabad High Court
Case No : C.M.W.P. No. 23291 of 1997

Sunil Kumar Pathak

APPELLANT

Vs

Chairman, Indian Oil Corporation and others

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 3 AWC 1696 : (2001) 89 FLR 1112 : (2001) LabIC 3518 :
(2002) 1 LLJ 410 : (2001) 2 UPLBEC 1271

Hon'ble Judges : O. Bhatt, J;M. Katju, J

Bench : Division Bench

Advocate : Lalji Sinha and Ravi Kant, for the Appellant; V.R. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

M. Katju and O. Bhatt, JJ.—This writ petition has been filed against the impugned order dated 20.5.1997, Annexure-1 to the writ petition by which petitioner was deemed to have abandoned his job and his name has been struck off from the rolls of the respondent corporation.

2. Heard learned counsel for the parties. We have also perused the counter and rejoinder-affidavits, it is alleged in paragraph 1 of the petition that the petitioner joined the service of Indian Oil Corporation as Accounts Officer on Probation after having qualified in written and interview test held on 15.1.1990. The petitioner was thereafter confirmed on the post of Accounts Officer in July. 1990. He was promoted as Senior Accounts Officer in 1994.

3. In paragraph 5 of the writ petition, it is alleged that the petitioner proceeded on earned leave to Bombay from 11.9.1995 to 22.9.1995 with prior permission of the concerned authority. However, the petitioner for unavoidable reasons could not join his duty and applied for extension of leave from 23.9.1995 to 6.10.1995. It is alleged that the petitioner Joined duty on 13.10.1995 and applied for

extension of leave from 7.10.1995 to 27.10.1995. This application was allowed and the petitioner worked till 6.11.1995 and received salary.

4. In paragraph 6 of the petition, it is alleged that the petitioner again fell ill as he was suffering from Hepatitis. He sent an application for leave from 7.11.1995 and resumed duty on 27.12.1995 when he was declared fit by the doctor. In paragraph 7. It is alleged that on 27.12.1995. a letter was issued by the Chief Finance Manager for producing the original papers with regard to the petitioner's treatment and for his medical examination at Indian Oil Corporation Hospital. In paragraph 8 of the petition, it is alleged that the petitioner presented himself for medical examination on 1.1.1996 before the Chief Medical Officer of the Corporation Hospital at Mathura and on 2.1.1996 the Pathological test was carried out. The petitioner submitted original papers of his treatment as demanded by the Chief Finance Manager and Dr. S. P. Singh attested the same and gave fitness certificate.

5. In paragraph 9 of the petition, it is alleged that on 6.1.1996, an application was made by the petitioner to the Senior Finance Manager for leave in order to escort the petitioner's father to Baroda for treatment. His application was rejected and a warning was issued to him to Join duty by 29.1.1996 otherwise his service will be terminated. In paragraph 10 of the petition, it is alleged that the petitioner submitted his joining report on 29.1.1996 and requested for allocation of work. He also submitted his reply on 31.1.1996 to the letter dated 19.1.1996 and stated the reasons for his absence. It is alleged that the petitioner's medical bill was sanctioned by the Chief Finance Manager. In paragraph 11, it is alleged that the petitioner actually worked on 6.2.1996 and signed the entry register and applied for provident fund loan.

6. In paragraph 12, it is alleged that the petitioner sent a registered letter on 9.2.1996 to the Chief Finance Manager on the ground of his Illness as he was suffering from lumbago and sciatica. He also sent applications on various dates for extension of leave, as he was not in a position to join duty. In paragraph 13, it is alleged that on 16.8.1996, the petitioner submitted the Joining report with medical bills and fitness certificate but on account of sickness, the petitioner was again unable to attend the office from 18.8.1996 to 20.5.1997 and applied for leave to the Chief Finance Manager.

7. In paragraph 15 of the petition, it is alleged that on 20.5.1997 the petitioner submitted fitness certificate from the Chief Medical Superintendent and joined duly on 21.5.1997. He was advised by the Senior Finance Manager to report to the Chief Human Resource Manager for allocation of duty but no duty was allocated to him. It is alleged that the petitioner was present in the office till 10.6.1997 when a registered letter appears to have been sent to his residence and was returned with the postal endorsement that the petitioner was on duty in the office.

8. In paragraph 17 of the petition, it is alleged that the petitioner was surprised

to read in the newspaper "Dainik Jagaran" dated 11.6.1997 that he had lost his lien for abandoning his job vide Annexure-1 to the writ petition.

9. It is alleged in paragraph 20 of the writ petition that no opportunity of hearing was given to the petitioner before terminating his service.

10. In the counter-affidavit of the corporation, it is alleged in paragraph 6 that the petitioner was sanctioned leave from 11.9.1995 to 22.9.1995 and he applied for extension of the leave upto 6.10.1995 which was also sanctioned but the petitioner did not report for duty after the extended sanction of leave upto 6.10.1995, i.e., he was absent from 7.10.1995 onwards. Hence the corporation wrote to the petitioner vide letter dated 19.10.1995 pointing out that he is remaining absent unauthorisedly and he ought to report on duty latest by 31.10.1995. On 31.10.1995, the petitioner reported for duty and submitted application for sanction of leave from 7.10.1995 to 27.10.1995. The petitioner remained on duty for about a week till 6.11.1995 and thereafter again remained absent unauthorisedly. In paragraph 7 of the counter-affidavit, it is alleged that the petitioner started remaining absent unauthorisedly without information from 7.11.1995 onwards and on 20.12.1995. i.e., after a month and half, the Corporation wrote to the petitioner advising him to report for duty positively by 26.12.1995 and submit his explanation. True copy of the letter dated 20.12.1995 is Annexure C.A. 1 to the counter-affidavit. On 26.12.1995, a leave application was received by the Corporation from the petitioner seeking leave from 8.11.1995 to 22.12.1995 on the ground that the petitioner was not physically well. This application was not supported by any medical certificate. True copy of the application is Annexure C.A. 2 to the counter-affidavit. The Corporation did not sanction this leave and wrote to the petitioner asking him to produce medical certificate and report to the Chief Medical Officer of the Corporation at Mathura for medical examination. True copy of the said letter is Annexure-C.A. 3.

11. In paragraph 8 of the counter-affidavit, it is alleged that the petitioner was examined by the Chief Medical Officer of the Corporation on 1.1.1996 who found him fit. True copy of the certificate is Annexure C.A. 4. In paragraph 9 of the counter -affidavit it is stated that the application for leave of the petitioner for the period 8.1.1996 to 7.2.1996 was examined by the Corporation and having regard to his long absences in the past and requirement of exigencies of work it was not considered possible to sanction him further leave and he was informed by the letter dated 19.1.1996 that his application for leave cannot be sanctioned and he was advised to Join duly by 29.1.1996. He was reminded that he had not submitted the medical certificate. He was also advised that if he falls to join the duty by 29.1.1996 it will be presumed that he was not interested in continuing his service. His attention was drawn to clause 8 of the relevant rules of the Corporation. True copy of the letter is Annexure C.A. 5 to the counter-affidavit.

12. in paragraph 10 of the counter-affidavit, it is stated that it is incorrect that the petitioner joined duty on 29.1.1996. However, it is correct that his letter dated 31.1.1996 was received by the Corporation in which he made various

unfounded and unbecoming allegation against his senior officers. True copy of the petitioner's letter is Annexure-C.A. 6 to the counter-affidavit. It is further alleged that the petitioner had been applying for leave on false grounds. He had alleged in his application dated 6.1.1996 that he had to take his ailing father to Baroda for treatment but this was absolutely false because he was all along in Mathura. It is also alleged that he was gainfully employed in his private business of selling rice at Mathura. In paragraph 11, it is stated that the petitioner came to the establishment on 6.2.1996 and he did not perform his duty. He came only to record his presence and for personal work. In paragraph 12 it is stated that the Corporation did not receive the petitioner's application for leave as claimed by the petitioner. However, his application dated 14.5.1996 was received in the office.

13. In paragraph 17 of the counter-affidavit, it is stated that the petitioner's name was removed from the roll of the Corporation by letter dated 20.5.1997 which was sent by registered post and when it was received back undelivered it was published in the newspaper. True copy of the order passed by the Executive Director dated 20.5.1997 is Annexure-C.A. 7.

14. A rejoinder affidavit has been filed and we have perused the same. We have also perused the supplementary affidavit and its reply.

15. The respondents are relying on clause 8 of the Indian Oil Corporation Ltd. (Conduct, Discipline and Appeal) Rules, 1980 which states that if an employee overstayed leave beyond the period of leave originally granted or subsequently extended or is otherwise absent beyond 21 days continuously without prior permission or intimation, he shall be treated to have voluntarily abandoned the Corporation's service.

16. In our opinion, the facts of the case are squarely covered by the decision of the Supreme Court in *D. K. Yadav v. J.M.A. Industry Ltd.*, 1993 (3) SCC 249. In view of the said decision, clause 8 of the rules is clearly violative of Article 14 of the Constitution and the petitioner should have been given opportunity of hearing in an Inquiry after charge-sheeting him. Since that was not done, the impugned order dated 20.5.1997. Annexure-1 to the petition is clearly illegal and is hereby quashed.

17. The petition is allowed. The petitioner will be reinstated with continuity of service but in the circumstances of the case without back wages. No order as to costs.