

(1978) 04 AHC CK 0085
In the Allahabad High Court

Symonds and Co. (Pvt.) Limited

APPELLANT

Vs

Maharanidin and Others

RESPONDENT

Date of Decision : 07-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1979) 1 LLJ 189

Hon'ble Judges : R.C. Srivastava, J;K.N. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.N. Singh, J.—This is a petition under Article 226 of the Constitution challenging the validity of the order of the Industrial Tribunal (1), U.P. at Allahabad dated April 28, 1975.

2. Maharanidin was employed as fitter in M/s. Symonds and Company Private Limited, Allahabad. He made an application to the management for grant of one day's casual leave for 11th July, 1974. The leave was granted, He sent an application for extension of his casual leave for two days more, namely, for 12th and 13th July and that was also sanctioned by the management. Maharanidin, however, did not join or resume his duties on 14th July, 1974. Instead he continued to remain absent without any sanction of leave from 14th to 23rd July, 1974. On 23rd July, 1974, the General Manager of the company issued an order which was sent to Maharanidin at his village addressed by registered post. The order stated that since the workman remained absent beyond the period of leave originally granted and subsequently extended and as he had not returned within eight days of the expiry of his leave, he lost his line in accordance with Clause 17(h)(i) of the standing orders and his name was removed from the muster-roll

with effect from 23rd July, 1974 and the workman was directed to collect his dues from the Accounts Department. Maharanidin, however, reported for joining his duties on 27th July, 1974, but he was not permitted to do so in view of the order of the General Manager. Maharanidin filed a complaint u/s 6F of the U.P. Industrial Disputes Act, 1947, before the Industrial Tribunal (1) U.P. Allahabad raising a grievance that the employers have wrongfully terminated his services without obtaining approval of the Tribunal as a dispute relating to bonus between the workman and employers was pending. The Tribunal registered Maharanidin's complaint application as Adjudication Case No. 58 of 1974.

3. The employers contested the proceedings before the Tribunal. On behalf of the employers it was pleaded that the Industrial Tribunal had no jurisdiction to entertain the application or to grant any relief to the workman as the services of Maharanidin stood automatically terminated in accordance with Clause 17(h)(i) of the Standing Orders. The workman on the other hand asserted that the employers had in fact terminated his services by way of punishment without holding any domestic enquiry or obtaining explanation, hence the order of termination was unjustified and illegal. He further pleaded that in the absence of any approval as contemplated by Section 6E of the U.P. Industrial Disputes Act, 1947, the order of termination was illegal. The workman asserted that he had sent a request for leave by means of a post card despatched on 15th July, 1947 to the employers, but he received no reply about the rejection or sanction of his leave. He pleaded that since he was continuously ill, he could not attend to his duties. On 27th July, 1947, he reported for joining his duties along with a medical certificate issued by a registered medical practitioner but he was not allowed to join. On 4th August, 1974, he again made an effort to join his duties and submitted his explanation but the employers refused to accept his explanation.

4. On the pleadings of the parties, Tribunal framed two issues. The first issue related as to whether the employers were justified in terminating the lien of the workman under Clause 17(h) of the Standing Orders while the second issue was as to whether the employers were justified in terminating the services of the complainant-workman without obtaining approval as required by Section 6E of the Act. The Tribunal held that the employers could not legally and justifiably terminate the services of the workman under Clause 17(h)(i) without obtaining his explanation. Since no explanation was obtained from the workman before terminating his services, the order of termination was in violation of principles of natural justice and the standing orders. Secondly, the Industrial Tribunal held that the order of termination in substance was an order of punishment as the workman's past record relating to his habitual absence had been taken into account and as no domestic enquiry was held, the order of termination was illegal. The Tribunal further observed that on the evidence on record it was abundantly proved that the workman was a habitual absentee and, therefore, he was not entitled to his wages. The Industrial Tribunal directed for reinstatement of the workman, with a condition that the workman will not be entitled to get his

past wages.

5. Sri P.K. Mukerji learned Counsel for the petitioner has raised two grounds before us. Firstly, he has contended that since Maharanidin's services stood automatically terminated in accordance with the Standing Orders 17(h)(i) which regulated the service conditions of workman, no approval u/s 6E of the Act was necessary. The Industrial Tribunal had no jurisdiction to grant any relief to the workman. Secondly, he urged that the finding of the Industrial Tribunal that the order of termination was in substance an order of punishment, was perverse. But, even assuming that it was an order of punishment and no domestic enquiry was held, the Tribunal had no jurisdiction to reinstate the workman on the findings recorded by the Tribunal itself.

6. We would deal with these questions seriatim. 6A. Clause 17(h)(i) of the Standing Orders as applicable to the petitioner-company is as under:

(i) In the event of a workman remaining absent in excess of the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (1) he returns within 8 days of the expiry of the period of leave and (2) gives explanation to the satisfaction of the employer of his inability to return immediately after the expiry of the leave period. In case a workman loses his line on his appointment he shall be entitled to be kept on the list of substitutes.

The above clause in the standing orders stipulates that if a workman who may have been granted leave remains absent in excess of the period of leave originally granted to him, he would lose his lien on his appointment unless he joins his duties within eight days of the expiry of the period of leave granted to him and further he furnishes a valid explanation to the satisfaction of the employers relating to his inability to return immediately after the expiry of the leave granted to him originally. If a workman does not return to his duty within eight days of the expiry of leave and if he fails to submit his explanation relating to his inability to return immediately to the satisfaction of the employers, he shall lose his lien on the appointment. In such a case the workman would lose his job automatically by operation of the standing orders which regulate his service conditions and there would be no necessity for issuing any order of discharge or holding of any enquiry.

7. Section 6E(2) of the U.P. Industrial Disputes Act, 1947, lays down that during the pendency of any proceeding in respect of an industrial dispute, the employer may in accordance with the standing orders applicable to a workman concerned in such dispute alter, the Conditions of service applicable to that workman immediately before the commencement of conciliation proceedings or any proceedings before a conciliation officer or a Board or any proceedings before a Labour Court or Tribunal in respect of an industrial dispute. No employer Shall during the pendency of any such proceeding alter the conditions of service of its workmen or discharge or punish whether by way of dismissal or otherwise, for

any misconduct not connected with the dispute. The proviso to the Sub-section lays down that no workman concerned shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Section 6E(2) curtails the right of employers to take action for punishing an erring workman or altering his service conditions during the pendency of a dispute or proceeding pending before the authority concerned without obtaining approval of the authority before whom the dispute may be pending. The question, therefore, arises as to whether an automatic termination of lien of appointment of a workman in accordance with the standing orders would amount to discharge or dismissal from service as contemplated by Section 6E(2) of the Act. In our opinion, automatic termination of a lien in accordance with the standing orders quoted earlier does not amount to punishment or discharge from service as contemplated by Section 6E(2) of the Act, therefore, no approval of Industrial Tribunal was necessary to be obtained. In *National Engineering Industries Ltd. Vs. Hanuman*, , the Supreme Court considered this question and held that where a workman's services terminated automatically under the standing orders, Section 33 of the Central Act would not apply and so an application u/s 33A (Central Act) was not maintainable. Sections 33 and 33A of the Central Act are *pari materia* with Sections 6E and 6F of the U.P. Industrial Disputes Act, 1947. Any interpretation of Sections 33 and 33A by the Supreme Court would squarely apply to the interpretation of Section 6E also, In view of the Supreme Court decision in *Hanuman's* case, the employers were not required to obtain any approval from the Industrial Tribunal and, therefore, no relief could be granted to the workman by the Industrial Tribunal u/s 6E of the Act.

8. The Industrial Tribunal held that under Clause 17(h)(i), the workman's services could not terminate automatically unless his explanation was obtained by the employers. In our opinion the Industrial Tribunal committed a patent error of law in appreciating the scope of the Standing Orders 17(h)(i). As already noted if a workman fails to return after the expiry of his leave within eight days, he must give explanation to the satisfaction of the employers of his inability to return. The Industrial Tribunal interpreted the expression "and" occurring in the said standing orders as "or" and thereupon it concluded that unless both the contingencies namely, that workman returns within eight days after the expiry of the leave and unless his explanation is obtained by the management relating to his failure to return immediately after the expiry of his leave, there would be no automatic termination of his lien. The language of the standing orders does not permit any such construction. In *Management of Shiva Flour Mills Vs. The Workmen and Another*, a similar standing order was considered. The Division Bench held that the word "and" in Clause 9(3) of the Model Standing Orders could not be read as "or" so that both the conditions must be satisfied before there is automatic termination of service of workman. The provisions contained in Clause 9(3) of the Model Standing Orders as interpreted in *Shiva Flour Mills*"

case are *pari materia* with the Standing Orders 17(h)(i) in the instant case. We are in agreement with the views expressed by the Division Bench of Patna High Court. The Industrial Tribunal committed patent error in taking a contrary view.

9. We have considered the second question raised on behalf of the petitioner and we find considerable force in the contention. An Industrial Tribunal has jurisdiction to hold enquiry into the charges against a workman if it records a finding that no domestic enquiry or a proper enquiry was held by the employers. In the instant case there was no question of holding any domestic enquiry as the workman's services stood automatically terminated in pursuance of the standing orders. The Industrial Tribunal, therefore, wrongly assumed jurisdiction in holding enquiry in the alleged charge of habitual absence.

10. In view of the above discussion, we are of the opinion that the award of the Industrial Tribunal is not sustainable in law. In the result we allow the petition and quash the award of the Industrial Tribunal dated 28th April, 1975. The parties shall bear their own costs.