

(1971) 07 PAT CK 0009
In the Patna High Court

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

Their Workmen and Others

RESPONDENT

Date of Decision : 14-07-1971

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1971) 07 PAT CK 0009

Hon'ble Judges : Untwalia, J; Akbar Hussain, J

Bench : Division Bench

Judgement

Untwalia, J.—Tata Iron & Steel Company Limited has obtained a rule against their workmen represented by Tata Collieries Workers' Union, Digwadih (respondent No. 1), the Presiding Officer, Central Government Industrial Tribunal No. II, Dhanbad (respondent No. 2) and the Union of India (respondent No. 3) to show cause why the award of the second respondent dated the 27th of December, 1968 a copy of which is Annexure "7" be not called upon and quashed by grant of a writ of certiorari. Cause has been shown on behalf of respondent No. 1.

2. Shri H.C. Chakravarty, the workman concerned in this case, was working as a clerk in the central bonus and provident fund section of the Digwadih colliery. On 12th August, 1965 the workman applied for one day's leave for some urgent need of work. One day's leave was granted. A copy of the application is Annexure T. On 13th August, 1965 he filed another application to extend his leave by two days more. That application is Annexure "1/a". On 16th August, 1965 he filed a third application asking for further extension of leave up to 21st August, 1965. A copy of this application is Annexure "1/b". On 16th August, 1965 the Senior Office Superintendent by a letter intimated to the workman that his request for extension of leave was refused and he was being marked absent. He was, therefore, advised and asked to resume his duty forthwith, in any event not later than 21st August, 1965 (wrongly mentioned as 21-8-68 in the application). The said letter was sent to the quarters of the workman but could not be delivered to him because he was not found there and the case of the

petitioner-company is that other members of the family refused to receive the letter. On 17th August, 1965 the said letter was sent to the home address of the workman concerned but it was returned undelivered with the endorsement "Delivery Refused". On 26th/28th August, 1965 another letter was sent to the workman concerned saying that since he had overstayed his leave he lost his lien on appointment and he has been placed in the badli list. The said letter also came back undelivered. On 9th October, 1965 and 16th October, 1965 a notice was published in the two daily papers "Jugantar" and "Khan Mazdoor" to the effect that on account of overstay the said workman had lost lien on his appointment. On 22nd November, 1965 the workman reported for duty and produced a medical certificate showing him ill from 16th August, 1965 to 20th November, 1965. The management, in view of the loss of lien of the workman in accordance with Clause 9 of the certified standing orders of the colliery, did not allow him to resume his duty. The respondent-union thereupon raised an industrial dispute which was eventually referred on 12th May, 1966 for adjudication to respondent No. 2 u/s 10(1) of the Industrial Disputes Act, 1947. The question referred for adjudication, as would appear from the impugned award, is

Whether the stoppage of work of Shri H.C. Chakravarty, clerk, central bonus and provident fund section of the Digwadih colliery by the management of Messrs Tata Iron and Steel Company Limited with effect from the 22nd November, 1965 was justified? If not to what relief is the workman entitled?

3. The case of the workman before the Tribunal was that he applied for extensions of leave on 13th August, 1965 and 16th August, 1965. The later application asked for extension of leave up to 21st August, 1965. He reported for duty on 22nd November, 1965 but the employer did not permit him to join duty. It may be pointedly mentioned here that it was not the workman's case anywhere at any time that even after 21st August, 1965 he had filed any other application asking for extension of leave any further. His case was that due to illness he was unable to return to Digwadih and join his duty on the expiry of the extended leave prayed for by him in his application dated 16th August, 1965. His further case was that the stoppage of work was illegal, arbitrary and by way of victimization for his trade union activities. The employer's case in short was that the workman had lost his lien when he did not report for duty in accordance with Clause 9 of the certified standing orders. The extension of leave asked for by the applications dated 13th August, 1965 and 16th August, 1965 was not granted and thereafter the company had taken sufficient steps to notify the termination of the petitioner's lien on his appointment. The employers further pleaded that they were not aware if the affected workman was a member of the Tata Workers' Union.

4. The certified standing orders were exhibit M/4 before the Tribunal. The view of the Tribunal is that they were not applicable to the affected workman who was governed by the old rules, namely, the colliery service rules. The terms of the

certified standing orders, Exhibit M/4, were not applicable to those who had been appointed before 24th August, 1953 when the certified standing orders were made final by the appellate authority under the Industrial Employment (Standing Orders) Act, 1946 (Act 20 of 1946). The further finding of the Tribunal is that the colliery service rules which were in force in the year 1945 were not produced and if produced they would have gone in favour of the workman and that the employers had not rejected the extension of leave asked for by the workman and when, due to illness, he was not able to resume duty before 22nd November, 1965, the management was not justified in not allowing him to join his duty. In regard to the case of the workman being a member of the union and the action taken by the management being for his victimization the only finding is that there was no evidence that the affected workman was not a member of the union. The Tribunal by his award has finally held that the workman is entitled to his back pay and other emoluments with effect from 22nd November, 1965 till the date of his actual reinstatement in his original job or till his services are terminated in accordance with law.

5. The view of the Tribunal that the certified standing orders were not applicable to those employees who had been employed before the year 1953 is obviously contrary to law in view of the decision of the Supreme Court in *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, . On a review of several authorities it has been pointed out that once standing orders come into force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. It is plain, therefore, that the certified standing orders, Exhibit M/4, a copy of which is Annexure "2" to the writ application, did govern the case of the workman concerned. Clause 9 of the certified standing orders read as follows:--

9. Any direct employee of the company other than a miner or loader who desires to obtain leave of absence shall apply in writing to the head of his department or the manager of the colliery. Employees who due to illiteracy do not apply in writing must apply verbally. If the employee remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless:

(i) he returns within 8 days of the expiry of the leave except those who have enjoyed the privilege of 30 days so far, and,

(ii) gives an explanation to the satisfaction of the manager of his inability to return before the expiry of leave. In case the employee loses his lien on the appointment he shall be entitled to be kept on the "badli" list.

In Sub-clause (i) the expression "except those who have enjoyed the privilege of 30 days so far" has created the confusion, if I may say so, in the mind of the Presiding Officer of the Tribunal. Its meaning would be clear if reference is made to the order of the certifying authority who had certified the standing orders in question on 30th July, 1952. A copy of the said order is Annexure "6" to the writ

application. It would be found in paragraph 10 of the said order that on behalf of the workman an objection was taken to the draft provision in that a worker will lose his lien if he does not return within eight days of the expiry of the leave. The ground of the objection was that in the colliery the lien is kept for thirty days after the expiry. Upon this objection, the phrase which I have extracted above from Clause 9(i) of the certified standing orders was added. The appellate authority certified the standing orders with some modification by its order dated 24th August, 1953 a copy of which is Annexure "6/a" to the writ application. There was no further discussion in regard to Clause 9.

6. In the writ application reasons have been stated to explain as to why the old rules could not be filed before the Tribunal and a copy of those rules have been annexed to the writ application here as Annexure "5". On reference to Clause 13 of the said rules it would appear that if the employee remained absent without information for more than thirty days beyond the period of leave originally granted or subsequently extended, a charge sheet was to be issued to his last known address informing him that unless he gave satisfactory explanation of his absence within a period specified in the charge-sheet, his services would be terminated or dispensed with. The provision as to the loss of lien is different and is couched in different language in Clause 9. But I have referred to Clause 13 of the old rules for the purpose of showing that there whatever action followed when an employee absented himself beyond the period of leave granted or extended, followed when such absence was for more than thirty days. And that explains the objection made on behalf of the workmen before the certifying authority and the addition of the phrase in Clause 9(i) of the certified standing orders. In this background it is abundantly clear that the meaning of Sub-clause (i) of Clause 9 was that the workman shall lose his lien on his appointment unless he returned within eight days of the expiry of leave if he was a new workman or unless he returned within thirty days of the expiry of the leave if he was an old workman. Shri Chakravarty was an old workman. He would not have lost his lien if he would have returned within thirty days of the expiry of his leave or even assuming that the two applications for extension of leave were not refused, within the expiry of the extended leave. As I have stated above, there was no third application for extension of leave and, in any view of the matter, the workman lost his lien by the 22nd of September, 1965. He, therefore, could not be allowed to join his duties on 22nd November, 1965. It may also be pointed out here that merely returning within thirty days of the expiry of the leave would not have been sufficient as the second sub-clause is conjunctive and not disjunctive. In support of the views expressed above reference may be made to the decision of the Supreme Court in *National Engineering Industries Ltd. Vs. Hanuman*, followed by two Benches of this Court in *Pure Kustore Colliery Vs. Khan Mazdoor Congress (by General Secretary) and Others*, and *Management of Shiva Flour Mills Vs. The Workmen and Another*. There is, therefore, no escape from the position that the workman had lost his lien and could not be allowed to join his duty on his original appointment on 22nd November, 1965. He could only

be placed on the badli list as he was placed. The fact that he claimed to be ill up to 20th November, 1965 was immaterial as loss of lien on the appointment was automatic and in that view of the matter, question of victimization also did not arise. If the loss of the lien to the appointment is automatic, no action is required to be taken by the employer, and in this connection I may also add that it was not for the employer to prove that the workman was not a member of the union rather the positive had to be proved by him. Be that as it may, in regard to the main questions of law it is abundantly clear to me that the views of the Tribunal are erroneous in teeth of several decisions of the Supreme Court as also of this Court.

7. In the result, I allow the application and quash the award of respondent No. 2 made on the 27th of December, 1968 a copy of which is Annexure "7" to the writ application, by grant of a writ of certiorari. In the circumstances of the case, I shall make no order as to costs.

Akbar Hussain, J.

8. I agree.