
(1976) 11 KL CK 0008
In the High Court Of Kerala

Travancore Rayons Ltd.

APPELLANT

Vs

Travancore Rayons Employees" Union

RESPONDENT

Date of Decision : 29-11-1976

Acts Referred:

Certified Standing Orders — Clause 13(g)

Citation : (1977) 2 ILR (Ker) 73 : (1978) 1 LLJ 84

Hon'ble Judges : Balakrishna Eradi, J

Bench : Single Bench

Judgement

Balakrishna Eradi, J.—The challenge in this writ petition is directed against the award Ext. P 1 rendered by the Labour Court, Quilon in an industrial dispute (I.D. No. 71/69) that had arisen between the Travancore Rayons Ltd-the writ petitioner-and the union representing the employees of the company (first respondent). The said dispute concerns the termination of the services of an employee by name V. Sankaran Nair who was working in the spinning department of the petitioner-company. The said employee was absent from duty without permission continuously for a long time commencing from 28th April, 1968. On the 12th of August, 1968 he applied for a month's leave on the ground of illness without producing any medical certificate. The period of absence from 28.4-1968 to 11-8-1968 was not covered by that application for leave. By a memo dated 16th August, 1968 Sankaran Nair was directed by the company to appear before the company's Medical Officer for a medical examination. But he did not comply with the said direction. On 13th September, 1968 the company informed the employee that since he had been continuously absenting from duty without leave or permission from 28th April, 1968 onwards he would be regarded as having voluntarily left the services of the company and treated as a deserter if he did not report for duty within four days and offer a satisfactory explanation for his unauthorised absence. That communication was sent by Registered Post to the home address that had been furnished to the company by the employee. After the said communication had been sent by the company, a leave application from Shri Sankaran Nair bearing the date 11th September, 1968 requesting for

the grant of leave on medical grounds for the period from 13th August to 13th September, 1968 was received in the company's office. But that application was also not accompanied by any medical certificate. The petitioner-company thereupon issued another memo to the employee on 18th September, 1968 calling upon him once again to report before the company's Medical Officer for a medical examination failing which, the employee was told he will be deemed to have left the services of the company voluntarily as informed in the memo dated 13th September, 1968. The memo sent by the company to Shri Sankaran Nair by Registered Post on 13th September, 1968 was returned with the endorsement that it had been refused by the addressee. The second memo dated 58th September, 1968 was also returned by the postal authorities with the endorsement "not known". The fact remained that the employee had been continuously absenting himself for very much more than eight days without even submitting a proper application for leave and without complying with the direction given to him as early as on 10th August, 1968 to appear before the company's Medical Officer for a physical examination. The management, therefore, took recourse to the provisions of Standing Order No. 13(m) of the certified standing orders of the company and treated Shri Sankaran Nair as having voluntarily left the services of the company and consequently removed his name from the rolls with effect from 9th October, 1968. It is the legality, propriety and validity of the action taken by the company that formed the subject-matter of the issue referred for adjudication

2. Even though an attempt was made by the union to contend before the Labour Court that the employee in question had sent in applications for leave, that those applications had been suppressed by the management, that no communication had been received by the employee from the management directing him to appear before the Medical Officer and that hence it cannot be said that the employee had either disobeyed the said direction or absented himself without submitting proper applications for leave, the Labour Court after a detailed consideration of the oral and documentary evidence produced before it found that the said case put forward on behalf of the workman could not be accepted as true. It has been categorically found by the Labour Court that the workman was absent from duty without leave for a long period and that "the management was justified under the circumstances in treating him as having left the company's services". However, in spite of its having reached the conclusion that Clause 13(g) of the certified standing orders of the company which lays down that any worker who remains absent from duty without leave for eight consecutive days shall be deemed to have left the company's services unless he gives an explanation to the satisfaction of the Manager of the necessity of such absence was attracted in the present case, the Labour Court took the view that since absence without leave for more than eight consecutive days is also a misconduct for which a penalty could be imposed under Standing Order 18(2)(g), the provisions of the two standing orders aforementioned had to be read together and that hence even in a case governed by Standing Order 13(g) the

Management was under an obligation to follow the procedure for termination of service by way of punishment by conducting a proper domestic enquiry. In this view the Labour Court proceeded to hold that the action taken by the company against Sri Sankaran Nair "virtually" amounted to a dismissal from service without holding an enquiry and it could not, therefore, be supported. On the said reasoning the Labour Court passed the impugned award directing the petitioner-company to reinstate Shri Sankaran Nair into service with effect from the date of coming into force of the impugned award, without back wages, on production of a medical certificate of fitness from a Medical Officer not below the rank of a Civil Surgeon.

3. It is urged on behalf of the writ petitioner that the view taken by the Labour Court that even in cases where the provisions of Standing Order 13(g) are attracted the management was obliged to hold a domestic enquiry before terminating the services of the employee concerned is manifestly incorrect and illegal. I find there is force in this contention. Clause 13(g) of the certified standing orders of the company specifically lays down that in the event of any worker remaining absent beyond the period of leave granted to him he shall be considered to be absent and if such absence exceeds 8 consecutive days he shall be deemed to have left the company's services unless he gives an explanation to the satisfaction of the manager regarding the necessity of such absence. It is further stated in Clause (m) of Standing Order No. 13 that any workman who is absent without permission for more than 20 days in the aggregate in a year or 8 days continuously, will be deemed to have voluntarily left the company's services even though he had applied for leave and this leave had not been sanctioned. The effect of Clauses (g) and (m) of Standing Order 13 is to bring about an automatic termination of the service of an employee who has remained absent without leave or permission continuously for 8 consecutive days except the in the event of his giving an explanation regarding the cause of his absence to the satisfaction of the manager in cases where the employee has over-stayed his leave. The fact that absence without leave for more than 8 consecutive days has also been mentioned in Standing Order No. 18 as a misconduct in respect of which a penalty can be imposed by the management does not to any extent affect the enforceability of Clauses (g) and (m) of Standing Order No. 13 which is an entirely independent provision. The correct way to understand the scheme of the standing order is that in cases where an employee is found to have been absent from duty without leave for 8 consecutive days the management has the option either to enforce the provision contained in Clauses (g) and (m) of Standing Order No. 13 and treat the employee as having voluntarily left the company's services, or to treat the employee concerned as still continuing in the service of the company and proceed to impose some penalty on him by regarding the absence only as a misconduct. That this is the correct position in law is clearly established by the decisions of the Supreme Court in *Buckingham & Carnet c Co. Ltd. v. Venkatiah* 25 F.J.R. 25 and *National Engineering Industries Ltd. Vs. Hanuman*, . Where an employer bona fide takes recourse to the

provisions in the standing orders entitling him to deem the absentee workman as having left its services the law does not cast any obligation on the management to hold a departmental enquiry before terminating the services of the employee. That is because the termination of service is automatically brought about by the action of the employee himself by force of the provisions contained in the certified standing orders which are fully binding on the employee. The Labour Court was, therefore, clearly in error in interfering with the action taken by the company to remove the name of Shri Sankaran Nair from its rolls on the basis that he was deemed to have left the services of the company under Clause (m) of Standing Order No. 113 on the ground that the said action virtually amounted to the dismissal of the employee for misconduct without conducting any domestic enquiry. The direction given by the Labour Court for reinstatement of the employee is, therefore, illegal and without jurisdiction. The award Ext. P1 will therefore, stand quashed. The original petition is accordingly allowed, but in the circumstances I direct the parties to bear their respective costs.