
(2009) 09 AHC CK 0165
In the Allahabad High Court

Triveni Engineering Works Ltd.

APPELLANT

Vs

Special Secretary, Labour Department and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 500

Citation : (2010) 1 AWC 953 : (2009) 123 FLR 1051

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Second writ petition is merely an offshoot of the first writ petition. The facts and points involved in the first writ petition are as follows:

Respondent No. 3, Rakesh Kumar Saxena (R.K. Saxena) was a Labour Welfare Officer Grade-II in Kathauli (District Muzzaffarnagar) Sugar Unit of petitioner company Triveni Engineering Works Ltd. Petitioner is covered under Factories Act, 1948 and by virtue of Section 49 of the said Act, a factory which has 500 or more workers, shall employ a labour welfare officer. State Government has framed U.P. Factories Welfare Officers Rules, 1955. Sri Saxena was appointed by the petitioner on 1.8.1984. Services of Sri Saxena were initially terminated on 8.10.1986 on the ground that he did not possess requisite qualification. His prayer for exemption from minimum qualification was rejected by Director of Factories against which he filed W.P. No. 8245 of 1986 at Lucknow Bench of this Court in which an interim order was passed staying his termination on the basis of which Sri Saxena continued to work.

3. It is stated in Para 16 of the writ petition that by order dated 17.7.1990, passed by petitioner employer, salary of Sri Saxena was fixed in Grade-II (Labour Welfare Officer), however he wanted the salary of Grade-I. It is further stated that salary was fixed in pursuance of G.O. dated 27.2.1990 through which pay

scales of Labour Welfare Officers were revised. Sri Saxena filed W.P. No. 7400 of 1991 for grant of pay scale of Grade-I in which it appears that no stay order was granted.

4. Thereafter, in paragraphs 18 to 21 of the writ petition, it is mentioned that Sri Saxena started behaving in unreasonable manner, absenting from duty without leave, quarrelling and abusing the other officers, instigating the workers and levelling all sorts of false charges. Thereafter, it is mentioned that Sri Saxena filed civil suit alleging therein that electricity and water supply of his official residence had been disconnected by the Management and Management was denying the facilities of school bus to his children. Civil court granted temporary injunction, which was subjected to appeal and thereafter, a writ petition in this Court was filed in which High Court directed the management to allow the children of respondent No. 3 to use the factory bus. In paragraph 23, it is stated that facility of bus was discontinued on the ground that Sri Saxena was writing letters and publishing statements in the newspapers alleging that his and his family members' life was in danger and in case of any accident blame of deliberate action would have been fastened on the petitioner.

5. Ultimately, the management charge-sheeted Sri Saxena through two charge-sheets dated 7.4.1994 and 8.4.1994. The main charge was that Sri Saxena got published in the newspapers defamatory news items against Vice President of petitioner company. It was also mentioned in the charge-sheets that Sri Saxena was not performing his duties and several workers had given a written complaint against him and he was also found absent from his desk at several times, loitering around and outside the factory premises. Reply to the charge-sheet was given by Sri Saxena. Thereafter, enquiry was held and enquiry officer submitted the report on 12.3.1993, holding the charges to be proved. Thereafter, management sought permission of Labour Commissioner for terminating the services of Sri Saxena as required by Rule 15 of the Rules. Thereafter, Labour Commissioner after hearing Sri Saxena also gave the permission for termination through order dated 8.9.1994. Thereafter, services of Sri Saxena were terminated by the petitioner through order dated 14.9.1994. Against the said order, Sri Saxena filed appeal before the State Government as provided under Rule 16 of the Rules.

6. Appellate authority through order dated 23.11.1995 (Annexure-1 to the writ petition) set aside the termination order. The said order has been challenged by the management through this writ petition. The Appellate Authority/Special Secretary, Labour Department, Government of U.P. held that it was not proved that news items were got published by Sri Saxena. News items were published in three newspapers. Sri Saxena had filed a letter written by the Editor of one newspaper Western Jyoti dated 18.6.1993 during enquiry wherein it was mentioned that news items in question were not got published by Sri Saxena. The Inquiry Officer had mentioned in his report that the said letter was not got proved by the Editor. The appellate authority did not agree with this reasoning.

Appellate authority further held that in respect of news items in another newspaper Nakkara dated 8.8.1991, it was clearly mentioned in the said news item that the information had been collected by own sources of newspaper. Appellate authority further mentioned that Sri K.K. Kohli, Vice President of the petitioner Company had also filed criminal case u/s 500, I.P.C. in respect of the three news items. The third one was published in the newspaper Veer Arjun. It is also mentioned in the appellate order that further proceedings of the criminal case had been stayed in W.P. No. 16298 of 1992.

7. The third charge against Sri Saxena was that on 18.5.1991 and 29.5.1991, he wrote a letter to the Director of the Factory levelling false allegation against Sri K.K. Kohli, the Vice President. It was mentioned in the said letter that it was proved that Sri Kohli prevented him from entering the factory and performing the duties inside the factory. In the said letter, dispute regarding grade was also raised. In this regard, appellate authority made reference to a letter written by Assistant Director, Factories (Inspection report dated 17.5.1991). In the said report, it was mentioned that Sri Saxena was appointed in Grade-I while he was paid salary of Grade-II. It was also mentioned that the seat/table of Sri Saxena was removed without giving any reason. In the report, it was also mentioned that in the Pay Sheet of April, 1991, it was written with pencil that "stop payment" which was without any authority and thereafter, the said entry was scored off and it was substituted by "salary not taken". It is also mentioned in the appellate order that in W.P. No. 8378 of 1992, High Court had observed in its order dated 9.4.1992 that Management should not have adopted such a strict attitude (it was in relation to permission to the children of Sri Saxena to use school bus). Ultimately, in the findings against the said charge, it was held by appellate authority that charge was not proved and on the contrary it was proved that management was acting mala fide against Sri Saxena. Fourth charge was regarding sundry misbehaviour of Sri Saxena including complaint of the employees that tea of inferior quality was being supplied in the canteen. The reply of Sri Saxena was that as he was not being permitted to enter the premises, hence all those troubles cropped up. Appellate authority found this charge also to be not proved. Ultimately, appellate authority held that neither charges were proved nor they were of such serious nature which could warrant termination.

8. The main arguments of learned Counsel for the Management, petitioner were that firstly charges were proved, appellate authority illegally set aside the termination order, which was passed with the concurrence of the Labour Commissioner and secondly that the management had lost confidence in Sri Saxena, hence management was justified in terminating the services of Sri Saxena. In the writ petition on 28.2.1996 while calling for counter-affidavit, it was observed as follows:

It is however made clear that in case writ petition fails, respondent No. 3 shall be paid full salary from the date of termination of services of [sic by] the petitioner.

In August, 2008, during pendency of this writ petition, Sri Saxena crossed the age of superannuation.

9. Learned Counsel for Sri Saxena has cited an authority of the Supreme Court in *Somesh Tiwari Vs. Union of India (UOI) and Others*, wherein it has been held that transfer of an employee on the basis of nonexistent facts was a malice in law. In the said authority, it has also been held that mechanical application of normal rule "no work no pay in some cases may be wholly unjust.

10. At one stage I tried to persuade the parties to enter into compromise. Learned Counsel for Sri Saxena stated that since date of termination till the date on which he attained the age of superannuation, he would have got about Rs. 9 lacs as salary under the old pay scale and about Rs. 18 lacs under revised pay scales. Through order dated 28.5.2009, I suggested that Rs. 3 to 4 lacs might be paid by the employer to the employee in full and final satisfaction of his claim. Sri V.K. Birla, learned Counsel for the management agreed to the suggestion of the Court and also indicated that even slightly more than Rs. 4 lacs might be paid by the management, however learned Counsel for Sri Saxena stated that Sri Saxena was not agreeable to the said suggestion.

11. For the proposition that full back wages need not be paid, learned Counsel for the management has cited a Supreme Court authority in *P.V.K. Distillery Ltd. Vs. Mahendra Ram*, In that case employer factory had been declared sick, remained closed for many years and had been assigned to a new management. It was a case under Industrial Disputes Act.

12. It is apparent that both the parties were freely trading charges and uncharitable remarks against each other. Both fought pitched battles on every front, no quarter was asked for or granted. Even though it appears that management was more at fault, however behaviour of Sri Saxena was also not above board. The appellate authority could consider the report of Assistant Director, Factories dated 17.5.1991, as evidence but not as conclusive or binding upon it, which it actually did while passing the impugned order.

13. As Sri Saxena has crossed the age of superannuation, hence there is no question of reinstatement. Accordingly, it is not essential to minutely examine as to whether termination order or the order of appellate authority setting aside the termination order is legal/ illegal. May be, in case Sri Saxena had not crossed the age of superannuation, I would have considered to remand the matter.

14. Keeping in view the totality of the circumstances, I am of the opinion that the most just course would be to award two third of the amount of Rs. 9 lacs, which according to the learned Counsel for Sri Saxena would have been payable to him as salary for the entire period for which he did not remain in service in the old pay scale.

15. Accordingly, writ petition is disposed of with the direction that management shall pay Rs. 6 lacs to Sri Saxena within three months positively failing which 2%

per month interest shall be payable thereupon since after three months till actual payment. The amount shall be deposited in the bank account of Sri Saxena within two months, if learned Counsel for Sri Saxena in this writ petition informs learned Counsel for the management in this writ petition about the bank account number of Sri Saxena. If it is not so done within two months, then within one month thereafter, the said amount shall be deposited before Labour Commissioner for immediate payment to Sri Saxena.

16. First writ petition is accordingly disposed of.

17. Through second writ petition, Sri Saxena had prayed for a direction to the management to permit him to work. As Sri Saxena had now crossed the age of superannuation and the first writ petition has been disposed of as above, hence second writ petition has become infructuous and is dismissed as such.