
(1996) 12 AHC CK 0088
In the Allahabad High Court
Case No : C.M.W.P. No. 10577 of 1984

U.P. State Textile Corporation Spinning Mills	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 17-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1997) 2 AWC 6700 : (1997) 75 FLR 44 : (1998) 3 LLJ 91 : (1996) 3 UPLBEC 2022

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : J.N. Tewari and Rakesh Tewari, for the Appellant; A.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—In this writ petition M/s. U. P. State Textile Corporation Spinning Mills, Jhansi (hereinafter referred to as the Mill) has challenged the award dated March 31, 1984, given by the Labour Court, Agra, in Adjudication Case No.62 of 1980. Respondent No. 3 Sital Prasad was employed as reeler in the Mill on September 30, 1977. He was terminated from service on April 21, 1979. He raised an industrial dispute which was referred u/s 4-K of the U. P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on December 27, 1979.

2. Case of Respondent No. 2 before the Labour Court was that on April 5, 1979, strike took place in the Mill and on account of the prevailing tension, workmen could not go to the Mill. On April 8, 1979 the Manager, Labour Welfare Officer and security guard of the Mill approached the petitioner and compelled him to go to the Mill. On his refusal to go he was severely beaten as a result of which he was hospitalised and remained there from April 13, 1979 to April 21, 1979. When he approached the Mill authorities, he was informed that on account of his absence from April 5, 1979 to April 20, 1979, his name has been struck off from

the roll. On April 20, 1979, he moved an application requesting for permission to work on the post which was not given. Consequently, he raised an industrial dispute. He also filed a criminal complaint for his alleged beating by the officials of the Mill.

3. The contention of the petitioner, on the other hand, was that Respondent No. 3 absented himself from April 5, 1979 without any leave or information and remained absent for 15 days and, therefore, by operation of para. 14 of the Certified Standing Orders applicable to the Mill, his services came to an end automatically. The case of the petitioner further was that there was no strike in the Mill and there was only a dispute between the two Unions and arrests of some workmen were made. Some other legal challenges were also raised before the Labour Court which have not been passed in this Court, hence they are not required to be mentioned.

4. The Labour Court after hearing the parties gave award in favour of Respondent No. 3 taking the view that the termination was without calling his explanation and, therefore, he is entitled to be reinstated from the date of termination. With regard to the back wages, it has been found that the workman has been guilty of causing inordinate delay and many adjournments were given because of his default and he has not been wholly without any means of livelihood since his termination from service and on these facts the Labour Court awarded Respondent No. 3, 50 per cent of the back wages admissible to him. Aggrieved by this award petitioner has approached this Court under Article 226 of the Constitution of India.

5. Learned counsel for petitioner has submitted that para 14 of the Certified Standing Orders provides that if an employee remains absent without leave or without any information or sufficient reason for more than 15 consecutive days, he will be deemed to have abandoned his employment from the Mill. Clause 14 relied on behalf of the petitioner is being reproduced below :

"14. Abandonment of Employment : If an employee remains absent without leave or without any information or sufficient reason for more than fifteen consecutive days he will be deemed to have abandoned his employment from the Mills."

Relying on the aforesaid Clause 14, it has been submitted that as Respondent No.3 remained absent from April 5, 1979 to April 20, 1979, he could be legitimately deemed to have abandoned his employment from the Mill and thus his name was struck off from the Roll. There was no positive act of termination. The termination was automatic by way of Clause 14 of the Certified Standing Orders and in the circumstances no opportunity of hearing was required to be given. Services of Respondent No. 3 stood terminated by operation of law contained in Clause 14 of the Certified Standing orders which has a statutory character. In the facts and circumstances of the case, there was no question of giving any opportunity of hearing nor there could be any violation of the

principles of natural justice. It has been further submitted that it was proved that there was no strike and findings of the Labour Court are based on surmises and conjectures. Learned counsel has further submitted that in any view of the matter opportunity ought to have been given to petitioners to establish the charge of absence from duty against Respondent No. 3 before the Labour Court. To support his submissions learned counsel has placed reliance on the following cases.

6. National Engineering Industries Ltd. Vs. Hanuman, The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, , U.P. State Electricity Board, v. H. S. Jain , Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, Brooke Bond India Private Ltd. v. Sudhir Ranjan Ghosh and Ors. 1969 Lab. I.C. 485 , Union of India and others Vs. M/s. Jalyan Udyog and another, , Dr. Umrao Singh Choudhary, v. State of M.P. and Anr. 1991 4 S C C 328 and The Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills and another, , M. Venugopalv. Div. Manager L.I.C. and Anr. 1994 I LLJ 597) (SC).

7. Learned counsel for the respondents, on the other hand, has submitted that Clause 14 of the Certified Standing Orders only provides that the absence from duty without leave or information is also a kind of misconduct and services can be terminated on such ground. However, the termination cannot be affected without any opportunity of hearing or explanation. It has been further submitted that Respondent No. 3 submitted his explanation about his absence from duty to Mill authorities vide Ex.W- 6 and this explanation was found to be correct as the recommendation was made to mark him only absent without pay from April 13, 1979 to April 21, 1979 but it was not accepted and his name was struck off from the Muster Roll in an arbitrary manner. The termination of service on the ground of over staying after expiry of the leave period without any proper explanation amounts to retrenchment and the provisions of Section 6-N of the Act ought to have been complied with, which in the present case was not done and for this reason also the termination was bad and has rightly been set aside by the Labour Court. Respondent N6.3 had raised a demand through Ex.W-5 for being allowed to work on the post but the prayer was refused in an arbitrary manner and to the facts and circumstances, it is submitted that the view taken by the Labour Court is perfectly justified and does not suffer from any error of law and no interference is called for by this Court under Article of the Constitution. Learned Counsel of the respondents has placed reliance in case, of D.K. Yadav Vs. J.M.A. Industries Ltd., Rolston John v. Central Government Industrial Tribunal-cum-Labour, Court and Ors. AIR 1993 S.C.W. 4073 and The State Bank of India Vs. Shri N. Sundara Money, .

8. I have thoroughly considered the submissions of the learned counsel for the parties. A close scrutiny of Clause 14 of the Certified Standing Orders relied on behalf of the petitioner to justify the so-called automatic termination of Respondent No. 3 from service itself demonstrates that the termination could not be automatic. Clause 14 provides: If an employee remains absent without leave

or without any information or sufficient reason for more than fifteen consecutive days, he will be deemed to have abandoned the employment. Thus, it leaves open to the employee to establish sufficient reasons explaining his absence and thus it is implied and inherent in Clause 14 itself that the termination cannot be automatic and at any rate the deemed abandonment may be rebutted by the employee on appearance by giving sufficient reasons for his absence. In the present case it is not denied that Respondent No. 3 appeared and submitted explanation for his absence. The explanation was considered by the authorities and a favourable recommendation was made to grant him leave without pay for the alleged period of absence and not to strike off his name from the roll, but thereafter nothing was done on the explanation given by the Respondent No. 3 and his name was struck off from the roll with effect from April 21, 1979. In these facts and circumstances, the Labour Court was perfectly justified in setting aside the order of termination. Hon'ble Supreme Court in similar circumstances in case of *D.K. Yadav v. J.M.A. Industries Ltd.* (supra) has held that the termination of service without any inquiry and opportunity of hearing on the basis of absence from duty under the Standing Orders providing for automatic loss of lien is violative of the principles of natural justice and such termination is liable to be set aside. Relevant part of the judgment is reproduced below :

"The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14, and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative enquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.

"In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980, and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice."

9. The view expressed by the Hon''ble Supreme Court squarely covers the present case. Name of Respondent No. 3 was struck off from the roll on the basis of Clause 14 of the Certified Standing Orders taking it to be automatic termination from service which has rightly not been accepted by the Labour Court as such a view would render Clause 14 violative of Article 14 of the Constitution. It cannot be denied that operation of Clause 14 will entail serious civil consequences against the employee and to prevent the miscarriage of justice the principles of natural justice must be read into Clause 14. The impugned award of the Labour Court thus does not suffer from any error of law.

10. Learned counsel for petitioner relying on the case of Delhi Cloth and General Mills Ltd. (supra) also submitted that in any case petitioner should have been permitted an opportunity to prove the charge of misconduct on the basis of absence from duty before the Labour Court. However, this submission is not acceptable as there is nothing on record that such a prayer was made before the Labour Court. This claim has been raised for the first time in this Court and that too at the time of arguments.

11. In view of the pronouncement of the legal position about the identical Clauses of the Certified Standing Orders, by the Hon''ble Supreme Court which squarely covers the present case, it is not necessary to enter into other questions argued by the learned counsel for the petitioner.

For the reasons stated above, this petition has no force and is accordingly dismissed. However, there will be no order as to costs.