

(2005) 06 JH CK 0001
In the Jharkhand High Court
Case No : C.W.J.C. No. 2114 of 1997 (R)

Workman Shri Sheo Shankar Ram

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 14-06-2005

Acts Referred:

Citation : (2005) 3 JCR 241

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : N.K. Prasad, V.K. Pd. and Pratyush Kr, for the Appellant; K.B. Sinha and Amitabh, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ petition the petitioner-workman has challenged the award dated 31st January, 1997 passed by the Presiding Officer, Labour Court Ranchi in Reference Case No. 8/92 whereby he has held that the concerned workman has been rightly dismissed from service by the respondent-Management.

2. This case has a very chequered history. The petitioner was employed as Electrician Grade-II in Muri workshop of the respondent-company. On 2.3.1982, he was asked by the superior officer to charge 12 volt car battery. The petitioner refused to carry out the order on the pretext that he had no safety tools for charging the same and that he was not receiving battery charges allowances. His complaint was looked into by the management of the respondent-company and the same was found to be baseless. The petitioner was, thereafter, served with a charge-sheet as per the provision of the Certified Standing Order of the company for wilful insubordination or disobedience of the lawful and reasonable order of the superior officer. On the same date the petitioner submitted his reply. A domestic enquiry was, thereafter, conducted and the Enquiry Officer submitted his report that the charges levelled against the petitioner stood proved and, as such, he is guilty of the charges levelled against him. A second show-cause

notice was issued to the petitioner and, thereafter, office order dated 31.5.1982 was issued dismissing the petitioner from service.

3. The petitioner raised industrial dispute and by order dated 10.12.1982 the Govt. of Bihar referred the dispute to the Labour Court, Ranchi for adjudication. The terms of reference are as follow :

"Whether the Management of M/s. Aluminum Company, Muri, Ranchi, is justified in terminating the services of the ex-employee, Shri Shiv Shankar Ram (Auto Electrician). If not, what relief Shri Shiv Shankar Ram is entitled?"

4. The Management and the Union of India appeared and filed written statement and rejoinder. The Presiding Officer, Labour Court, Ranchi, by order dated 14.12.1983, held that the domestic enquiry was not fair and proper. The Management, then challenged the said order before this Court by filing" a writ petition being C.W.J.C. No. 333/1984 (R). This Court allowed the writ petition holding that the domestic enquiry was fair and proper.

5. It appears that against the said order the petitioner wrote a letter to the Hon"ble the Chief Justice of Supreme Court which was entertained and numbered as SLP No. 1590/86. In the said SLP the petitioner filed a petition stating that he is not gainfully employed and, as such, he may be allowed interim relief. The Supreme Court directed the management to pay him the last wages drawn by him per month. That was to be paid per month but in the meantime the respondent-management came to know that the petitioner is working as an Electrician with Steel Authority of India Limited (SAIL) and is getting salary per month. The attention of the Supreme Court was drawn about the full facts of the case. The Supreme Court ultimately recalled the interim order for payment of last wages to the petitioner. The SLP was also dismissed.

6. When the reference case was again taken up. The petitioner filed a petition before the Labour Court that he may be allowed to adduce evidence on the point of victimization. The Court below, by his order dated 5.9.1986, allowed the petitioner to lead evidence on the point of victimization, unfair labour practice and mala fide. The said order was challenged by the management by filing a writ petition before the High Court being C.W.J.C. No. 1542/86 (R). The said writ petition was dismissed on 27.1.1989. The management then challenged the said order by filing a Letter Patent Appeal which was also ultimately dismissed. Consequently, the parties adduced evidences and the Presiding Officer, labour Court, after hearing the parties, in terms of the award dated 31.3.1997, answered the reference in favour of the management and held that the petitioner has been rightly dismissed from service. Hence this writ petition.

7. Mr. N.K. Prasad, learned Senior counsel appearing for the petitioner-workman assailed the award as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that while awarding punishment the authority have not at all considered the previous records and extenuating circumstances which was mandatory in view of the Clause 24 of the Certified Standing Order. Learned

counsel further submitted that for the entire period of suspension no subsistence allowance was paid. It was only after the final award was passed the management decided to pay subsistence allowance. Learned counsel also submitted that there must be wilful insubordination, but no finding has been recorded by any of the authority to that effect.

8. On the other hand, Mr. K.B. Sinha, learned Senior counsel appearing for the management submitted that the punishment awarded is perfectly legal and justified. Learned counsel submitted that if the domestic inquiry was held fair and proper, the question of re-appreciation of evidence for the purpose of assessing the quantum of punishment does not arise.

9. It appears that the impugned order of dismissal was passed against the petitioner on the basis of finding recorded in the domestic inquiry. The inquiry was held to be just and proper by the Court also. However, workman was allowed to lead evidence on the point of victimization. The Labour Court after re-appreciation of the entire evidence has recorded a finding that the workman has failed to prove that he has been victimized. Thus, I do not find any perversity in the finding recorded by the Labour Court which needs interference by this Court.

10. The only question that needs consideration, in my opinion, is as to whether the punishment by way of dismissal from service is proportionate to the charges leveled against the workman.

11. Mr. N.K. Prasad, learned Senior counsel appearing for the petitioner, drawn my attention the various provisions of the Certified Standing Order of the respondent-company and submitted that the punishment by way of dismissal from the service is not in accordance with the Standing Order.

12. The charge-sheet dated 3rd March, 1982 was issued against the petitioner who is the Auto Electrician in the Engineering Department alleging that he refused to make a new car battery ready after making proper strength of acid solution for charging when he was asked to do so by his superior officer. After some time the officer gave a written instruction to the petitioner to do the above job, he expressed his unwillingness to carry on his superior's instruction on the ground that the specified tools were not available in the section. The petitioner was, thereafter, proceeded with the domestic inquiry on the ground that the aforesaid refusal amounts to misconduct as provided in Clause 24 (B)(b) of the Standing Order. Clause 24(B)(b) reads as under :

"Wilful insubordination or disobedience, whether alone or in combination with another, of any lawful and reasonable order from a superior; striking work or inciting others to strike work in contravention of the provisions of the Trade Disputes Act, 1929 (VII of 1929), or any other enactments or rule in force for the time being."

13. The Enquiry Officer in his inquiry report held that the workman deliberately disobeyed the lawful orders given to him by Garage Supervisor to charge the

battery. On the basis of the aforesaid inquiry report the Disciplinary Authority passed the impugned order of dismissal of the petitioner -workman from service.

14. Clause 24 of the Standing Order speaks about the different acts of the workman as minor offences and major offences. The relevant portion of Clause 24 reads as under :

"24. DISCIPLINE :

Workers must carry out the legitimate orders of their superior officers promptly, and must conform strictly to the Works Rules and Regulations under penalty of reprimand, suspension or discharge depending upon the nature of the offence. No punishment will be meted out on disciplinary grounds unless the worker concerned is given an opportunity to offer his explanation.

A. MINOR OFFENCES :

A worker accused of a first minor offence will be summoned before the Department Head or the Personnel Officer to explain the circumstances alleged. If no satisfactory explanation is forthcoming, he will receive a written warning indicating the nature of his offence. He will acknowledge the same by signing a copy of the reprimand, which will be recorded on his record. With the first minor offence, there will be no further action than the written warning. A second minor offence will necessitate a warning and suspension without pay up to a maximum of three days.

Minor offences are as follows :

- (a) Breaches of any standing order if not specifically mentioned under major offences.
- (b) Failure to observe safety measures or instructions.
- (c) Committing a nuisance on the Company property, including spitting of pan.
- (d) Careless or slow work, laziness, inefficiency or inattention
- (e) Repeated lateness as detailed in Section 80(f).
- (f) Engaging in trade on the company premises.

B. MAJOR OFFENCES :

A worker will render himself liable for summary discharge without notice or without payment in lieu of notice if he is guilty of a major offence. At the discretion of the management penalty may be reduced to suspension without pay.

An order of suspension or dismissal shall be in writing and may take effect immediately on delivery to the workman. Such order shall set out in detail the alleged misconduct and the workman shall be given an opportunity to explain the circumstances alleged against him, if, on enquiry, the order is confirmed the workman shall be deemed to have been absent from duty for the period of

suspension or dismissal and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the workman shall be deemed to have been on duty, during the period of suspension or dismissal and shall be entitled to the same wages as he would have received if he had not been suspended or dismissed. In awarding punishment under this standing order, the works manager shall take into account the gravity of the misconduct, the previous record, if any of the workman and any other extenuating or aggravating circumstances. In all cases the works manager's orders shall be final."

15. From bare perusal of the aforesaid clause, it is manifestly clear that in case of disobedience of the order of the superior officer, the workman may be subjected to penalty of reprimand, suspension or discharge depending upon the nature of the offence, such punishment shall be inflicted after holding the disciplinary inquiry. It further provides that in awarding punishment under this Standing Order, the works manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances. At the discretion of the management penalty may be reduced to suspension without pay.

16. The disciplinary authority while imposing the punishment has not taken into consideration all aspects of the matter including the past conduct of the delinquent and the existence of aggravating circumstances, It is come in the inquiry report that the petitioner-delinquent earlier met with an accident while charging battery because of non-availability of tools. It is also come in the evidence that for procuring the tools Mr. P.K. Sarbadhikary along with the petitioner went to Ranchi for local procurement of tools which were not available, It is also come in the evidence as it appears from the inquiry report that the petitioner-delinquent earlier never refused to do the work or never subjected to an act of in subordination. Taking into consideration all the facts, I am of the opinion that the punishment imposed upon the petitioner by way of dismissal from the service is very harsh and disproportionate to the charge leveled against him. For a charge of not obeying the order of the superior for charging battery on plausible ground the workman should not be removed from the service by way of dismissal.

17. For the aforesaid reason, I allow this writ petition and quash the order of punishment and remit the matter back to the respondent-authority to impose a lesser punishment in accordance with law.