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(2013) 07 JH CK 0056

Jharkhand High Court

Case No: Writ Petition (S) No. 1469 of 2004

Raghunath Bhogta APPELLANT

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Central Coalfield Ltd. and Others RESPONDENT

Date of Decision: July 4, 2013

Citation: (2013) 3 AJR 652: (2013) 3 JLJR 476

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: H.K. Mahato, for the Appellant; Ananda Sen, for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. By the order impugned dated 27.12.2002 issued by the Project Officer, Swang Colliery, CCL, Bokaro, the services of the petitioner has been terminated, which is under challenge in the present writ petition.

2. The petitioner was a Piece Rated Worker (in short P.R.W.) in the respondent-coal company and has joined on 25.06.1992 under the respondent. He, however, suddenly went on leave from 12.09.1997 and submitted his joining on 05.04.2001. He did not seek any prior permission to proceed on leave during this period of his absence or ever made any application for sanction of leave for the period of absence or regularization of the said period. The respondents issued a charge sheet on 20.08.2001, Annexure-2, against the petitioner for having remained in unauthorized absence from duty for the aforesaid period. The petitioner, thereafter, submitted his show cause vide Annexure-3 dated 03.09.2001 taking a plea that he was suffering from mental illness enclosing a certificate issued by the Private Doctor, who is said to have speciality in treating mental diseases. Being dissatisfied with the show cause of the petitioner, enquiry was conducted by the respondents. The petitioner participated in the enquiry proceeding on number of dates as has been indicated in para-13 to the counter affidavit i.e. on 12.09.2001, 27.09.2001, 03.10.2001,

29.10.2001, 30.11.2001, 05.01.2002, 06.03.2002, 12.03.2002, and 14.03.2002. Thereafter, he was issued 2nd show cause notice on 25.07.2002 as to why appropriate punishment be not imposed upon him including dismissal from service for having remained absent unauthorizedly for a pretty long period. Inquiry report submitted by the inquiry officer found the charges against the petitioner to be proved. The petitioner furnished his second show cause on 25.07.2002. After taking into account the enquiry report, the 2nd show cause of the petitioner and the findings recorded in the said enquiry, the disciplinary authority came to a conclusion that the petitioner should be awarded with the punishment of termination from service for remaining under unauthorized absent for a considerable length of time from 12.09.1997. Learned counsel for the petitioner has assailed the aforesaid impugned order on the ground that the plea of mental illness of the petitioner had not been properly considered by the enquiry officer and the disciplinary authority though he had furnished the medical certificate as also prescription showing the treatment for mental disease of Schizophrenia for the said period. It is further submitted that the petitioner was a land loser and the appointment was given on that account treating him to be a land loser. The punishment imposed is harsh as in similar circumstances vide Annexure-8 dated 10.06.2002, another person under the employment of the respondent-Coal Company has only been inflicted with a punishment of withholding of two increment with cumulative effect. Based on these grounds, the impugned order has been assailed.

- 3. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court rendered in the case of Malkiat Singh Vs. State of Punjab and Others, in order to submit that on furnishing proof of medical illness by way of medical certificate, the petitioner's absence could not have been treated as unauthorized or deliberately absenting himself.
- 4. Learned counsel for the respondents, however, submitted that the petitioner had absented without any prior information or sanction of leave from the competent authority of the respondent-coal company. During the course of entire treatment, he or anyone on his behalf had never approached for sanctioning of leave for such absence or regularization of such period of absence. After almost four years since he had remained absent, he contends that he submitted his joining before the respondent-coal company. However, because of his continued absence, the respondents had issued charge sheet for unauthorized absence on 20.08.2001. The petitioner gave show cause, which was not accepted and an enquiry was conducted in a proper manner after giving proper opportunity to the petitioner and, thereafter, on issuance of second show cause and its reply, the impugned order has been passed in a proper manner for alleged misconduct of unauthorized absence for a long period of almost four years.
- 5. I have heard learned counsel for the parties and have gone through the relevant materials on records including the impugned order. The facts, which have been

narrated hereinabove are sufficient to show that the petitioner had absented himself without any prior permission or sanction of leave from 12.09.1997. He remained absent for a pretty long period till 20.08.2001. The petitioner has relied upon a medical certificate of a private doctor. The certificate, however, shows that the petitioner had never been in indoor treatment for his alleged mental illness. Neither the petitioner got himself treated in a Government Mental Hospital though he was living at Ranchi and such mental hospitals are functioning herein. The disease referred to in the medical certificate as Schizophrenia and the contents of the medical certificate also shows that the petitioner had relapse in his mental condition at intervals, which would mean that during other periods, he was more or less in a normal state of mind as it happens in cases of Schizophrenia. However, the petitioner never cared to make any application for sanction of leave for his absence for a long period of almost little less than four years and he remained out of duty unauthorizedly. He was, therefore, charge sheeted and misconduct was enquired into for the charges in the disciplinary enquiry in which the petitioner appeared and participated on a number of dates as would evident from the statement made in the counter affidavit. The petitioner having been furnished 2nd show cause notice and having made a reply to the same, has been imposed with the impugned punishment of termination from service on account of the established charges of unauthorized absence from duty. The aforesaid facts, therefore, show that the petitioner could not furnish any statutory explanation for the entire long period of absence and had also not made any application for sanction of such leave during the said period. In these circumstances, the employer management can not be accused of taking a view of that such misconduct was serious enough to warrant termination of his service. The reference of the order contained at Annexure-6 alone, however, does not come to the aid of the petitioner as it does not clarify about the relevant facts of the case of the other person. The judgment relied by the petitioner is of no help to him also as evidence in support of his such medical treatment is not convincing enough to explain the continued absence for a period little less than four years. Therefore, the impugned order does not suffer from any errors of law or of facts and does not warrant any interference. Accordingly, this writ petition is dismissed as being devoid of any merit.