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

Jharkhand High Court

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

Raghunath Bhogta

APPELLANT

Vs

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.