

## Phul Kumari and Others Vs Bharat Coking Coal Limited and Others

**Court:** Jharkhand High Court

**Date of Decision:** July 21, 2011

**Citation:** (2011) 131 FLR 186

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

### Judgement

Narendra Nath Tiwari, J.

The original Petitioner (since dead) prayed for quashing order dated 5.10.1999, contained in Annexure-18 of

the writ petition, whereby he had been awarded punishment of dismissal from service.

2. The short fact of the case is that the said Petitioner was appointed as a Sought Firer on 7.10.1966. Since the date of appointment he was

sincerely discharging his duty. In the year 1979 he had passed Mining Sirdar examination. The Petitioner had developed heart disease in the year

1990. He was examined at Indira Gandhi Institute of Cardiology on 18.7.1990. Again in 1996 he suffered heart pain. Due to his sickness he had

to go on medical leave on 20.1.1996 and remained on leave for about four months till 3.5.1996. The Petitioner was treated by the company

doctor. The Respondents had also sanctioned Rs. 5,000/- for medical treatment. However, the said amount was not paid to the Petitioner. The

Petitioner, thereafter, was under treatment in All India Institute of Medical Sciences from 9.7.1996 to 10.9.1996. In the meanwhile, in the general

transfer, the Petitioner was transferred to Bhalgora Colliery. The Petitioner filed representation against his transfer order and requested to stay the

order on medical ground. In stead of entertaining the said representation, the Respondents asked him to join in Bhalgora Colliery. When the

Petitioner went to join, he was not allowed to join as he was not found fit for the duty. In the meanwhile, the Respondents modified and stayed the

order of transfer of 79 employees. However, the Petitioner's representation was not considered and his transfer order was not stayed. The

Petitioner could not join his duty due to his sickness and treatment to the notice and knowledge of the Respondents. In stead of showing sympathy,

the Respondents issued a memorandum of charge imputing the charges of disobedience and misconduct against the Petitioner, vide charge-sheet

dated 20.3.1999. The Petitioner filed his reply denying the charges and explaining the circumstance under which he could not join on his

transferred post. But his explanation was not accepted and departmental proceeding was initiated. The Petitioner appeared and adduced cogent

evidence in support of his written explanation. There was no contrary evidence and material on record to substantiate the charges. But without

considering the evidence and materials on record, the Enquiry Officer held him guilty of the alleged charges. On the basis of the said enquiry report

the disciplinary authority awarded punishment of dismissal against the Petitioner.

3. It has been submitted by the Petitioner that the impugned order is arbitrary, illegal and unjust. The Petitioner was not a habitual absentee and a

single absence howsoever long does not come within the definition of misconduct under the certified standing order of the company. The impugned

order has been passed without applying mind properly and without giving sufficient opportunity to the Petitioner. It has been lastly submitted that

for over-staying medical leave for the first time in his long service career punishment of dismissal is severely disproportionate and unconscionable.

4. Mr. A.K. Mehta, Learned Counsel appearing on behalf of the Respondents, on the other hand, supported the impugned order of punishment

and opposed the Petitioner's prayer. Learned Counsel even took preliminary objection of maintainability of the writ petition in view of the

availability of alternative remedy to prefer appeal or raise industrial dispute against the impugned order. He further submitted that the Petitioner was

sick in the year 1996 for which medical treatment was provided to him in the hospital of the company. Thereafter, the Petitioner was not found

unfit for discharging his duty. He was also given a lighter duty in the magazine section. The Petitioner has not only over-stayed leave, he had also

disobeyed the order of transfer. The Petitioner was habitual discipline breaker. Domestic enquiry was properly held after serving charge sheet

against the Petitioner and the enquiry officer, on due consideration of materials and evidence on record, found the Petitioner guilty of the charges.

On the basis of enquiry report the disciplinary authority has awarded punishment of dismissal.

5. I have heard Learned Counsel for the parties and considered the facts and materials on record. On perusal of the charge sheet (annexure-11) I

find that the Petitioner sought to be proceeded on the charge of disobeying transfer order and for his un-authorised absence since 22.1.1996. In

the charge-sheet it has been said that the said charges come under the category of mis-conduct under Rules 26.1.1 and 26.1.10 of the Certified

Standing Order of the Company. The said provision quoted in the memo of charge is reproduced herein below:

26.1.1 Yathesth Karan Ke Bina Aadatan Der Se

Upasthiti Athwa Karya Se Janbujhkar Ya

Aadatan Anupasthiti.

26.1.10 Aadatan Anushasanhintā Ya Janbhujhkar Bat

Nahin Manana Ya Uchhtar Adhikari Ke

Kanooni Ya Tark Sangat Kisi Aadesh Ki

Awagyan Kama.

6. On plain reading of the said provision of said Rules of Certified Standing Order it is clear that habitual absence as well as the habitual

disobedience of legal and proper order constitutes charge of misconduct.

7. On perusal of the memorandum of charge issued to the Petitioner, I find that there is no charge of habitual or repeated absence or disobedience

against the Petitioner. The event which constitutes the charge though covers a long period since 22.1.1996 but there is no allegation of recurrence

of absence or indiscipline or absence or disobedience of any order before the period covered by the charge.

8. Mr. Mehta, Learned Counsel for the Respondents, submitted that during the period covered by the charge the Petitioner disobeyed the transfer

order and remained absent from duty without leave and, as such, different dates in the charge goes to show that the Petitioner was habitual

absentee and he was in the habit of disobeying the legal orders issued by the higher officers and the charges against him constitute misconduct

under the said Rules 26.1.1 and 26.1.10 of the Certified Standing Order of the company.

9. The submissions of Mr. Mehta are not convincing. The charge of long absence and disobedience of order stretched in a single period in

continuity. There is no allegation that in the past also he had disobeyed orders of the superior officers and had absented unauthorisedly before the

period of charge.

10. The Petitioner has explained that he had taken leave and could not join his duty due to his protracted illness for a long time to the due notice

and knowledge of the Respondents.

11. It has been also admitted by the Respondents that the Petitioner was ill and he had proceeded on sick leave. The Respondents had also

sanctioned medical grant of Rs. 5,000/- (though remained unpaid till date).

12. In that admitted position it cannot be said that the Petitioner was wilfully absent without any reason.

13. On the basis of the admitted facts it can be said that the Petitioner over-stayed medical leave.

14. The transfer order was also issued in between the said period. The Petitioner has produced medical prescription and other medical documents

to substantiate the said fact.

15. The said facts and circumstances supported by the documents, have not been thoroughly considered and the enquiry officer found him guilty of

the charge on extraneous consideration of his long absence.

16. As discussed above, since the one time absence, though it was long and during the said period not joining at the transferred place does not

come within the ambit of "habitual disobedience" or "habitual unauthorised absence".

17. The disciplinary authority, without taking into consideration of the said provision of Certified Standing Order and without properly applying

mind and appreciating the facts and material on record, has arbitrarily awarded the punishment of dismissal.

18. Even if the Petitioner is found guilty of offending the rules of the company for the first time, the ultimate punishment of dismissal is

disproportionate and unconscionably harsh and severe.

19. However, even if the charges against the Petitioner do not constitute misconduct, as discussed above, the Petitioner cannot be given clean chit

in view of his long absence without any sanction of leave, It is admitted position that the Petitioner was absent from duty from 22.1.1996 till the

date of charge sheet dated 15.3.1999. Though the Petitioner has bought some medical prescription on record, the medical documents which have

been produced before this Court also, do not cover the entire period of his alleged absence. The Petitioner has also failed to bring on record any

document to prove that his leave was sanctioned by the concerned authority, even subsequently. In view of the above, the long absence for years

cannot be held to be justified.

20. Considering the facts and circumstances, I find that the interest of justice shall be served if the punishment of dismissal awarded to the

Petitioner is modified to termination simplicitor. Consequently, the impugned punishment of dismissal is converted into the termination simplicitor.

21. In view of the said finding, it is not necessary to enter into the other controversies between the parties. Since the matter is more than a decade

old and the original Petitioner has died during pendency of this writ petition, the preliminary point of maintainability at this stage does not deserve

serious consideration and adjudication, particularly in the view of plenary jurisdiction of this Court to do justice without any technical limitations.

22. This writ petition is, accordingly, disposed of in the above term.

23. There is no order as to cost.