(2004) 1 JCR 657

Jharkhand High Court

Case No: CWJC No. 2500 of 1997 (R)

Abdul Azim Ansari	APPELLANT
Vs	
Heavy Engineering Corporation Ltd. and Another	RESPONDENT

Date of Decision: Jan. 6, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 1 JCR 657

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: P. Gangopadhaya, for the Appellant; R. Mukhopadhaya, for the Respondent

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.
The prayer in this Writ Application is to quash the award dated 12.8.1996 by the Labour Court, Ranchi in Reference Case No. 12/1990, contained in Annexure-6, whereby the Labour Court has decided the Reference against the petitioner-workman, holding that his dismissal from service was Justified and therefore not entitled to any relief.

2. The dispute which was referred for adjudication to the Labour Court is as under:--

"Whether dismissal of Abdul Azim Ansari, Fitter, P.No.32383 is justified? If not what relief he is entitled and since when?

3. The case of the petitioner-workman is that he was initially appointed in H.E.C. as Fitter on 26.2.63. On account of illness of his mother, he took 5 days casual leave on 2.8.83 and went to his village home. Since his mother was serious and therefore by sending an application on 25.8.83 by registered post, he requested to extend the leave but his

Controlling Officer directed him to resume his duties. The workman thereafter submitted another application for extension of leave with medical certificate but the management sent a letter on 8.12.1983 directing him to report for duty within a month. Since the condition of his mother had not improved and he himself also fell ill and as such, on 5.12.1983 he again sent an application for extension of leave for a further period of one month.

4. The workman reported for duty with medical certificate on 10.1.1984 which was not accepted by the Controlling Officer and workman was directed to report to the plant Administration. Though he reported for duty but on 16.1.1984 he was informed that his service has been terminated on the ground of unauthorized absence.

5. According to the workman, the Junior Manager, Shri S.K.Jha under whose signature the termination order was issued, was not competent to issue the order of termination. His termination was a retrenchment and he was not given the compensation as notice pay under the provision of Section 25A of the Industrial Disputes Act.

6. The case of the Management is that the workman proceeded on leave from 2.6.83 to 6.6,83 and after expiry of the period of leave, the workman started absenting unauthorizedly leave. He was directed to join his duty within seven days but when he did not join, then a notice under Clause 15 (X) of the Certified Standing Order of the Corporation was sent by registered post directing him to join his duty within one month. Even then he did not join, consequently on expiry of one month he lost his lien on his appointment. It was further stated thai on earlier occasion also the workman had absented unauthorizedly and for that punishment by stoppage of 5 increments was imposed and he was also debarred from promotion for five years.

7. The learned Labour Court held that the provisions of Clause 15 (X) of the Standing Order was complied with. It was further held that Shri S.K. Jha, Junior Manager was authorized to sign the termination order. Labour Court on appreciation of evidence on record came to a finding on fact that the workman failed to prove his illness and the illness of his mother and it appears that the workman voluntarily left the service and therefore his dismissal from service was justified.

8. It has not been disputed by the petitioner that under Clause 15(X) of the Certified Standing Order of the H.E.C. if an employee absent himsfelf from his duty for 15 days then he looses his lien on the service.

9. However, it has been submitted by the learned Counsel for the petitioner that even if there is a Standing Order of the Corporation to that effect but still holding of domestic enquiry was a must and therefore the termination of the petitioner without holding domestic enquiry was against the principles of natural justice.

10. In support of the submission learned Counsel has relied on the decision of the Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress

and Others, and the decision of a Division Bench of this Court in the case of Sunil Kumar Sinha Vs. Chancellor of Universities and Others, .

11. On the other hand, Mr. Mukhopadhaya, appearing for the respondents has submltted that the Certified Standing Order of the Corporation has statutory force and is binding on both the parties and under Clause 15 (X) of the Standing Order, holding of departmental enquiry was not at all required.

12. Mr. Mukhopadhaya further submitted that the award of Industrial Tribunal is based totally on the facts and appreciation of the evidence on record and since nothing his been shown by the petitioner that any of the finding in the award is perverse or unreasonable and as such any inference by this Court in exercise of power under Articles 226 and 227 of the Constitution is not called for. He has relied on the decision of the Supreme Court in the case of "Punjab & Sind Bank & Others v. Sakattar Singh, reported in (2001) 1 SCG 214.

13. Now coming to the decision of the Supreme Court in the case of "Delhi Transport Corporation (supra), it appears that in para 138, the points in issue to be decided was formulated which is quoted herein below:

"The pivotal question which arises for consideration is whether Regulation 9 (b) of the Regulations framed u/s 53 of the Delhi Road Transport Act, 1950 which provides for termination of services of permanent employees on giving simply one month"s notice or pay in lieu thereof without recording any reason therefore in the order of termination is arbitrary, illegal, discriminatory and violative of Audi Alteram Partem Rule and so constitutionally invalid and void. It is also necessary to consider in this respect whether the said Rule 9 (b) can be interpreted and read down in such a manner to hold that it was not discriminatory nor arbitrary nor does it confer unbridled and uncanalised power on the transport authority to terminate however the services of any employees including permanent employee without any reason whatsoever by the Delhi State Transport Authority. It is also necessary to consider whether such a power can be exercised without conforming to the fundamental right embodied in the Art. 14 as interpreted by this Court in E.P. Royappa"s case that arbitrariness is the antithesis of equality enshrined in the Art. 14 of the Constitution. In other words, whether such regulation has to comply with the observance of fundamental rights granted by part 3 of the Constitution and whether such a power is to be exercised in furtherance of and in consonance with the Directive Principles embodied in Articles 38 and 39 of the Constitution.

14. Therefore, from the perusal of the para 138 quoted above, It is clear that the point in issue before the Supreme Court was quite different from the points in issue in the present case and in the context of the points in issue, the Supreme Court in para 199 of the said judgment, held as follows:--

"Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9 (b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the Impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Art. 14 of the Constitution. It has also been held consistently by this Court that the Government carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporation. Such Government Company or Public Corporation being State instrumentalities are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of fundamental rights embodied in Part III as well as to conform to the directive principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Art. 14 of the Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised, it is now well settled that "Audi Alteram Partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations, Moreover, the Rules of Law which permeates our Constitution demands that it has to be observed both substantially and procedurely. Considering from all aspects Regulation 9 (b) is illegal and void as it is arbitrary, discriminatory and without any guideline for exercise of the power. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9 (b) does not expressly exclude the application of the "Audi Alteram Partem" rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month"s notice under Regulation 9 (b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purported order is made."

15. So for as the case of Sunil Kumar (supra) of this Court is concerned, it appears from the said judgment of the Division Bench that question for consideration was whether Section 9(7)(ii) of the Bihar State Universities Act, 1976 can be construed/read to mean that under powers vested in the Chancellor to issue direction to the Universities in the Administrative or Academic interest of the Universities which he considers to be

necessary, such directions can be issued which may adversely or prejudicially affect or tend to adversely affect to the right or interest of the third parties and further as to whether the Universities will be bound to implement such directions.

16. From the above facts, it is clear that the decisions of this Court in Sunil Kumar Sinha (supra) is also not applicable in this case and it does not held in deciding the point in issue of this case. Of course, the decision cited by the learned Counsel for the respondents in the case of Indian Iron Steel Company v. Prahlad Singh (supra) appears to be befitting with the facts and points in issue of the case in hand. The facts of the case before the Supreme Court was:--

"The respondent was granted leave but did not resume duty after the expiry of the leave period. After waiting for more than two weeks, the appellant terminated the services of the appellant. An Industrial Dispute regarding the termination was referred to CGIT. CGIT refused to grant any relief to the respondent as it found that the respondent had lost his lien on the appointment in view of the provisions of the Standing Orders and also because the industrial dispute having been raised after about 13 long years of termination., was to stale to grant any relief. A Single Judge of the High Court, without discussing the material on record and the findings recorded by the Tribunal, proceeded to hold the termination order to be illegal, arbitrary and violative of the principles of natural justice."

17. The Supreme Court held that the Single Judge acted as a Court of appeal in exercising jurisdiction under Articles 226 & 227 of the Constitution of India that too without finding that the findings of fact recorded by the Tribunal were either perverse or unreasonable and thereby set aside the order of the High Court.

18. The second decision cited by the respondents in the case of Punjab and Sind Bank (supra) is also a decision in a case of which facts are more or less similar to the facts of present case and it supports the contention of the respondents that holding of domestic enquiry in the given facts like in the present case was not required.

19. The findings of the learned Labour Court on the facts on appreciation of evidence on record namely that the provisions of Clause 15 (X) of the Certified Standing Order was complied with, secondly that Shri S.K.Jha Junior Manager was authorized to sign the termination order since the concerned workman did not assail by deposing in Court nor any document in support of the said fact was filed by the workman and lastly that the concerned workman failed to prove his illness and illness of his mother, cannot be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India because nothing has been shown on behalf of the petitioner that those findings on fact are perverse, unreasonable, not based on the record or are contrary to the record.

20. In view of my discussions and findings above and relying on the decision of the Supreme Court in the case of Indian Iron & Steel Ltd. (supra) and in the case of Punjab and Sind Bank (supra), I hold that the impugned award does not suffer from any infirmity so as to call for any interference by this Court.

21. Accordingly, this writ application is dismissed but without any cost.