

(1992) 01 MP CK 0013

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 1600 of 1985

All India Trade Union of Food
Corporation Employees and
Workers and Another

APPELLANT

Vs

Food Corporation of India and
Another

RESPONDENT

Date of Decision: Jan. 23, 1992

Acts Referred:

- Food Corporation of India Staff Regulations, 1971 - Regulation 32A
- Industrial Disputes Act, 1947 - Section 2, 25B, 25F

Citation: (1994) ILR (MP) 58 : (1994) 1 MPJR 129 : (1994) 39 MPLJ 482 : (1994) MPLJ 482

Hon'ble Judges: S.K. Jha, C.J; D.M. Dharmadhikari, J

Bench: Division Bench

Advocate: P.S. Nair, for the Appellant; R.K. Gupta, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.K. Jha, C.J.

This petition under Article 226 of the Constitution of India has been jointly filed by the Union of Employees of Food Corporation of India (Petitioner No. 1) and Shri L. N. Gupta (Petitioner No. 2) who was employed as T A. Grade I in the Food Corporation of India. The Food Corporation of India and the petitioner No. 2 shall hereinafter be referred to as the "employer" and the "employee", respectively.

Main challenge in this petition, amongst other orders, is to the order dated 27-4-1985 (Annexure Y to the petition) whereby the employee's name has been struck off from the rolls of the employer with effect from 25-5-1984. The services of the employee have been terminated on the alleged ground of his long absence from duty and failure to report back to the work in spite of notice given to him by

publication in the newspaper on 21-11- 1984. The contents of the above order of termination (Annexure Y), being relevant for decision, are reproduced hereunder :-

"It has been observed that Shri L. N. Gupta TAI of Food Corporation of India working in the M. P. Region has been unauthorisedly absenting himself without prior permission of the competent authority w.e.f. 25-5-1984 A/N.

A notice was published in the leading newspaper of M. P. on 21-11-1984 whereby the official was directed to resume his duty within 15 days of the publication of the notice and to explain the reasons to the satisfaction of the competent authority for his unauthorised absence. It was also made clear in the notice that if he did not report for duty within the stipulated period, he would be deemed to have abandoned the services of the Corporation on his own volition and his name would be struck off from the rolls of the Corporation from the appropriate date. The official has not reported for duty within the time limit specified in the notice and it is, therefore, clearly established that he has abandoned the services of the Corporation on his own volition and accordingly it has been decided to strike off his name from the rolls of the Corporation with effect from 25-5-1984 A/N in terms of the instructions contained in Headquarters circular No. 38-8/EP dated 1-12-1981."

The above impugned action of the" employer is purported to have been taken under its circular dated 1-12-1981 (referred to herein), a copy of which is on record as Annexure Z. 1. The above circular is in the nature of executive instructions containing guidelines for the officers of the employer in the matter of taking action against the employees who remain absent from duty for long periods or stay on leave without intimation. The only relevant parts of the circular for our purposes are contained in sub-paragraphs (iv) and (v) which read as under :-

"(iv) Applications for extension of leave for long periods on grounds other than medical particularly when the employee concerned has proceeded to a station other than his Headquarters or even outside India are sought to be examined carefully with a view to finding out if the employee concerned has extended his leave with the idea of exhausting all leave available in his leave account before submitting his resignation. If so it is not necessary for the Controlling Authority to sanction the leave applied for. The authority should send an intimation (by telegram/registered post) to his last known address directing him to report for duty forthwith. In case there is no response thereto, then after getting adequate proof of service of such intimation the Controlling Authority should publish a notification in one or the other leading newspapers circulating in the area making it clear therein that if the concerned employee does not report for duty by a stipulated date he would be deemed to have abandoned the service of the Corporation on his own volition and that his name would stand struck off the rolls of the concerned office of the Corporation from the appropriate date.

(v) Wherever found necessary by the circumstance of a case disciplinary action against the employee should be initiated immediately for wilfully refusing to obey the orders of the Controlling Authority within the purview of staff Regulations. In such cases if the charges are proved against the employee, major penalties including removal/dismissal or compulsory retirement from service would appear to be merited."

Shorn of all details concerning service history of the employee, the necessary undisputed facts are that the employee was a regular employee having put in about fifteen years of service. While he was facing a charge-sheet, he was transferred by order dated 24-4-1984 (Annexure M) from Bhopal to Gwalior. He represented and sought cancellation of his transfer, but the same was not allowed. He did not join at the place of his transfer because, as stated by him, he had applied for medical leave and thereafter alleged to have suffered in his health in Bhopal Gas Tragedy in December, 1984. Since the employee had remained absent from work continuously from April 1985, the employer published a notice in local news- paper Nav Bharat in its issue dated 28-11-1984 calling upon the employee to rejoin his duties within fifteen days of the publication of the notice, failing which it was declared that he would be deemed to have abandoned .the employment. After expiry of fifteen days" notice period, the services of the petitioner were terminated by striking off his name from the rolls of the concerned office, vide impugned order dated 27-4-1985 (Annexure Y), already mentioned above.

Learned counsel appearing for the employee assails the impugned order of termination mainly on two grounds. The first contention is that the impugned action of termination by striking out his name from the rolls amounts to an action of "retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act and the same is ab initio void for non- compliance of the mandatory pre-condition of payment of retrenchment compensation as required by provisions of Section 25F of the I.D. Act, 1947. Reliance is placed on the decisions in the following cases :-

(i) [Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others,](#)

(ii) L. Robert D'Souza v. The Executive Engineer, Southern Railway and Anr. AIR 1982 SC 854.

(iii) Mohanlal v. The Management of Mis. Bharat Electronics Ltd. AIR 1991 SC 1253, and

(iv) [Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others,](#)

The second contention is that the impugned action of termination of services is in violation of the conditions of service of the employees contained in Service Regulations framed under the Food Corporation of India Act, named as Food Corporation of India Staff Regulations, 1971, as amended on 22-2-1982. The

argument is that "absence from duty" is one of the enumerated misconducts under the Regulations and holding of a disciplinary enquiry, requiring affording of reasonable opportunity to the employee to defend himself, could not have been dispensed with by treating his misconduct as an act of abandonment of service. Reliance is placed on the decisions in the following cases :-

- (i) [Jai Shanker Vs. State of Rajasthan,](#)
- (ii). [Deokinandan Prasad Vs. The State of Bihar and Others,](#)
- (iii) [Sobhana Das Gupta Vs. The State of Bihar and Another,](#)

Learned counsel appearing for the employer supports its action and states in reply that the termination of services on the ground of abandonment does not amount to "retrenchment" within the meaning of Section 2(oo) of the I.D. Act. Alternatively, it is submitted that there is nothing on record to show that the employee had completed one year's continuous service within the definition of "continuous service" u/s 25B of the I.D. Act. The argument is that for the aforesaid reason, the employee cannot get benefit of the provisions of Section 25F of the I.D. Act. Supporting the impugned action on the basis of the circular (Annexure ZI), the submission on behalf of the employer, is that deemed abandonment of service is a subject matter falling outside the purview of the statutory staff regulations, hence can be governed by departmental instructions contained in the circular.

Having given our thoughtful consideration to the submissions of the parties, we find that the contentions advanced on behalf of the employee deserve to be accepted and his termination is liable to be set aside. The service conditions of the employees of the Corporation are regulated by statutory regulations. Regulation 32A enumerates several categories of misconduct which under sub-regulation (7) includes "absence without leave". Regulation 32A(7) is reproduced hereunder :-

"32A Misconduct

Without prejudice to the generality of the term "Misconduct" the following acts of omission and commission shall be treated as misconduct :-

(1).....

(7) Absence without leave or overstaying the sanctioned leave for more than four consecutive days without sufficient grounds on proper or satisfactory explanation."

From perusal of the regulation quoted above, it is clear that where the employee is "absent without leave" he commits misconduct for which he can be punished only by way of disciplinary action to be taken in accordance with the procedure prescribed in the Regulations. The procedure contemplates issuance of a charge-sheet and conducting of enquiry in which the employee is afforded reasonable opportunity to defend himself. The employer cannot dispense with the procedure of holding a departmental enquiry by issuing departmental instructions

by way of a circular as Annexure ZI here, to treat the misconduct as an act of abandonment of service, on the part of the employee and thus bring to an end the service relationship between the parties. The circular Annexure ZI to the extent it authorizes the employer to treat absence from duty or failure of the employee to report for duty in spite of notice, as deemed abandonment is invalid because statutory regulations cannot be amended or nullified by executive instructions. A bare perusal of sub-paragraphs (iv) and (v) quoted above of the circular Annexure ZI, makes it manifest that the case of the employee is not covered by sub-paragraph (iv) of the circular. It is applicable where an employee applies for long leave on grounds other than medical with a view to exhaust all leave at his credit before tendering his resignation. In the present case, the circumstances on record are that the employee has refused to obey the order of transfer and had filed an application for long leave on medical grounds. The case of the employee was thus covered by sub-paragraph (v) of the above circular and as instructed therein, the Controlling Authority ought to have proceeded by way of a disciplinary action in accordance with the procedure prescribed in the Staff Regulations for the alleged misconduct of the employee of unauthorized long absence from duty.

Learned counsel for the employee is also right in submitting that striking off the name of the employee from the rolls on the alleged ground of abandonment of service amount to his "retrenchment" which is ab initio void from non-compliance of the provisions of Section 25F read with Section 2(oo) of the I.D. Act. The contention of the learned counsel for the employer in the above respect cannot be accepted that the employee was not in continuous service of one year immediately preceding the date of his termination within the meaning of Section 25B read with Section 25F of the I.D. Act. It is not in dispute that the petitioner No. 2 was regular employee having put in fifteen years of service without break. He would, therefore, be deemed to be "in continuous service for not less than one year", within the meaning of that expression used in Section 25B read with Section 25F of the I.D. Act. Admittedly, no retrenchment compensation, as required by Section 25F, was paid to the employee. His termination was, therefore ab initio void. The decisions relied upon by the learned counsel for the employee in the case of L. Robert D" Sourza (supra) and Punjab Land Development and Reclamation Corporation Ltd., Chandigarh (supra) fully support him on this point:

The last question which remains to be decided is what relief should be granted to the employee. The employer expressed its unwillingness to take the employee in service, due to his long absence from duty since 1984. We withheld delivery of judgment in this case for a considerable period to allow the parties to come to an amicable settlement. The counsel appearing for the parties report that no settlement could be reached. We have considered all aspects of the case and the entire material on record. It could not be disputed that the normal remedy for seeking reliefs claimed in this petition was to approach the Labour Court under the provisions of the I.D. Act. That statutory remedy was not resorted to by the

employee, but having entertained the petition which was pending since 1985, we do not think it prudent to throw the same on the preliminary objection based on alternative remedy. It is also to be considered that had the remedy before the Labour Court resorted to, it would have been possible for the parties to lead evidence on all issues including the desirability of the grant of relief of reinstatement with full back wages to the employee. We do not agree that the quashing of the order of termination of the services of the employee should necessarily follow grant of relief of reinstatement in service with full back wages. Here we find that, even accepting all his explanation for his absence, the employee was certainly guilty of a serious lapse in not obeying the order of transfer and in remaining absent for an unduly long period of time without strong and cogent reasons. His conduct, thus, to some extent can be held to be irresponsible and blameworthy. He is, therefore, not entitled to full relief claimed by him. As the matter was not litigated in Labour Court, the employer was deprived of leading evidence to prove whether or not the employee was in gainful employment elsewhere after the date of his termination so as to justify grant of relief of back wages.

Taking all the relevant circumstances into consideration, we are of the opinion that interest of justice would best be served by quashing the impugned order of termination (Annexure Y), dated 27-4-1985 with an option given to the employer to either reinstate the employee in service forthwith without payment of back wages or to pay him compensation in lump sum of Rs*. 1,50,000/- in lieu of reinstatement and back wages. We order accordingly.

Consequently, this petition succeeds partly to the extent indicated above. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The amount of security, if deposited be refunded to the petitioners.