(1999) 09 AP CK 0026

Andhra Pradesh High Court

Case No: Writ Petition No. 12101 of 1991

E. Veera Raju		APPELLANT
	Vs	
Presiding Officer, Labour Court and another		RESPONDENT

Date of Decision: Sept. 7, 1999

Acts Referred:

- Companies Certified Standing Orders - Order 8
- Constitution of India, 1950 - Article 14, 16(1), 21, 226
- Industrial Disputes Act, 1947 - Section 25

Citation: (1999) 6 ALD 379 : (1999) 5 ALT 212

Hon'ble Judges: B. Sudershan Reddy, J

Bench: Single Bench

Advocate: Mr. A. Satya Prasad, for the Appellant; Government Pleader for Labour and Mr. C. Kodanda Ram, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The writ petitioner is a workman. The award passed by the Labour Court, Visakhapatnam refusing to grant any relief to the petitioner is challenged in this writ petition. He claims for reinstatement into service with backwages and continuity of service. The order of termination of his service by the respondent-employer is challenged.

2. Before adverting to the question as io whether the petitioner is entitled for any relief, few relevant facts may be noticed: The petitioner joined the service of the respondent-establishment on 15-11-1959 as Field Supervisor of Sugarcane Fields. He applied for leave from 4-6-1975 to 12-6-1975 and afterwards extended the leave upto the end of June, 1975. But according to him he resumed duty on 13-6-1975 and submitted his joining report to his immediate superior. But he was asked to wait for reallocation of work and accordingly he was directed to handed over the record to

one Sri E. Satyanarayana Raju, Field Assistant Someswaram circle orally. Accordingly, the petitioner handed over his records to the said Satyanarayana Raju on 19-6-1975. But he was not paid his wages from 19th June, 1975 onwards inspite of repeated representations. Whereas it is the case of the respondent employer that the workman applied for leave and was on leave from 4-6-1975 till 12-6-1975 and failed to resume duty on 13-6-1975, instead, extended, his leave till the end of June, 1975. The workman neither extended his leave nor resumed duty with effect from 1st July,1975 and lie never reported to duty at any time thereafter. It is the case of the respondent-employer that the petitioner unauthorisedly remained absent from duty beyond the period of sanctioned leave without any justifiable reasons. The petitioner-workman accordingly lost his lien over his employment and deemed to have voluntarily left the service and abandoned the same in terms of Clause 8K of the Standing Orders is the case of the respondent-employer. It is the case of the respondent-employer that the petitioner even received an amount of Rs.500/- on 24-2-1977 by way of advance towards gratuity payable consequent upon his abandonment of service on loosing lien over the job. The subsequent claim of the petitioner-workman seeking reinstatement and other relief is an after thought.

3. It is the case of the workman that the action of the respondent-Management would amount to victimisation and unfair labour practice and constitute retrenchment under the provisions of the Industrial Disputes Act, 1947 (for short ''the Act''), and therefore, he is entitled for reinstatement into service. It is the case of the respondent- employer that the petitioner lost his Ins hen over the job in terms of Clause 8K of the Standing Orders. The action does not amount to retrenchment. The petitioner voluntarily abandoned the service. The petitioner was merely informed by the proceedings dated 18-7-1977 (marked as Ex.M7 before the Tribunal) that "in view of your continued absence from duty from 1-7-1975 without leave you are deemed to have left the Company''s service without notice under Standing Order 8(k) of the Company''s certified Standing Orders." It is the case of the employer that the said order does not amount to order of termination as such. But mere declaration under Clause 8K of the Standing Orders declaring that the petitioner lost his lien over his job.

4. The following events may have to be kept in view before adverting to the question that arises for consideration.

5. According to the findings of the Labour Court, the petitioner failed to attend to his duty eversince from 1-7-1975 and his service is deemed to have been terminated. The petitioner approached the respondent-company on 6-7-1977 and sought to join the service. The company through the proceedings dated 18-7-1977 informed the petitioner that his services stood terminated with effect from 1-7-1975 in terms of Clause 8(k) of the Standing Orders. The petitioner made an application on 13-6-1977 to the Industrial Relations Officer, Rajahmundry claiming arrears of wages. On receiving necessary information from the respondent-company, the Industrial

Relations Officer by an order dated 5-8-1977 directed the petitioner to approach the appropriate authority under the Payment of Wages Act. The petitioner instead filed a suit in forma pauperis on 25-10-1977 for recovery of arrears of salary at the rate of Rs.444/- per month from 1-7-1975 to 30-9-1977 and bonus and also for mandatory injunction directing the respondents to reinstate him into service and subsequent salary till reinstatement. In the meanwhile the petitioner sent an application for settlement of gratuity in Form 1 of Payment of Gratuity Rules on 24-2-1977 and accordingly drawn a sum of Rs.500/- as advance from gratuity account. The suit filed by him was dismissed by the trial Court on 29-3-1982 and the same has become final. The petitioner thereafter filed an application purporting it to be u/s 33(c)(2) of the Act before the Labour Court, Guntur on 22-5-1982 and the same has been dismissed by the Labour Court on 25-11-1985. But in the meanwhile the petitioner made an application on 5-9-1983 for reference of the dispute under the Industrial Disputes Act for adjudication by the Labour Court. The Government through G.O.Rt.No.1955 dated 20-12-1984 referred the matter for adjudication by the Industrial Tribunal as to "whether the termination of the services of Sri E.Veera Raju, Ex-Field Supervisor by the Management of M/s Sarvaraya Sugars Limited, Chelluru, Rayavaram Taluq of East Godavari District is justified". The Labour Court after an elaborate consideration of the matter refused to grant any relief and accordingly passed the Award in ID No.51 of 1986 dated 9-3-1987. The same is questioned by the petitioner after more than 3 1/2 years by way of this writ petition.

6. It is an admitted case that the respondent management did not make any enquiry whatsoever against the petitioner. No charges were framed and no enquiry as such was held against the petitioner either for terminating or dismissing him from service on the ground of unauthorised absence. It is the case of the respondent-Management that no such enquiry is required to be held in view of Clause 8(k) of the Standing Order which declares:

"Any worker who absented himself for 8 consecutive working days without leave shall be deemed to have left the company''s service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management the option shall be converted into leave. Any worker leaving the company service in this manner shall have no claim for re-employment in the factory. Sick leave will be granted only on the production of certificates from registered medical practitioner."

7. In this writ petition, it is contended by the learned Counsel for the petitioner that the impugned action on the part of the respondent amounts to retrenchment without following the procedure provided for under the provisions of the Industrial Disputes Act, 1947. It is also contended that the services of the petitioner could not have been terminated on the ground of unauthorised absence without providing reasonable opportunity to the petitioner. Sri A. Satya Prasad, learned Counsel appearing on behalf of the petitioner would place reliance upon the decision of the

Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., , in support, of his submission that the management could not have terminated services of the petitioner without prior notice and reasonable opportunity to the petitioner herein. The Supreme Court in the said judgment dealing with simitar clause in the certified Standing Order observed that "the principles of natural justice must be read into the Standing Order No.l3(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice." The Apex Court further held that "the management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case." It is observed that "before taking any action putting an end to the tenure of an employee/ workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. The Supreme Court in many words rejected the contention put forth by the management that employee''s eight days absence from duty brings about automatic loss of lien on the post and nothing more need be done by the management to pass an order terminating the service? and per force termination is automatic. The Supreme Court declared that such a contention bears no substance. It is observed that striking of the name from the rolls for unauthorised absence from duty amounted to termination of service and absence from duty for 8 consecutive days amounts to misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified.

8. The Supreme Court followed the decision reported in D.K. Yadav''s case (supra) in Uptron India Limited Vs. Shammi Bhan and Another, . The Supreme Court after referring to various decisions observed that the permanent status on an employee guarantees security of tenure and the services of a permanent employee cannot be terminated abruptly and arbitrarily without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the Certified Standing Orders.

It is observed that:

"In view of the above, we are of the positive opinion that any clause in the Certified Standing Orders providing for automatic termination of service of a permanent employee, not directly related to "Production" in a Factory or Industrial Establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.

9. In the said decision, the Supreme Court was considering the scope of Clause 17(g) of the Certified Standing Orders which is more or less akin to the Standing Orders with which we are now concerned and similar to the Standing Order which fell for consideration in D.K. Yadav''s case (supra) and observed:

"There is another angle of looking at the problem. Clause I7(g), which has been extracted above, significantly does not say that the services of a workman who overstays the leave for more than seven days shall stand automatically terminated. What it says is that "the services are liable to automatic termination." This provision, therefore, confers a discretion upon the management to terminate or not to terminate the services of an employee who overstays the leave. It is obvious that this discretion cannot be exercised, or permitted to be exercised, capriciously. The discretion has to be based on an objective consideration of all the circumstances and material which may be available on record. What are the circumstances which compelled the employee to proceed on leave; why he over stayed the leave; was there any just and reasonable cause for overstaying the leave; whether he gave any further application for extension of leave; whether any medical certificate was sent if he had, in the meantime, fallen ill? These are questions which would naturally arise while deciding to terminate the services of the employee for overstaying the leave. Who would answer these questions and who would furnish the material to enable the management to decide whether to terminate or not to terminate the services are again questions which have an answer inherent in the provision itself, namely, that the employee against whom action on the basis of this provision is proposed to be taken must be given an opportunity of hearing. The principles of natural justice, which have to be read into the offending clause, must be complied with and the employee must be informed of the grounds for which action was proposed to be taken against him for overstaying the leave."

10. The Apex Court thus in categorical terms held that any termination of services of a permanent employee on the ground that the" employee overstayed the leave period and remained unauthorisedly absent would be bad if such termination is without any notice and making an enquiry. The Supreme Court took similar view as early as in 1966 in Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, . The Supreme Court while interpreting similar Regulation of Gujarath State Road Transport Corporation observed that the employer may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show-cause why he be not removed. The workman is entitled to a reasonable opportunity to show-cause which includes an opportunity to deny his guilt and establish his innocence which he can do only when he knows what the charges levelled against him are and the allegations on which such charges are based. A Division Bench of this Court in Chief Engineer, APSEB v. K.Naga Hema, 1996 (1) ALD 304 (DB), observed:

"The fallacy, however, in the stand of the Board starts from its case that the service of the husband of the writ petitioner stood automatically terminated for his long unauthorised absence from duty. Allegation that some one is absent without any grant of leave by the competent authority, is obviously an allegation leading to a

charge of misconduct on the part of the employee. When such a charge is levelled against the employee, it is imperative the employer is duly bound to hold enquiry into the alleged misconduct, before making any order of removal from service, which in every sense will be an order imposing a major punishment. The view which several High Courts expressed and applied in different parts of the country, notwithstanding the rules or Certified Standing Orders providing for such automatic cessation of contract of service, has now been expressed by the Supreme Court in the case in D.K. Yadav v. J.M.A. Industries Limited (supra), in the case of a private employer, wherein it is stated, principles of natural justice and duty to act in just, fair and reasonable manner must be read into the Standing Orders and notwithstanding the order which provided for automatic cessation of contract of service, the Court has directed that such order to terminate the service can be made only after an enquiry, otherwise it will be violative of Articles 14, 16(1) and 21 of the Constitution of India."

11. Learned Counsel for the Management Sri C. Kodandaram however, would place reliance upon the judgment of the Supreme Court in National Engineering Industries Ltd. Vs. Hanuman, , in support of his submission that when the Standing Order provides that a workman will lose his lien on his appointment in case he does not join his duty within the stipulated time by the Certified Standing Orders, his services are automatically terminated on the happening of the contingency provided for by the Certified Standing Orders. The Supreme Court observed:

".....it seems to us clear that when the Standing Order provides that a workman will lose his lien on his appointment in case he does not join his duty within eight days of the expiry of his leave, it obviously means that his services are automatically terminated on the happening of the contingency. We do not understand how a workman who has lost his lien on his appointment can continue in service thereafter. Where therefore a Standing Order provides that a workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens."

The learned Counsel would also rely upon the judgment of the Supreme Court in Buckingham and Carnatic Company Limited v. Venkatayya, (1963) II LLU 663. The Supreme Court observed:

"It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and, normally such an intention cannot be attributed to an employee without adequate evidence in the terms and conditions of service and they are included in Certified Standing Orders, the doctrines of common law or considerations of equity would

not be relevant. It is then a matter of constituting the relevant terms itself. Hence under the first part of the relevant Standing Order an employee remaining absent for eight consecutive days without leave shall be deemed to have terminated his contract of service and thus relinquished or abandoned his employment. The fact that such absence is also made a misconduct under the other Standing Order will not affect this position as it is not incumbent on the management to take recourse to the Standing Order providing for disciplinary proceedings for such absence on the part of any employee."

The learned Counsel for the respondent management also placed reliance upon the decision of the Madhya Pradesh High Court in Shamboo Singh v. Central Industrial Tribunal-Cum-Labour Court, Jabalpur, (1981) II LU 346, and the decision of this Court in Narsi Reddy v. The General Manager, Andhra Pradesh State Road Transport Corporation Musheerabad, 1978 Lab.IC 1510, and also the Bombay High Court in Chipping and Painting Employees'' Association Ltd. Vs. Zambre (A.T.) and Another, . In view of the authoritative pronouncement of the Supreme Court on the subject, there is no need to refer those judgments in detail. The decision cited by the learned Counsel for the respondent-management in B.V. Ramnarayan v. Chief General Manager, State Bank Of India, 1996 (4) ALD 694, however, in some extent, may support his case. But the decision turns upon its own peculiar facts and circumstances and is required to be understood in the background of the law laid down by the Apex Court in D.K. Yadav''s case in Uptron''s case (supra).

12. In my considered opinion, the judgment of the Apex Court in Buckingham''s case and National Engineering''s case (supra) may have to be understood in the context of march of law and its development with regard to the extent of application of principles of natural justice in the matter of termination and removal of an employee by the management either as a disciplinary measure or for any other reason. Even before the judgments in D.K. Yadav''s case and Uptron''s case (supra) the Supreme Court in West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, , declared that any provision in the Regulation enabling the management to terminate the services of a permanent employee by giving three months notice or pay in lieu thereof, would be bad as violative of Article 14 of the Constitution of India. The said principle has been reiterated in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . In O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , the Supreme Court struck down Rule 31(v) of the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978 as violative of Articles 14 and 16 of the Constitution of India, as it provided for terminating the services of a permanent employee by giving 90 days'' notice. That is the development and march of law. In D.K. Yadav''s case (supra) the principles of natural justice are read into the Certified Standing Orders and held that striking of the name of the employee from the rolls for unauthorised absence from duty amounted to termination of service and the absence from duty may amount to misconduct and termination of service

on such ground without complying with the minimum principles of natural justice would not be justified.

13. A close reading of Clause 8(k) of the Certified Standing Order with which we are now presently concerned is exactly similar to the one that has fallen for consideration in D.K. Yadav''s case and Uptron''s case (supra). This particular Standing Order enables a worker to explain about his absence to the satisfaction of the management and in such a case, the management has the option to convert the absence into leave. It further provides for grant of sick leave on the production of certificate from the Registered medical practitioner. It means that unauthorised absence of a worker for eight consecutive working days without leave does not result in automatic determination of the services. An employee is entitled to satisfy the management and provide reasonable explanation for his absence, it enables the management even to grant the sick leave on the production of certificate from the Registered Medical Practitioner. Therefore, the plea that a worker who absented himself for eight consecutive days without leave shall he deemed to have left the company''s service and the same results in automatic termination of his contract of service cannot be accepted. Any other interpretation would result in drastic and serious consequences. It would mean as if the management is empowered to dispense with the services of an employee, in a given case, whom it may not like by invoking Clause 8(k) of the Standing Orders by merely alleging unauthorised absence, though in fact, the employee may not have remained absent for eight days at all. Would it be enough if the management merely declares that the workman lost his lien of his appointment on the ground that the workman remained absent for eight consecutive days without leave? Is it not necessary to make an enquiry in this regard. In a given case the allegations may be true or may not be true. Therefore, the basic requirement is notice and an opportunity of being heard. Principles of natural justice have to be read into such Certified Standing Orders as the one on hand which declares an employee deemed to have left the Company''s service on the ground of abstaining himself for eight consecutive days without leave. Otherwise, it would lead to dangerous consequences. Employees would be at the mercy of the employer and without any protection whatsoever. Otherwise there is a danger of employer invoking the said clause in the Certified Standing Orders to dispense with the service of its employee even in the absence of unauthorised absence, as the Certified Standing Order does not provide for any further enquiry. Such a situation cannot be countenanced by this Court.

14. Following the ratio of the decisions in D.K. Yadav and Uptron''s case (supra), the Court has no other option except to declare the action of the respondent in informing the petitioner herein as if his service stood terminated with effect from 1-7-1975 as bad in law, avoid and inoperative.

15. The action on the part of the respondent would also amount to retrenchment without following the prescribed procedure, as the management failed to follow the

mandatory procedure prescribed by Section 25-F of the Industrial Disputes Act. Viewed from any angle, the decision and the action of the respondent management cannot be upheld and it suffers from incurable legal infirmities.

What is the relief?

The petitioner is not free from blame and the chronology of events speak volumes of the petitioner''s callous and indifferent attitude eversince the services of the petitioner was deemed to have been terminated from 1-7-1975. That the petitioner approached the Company only on 6-7-1977 after a period of two years and sought to join the service. The petitioner was immediately informed by the respondent-Company that his services stood terminated with effect from 1-7-1975, under Clause 8(K) of the Standing Orders. Thereafter, the petitioner failed to avail the proper remedy available to him till September, 1983, when he filed an application seeking reference for adjudication of the dispute. The respondent Company cannot be blamed in any manner whatsoever atleast until the proceedings were taken cognizance by the Labour Court in the year 1986.

16. It is brought to the notice of the Court by the learned Counsel for the petitioner that the petitioner could have retired on attaining superannuation some time in May,1999. It is true, the petitioner lost almost about 24 years of service on account of the illegal termination of his service by the respondent-company. But as I have already observed, the petitioner is not free from blame. No authenticated particulars as such are placed before this Court as to what would have been the salary the petitioner was entitled to during all these years except stating that the present salary of the petitioner would have been at Rs.5,000-00. Obviously, the pay scales may have been revised many times during all these years.

17. In the totality of the facts and circumstances of the case, I consider that interest of justice would be met by directing the respondent-Company to pay a sum of Rs.1.50 Lakhs (Rupees One Lakh and fifty thousand only) which would be adequate compensation in lieu of reinstatement and backwages. There shall be an order accordingly.

20. The writ petition is according allowed and the impugned award is quashed. Let a certiorised mandamus be issued accordingly. There shall be no separate order as to costs.