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Court : Jharkhand

Decided On : Sep-07-2017

Appellant : Their Workman Represented By

Respondent : Employers in Relation to The

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(L) No. 5667 of 2001 Their workmen represented by the Secretary, Bihar Colliery Kamgar Union, Jharnapara, Hirapur, Dhanbad .. Petitioner Versus 1. Employers in relation to the Management of Chasnala Colliery of M/S IISCO, Chasnala, Dhanbad 2. Presiding Officer, Central Government Industrial Tribunal No.2, Dhanbad .. Respondents ----- CORAM HONBLE MR. JUSTICE RAJESH SHANKAR ----- For the Petitioner: M/s Vikas Kumar, J.

Mazumdar For the Respondent No.1: Mr. Vijay Kant Dubey ----- 09/07.09.2017 The present writ petition has been filed for quashing the award dated 10.07.2001 passed by the Presiding Officer, Central Government Industrial Tribunal No.2 at Dhanbad in Reference No. 147 of 1995 whereby, the reference was answered in favour of the Management holding that the workman has failed to satisfy the Management about his performance of work as Daily Rated Worker.

2. The factual background of the case, as stated in the writ petition, is that the father of the concerned workman had died in Chasnalla disaster and in pursuance of the policy decision of the Management, the mother of the concerned workman,

namely, Sova Devi was provided employment. The mother of the concerned workman was insisted by the Management to take voluntary retirement in order to provide employment to her dependant son, as the Management was in need of male workman. Thereafter, the mother of the concerned workman submitted resignation and, accordingly, the Management provided employment to the concerned workman vide letter dated 24.02.1992 as Category-I Mazdoor. The case of the petitioner is that the concerned workman was appointed as a permanent workman, which is evident from the appointment letter itself. It is further submitted that his service condition would be guided by the provisions of the Certified Standing Orders. The 2 Management vide letter dated 01.06.1992 terminated the service of the petitioner during the probation period on the ground of bad conduct and unsatisfactory performance. The concerned workman raised industrial dispute through the petitioner-Union and when conciliation failed, the matter was referred to the learned Tribunal vide Reference No. 147 of 1995. The term of the reference was Whether the action of the management of Chasnala Washery of M/s IISCO Ltd. in terminating the service of Shri Dhiraj Kumar Sharma S/o Smt. Sova Devi w.e.f. 01.06.1992 is justified? If not, to what relief Shri Dhiraj Kumar Sharma is entitled and from which date? The learned Tribunal, after appreciating the evidences of both the parties, came to the conclusion that the concerned workman did not complete the training due to his long absence for about 2 months without assigning any reason and as such the Management bonafidely terminated him from service finding him unsuitable and inefficient during the period of training. It has been further held that the order of termination was without any malafide intention.

3. Learned counsel for the petitioner submits that the concerned workman was appointed as a permanent workman as Category-I Mazdoor and his service would be governed by the Certified Standing Orders of the Management. It is further submitted that as per the Certified Standing Orders, bad conduct and unsatisfactory performance is misconduct and the workman can be dismissed from service only by issuing chargesheet and holding an enquiry. Admittedly, neither chargesheet was served on the concerned workman nor enquiry was conducted before terminating him from service. It is also submitted that the principle of natural justice has not been followed while terminating the concerned

workman and as such the order of termination is fit to be set aside.

4. Learned counsel for the petitioner puts reliance on a judgment 3 rendered by the Honble Supreme Court in the case of Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors. reported in (1978) 1 SCC405and submits that action of the respondent-Management is to be judged by the reasons stated while making the order and the supplementary reasons in the shape of affidavits are to be excluded.

5. Learned counsel for the respondent No.1 submits that as per the Certified Standing Orders of Chasnalla Colliery of M/S Indian Iron Steel Company Ltd., there is a provision under Clause 14(b) that no notice of termination under the provision of Industrial Disputes Act, 1947 is required in the case of temporary and Badli workman. It is further submitted that the petitioner, during his short period of service i.e. from 24.02.1992 to 31.05.1992 attended duty from 25.02.1992 to 21.03.1992 i.e. less than one month and absented from 23.03.1992 to 31.05.1992 i.e. more than two months. It is further submitted that Smt. Sova Devi voluntarily submitted her resignation on 16.12.1991 which was accepted vide letter dated 14/15.02.1992 and there was no stipulation in that letter that her son would be provided employment in lieu of her resignation. It is further submitted that actually the petitioner was provided employment as Daily Rated Worker on 24.02.1992 for performing casual nature of job of General Mazdoor of Category-I on the consideration that he happened to be the son of ex- employee. It is further submitted that from time to time, the Management appointed the dependants of ex-employees for performing casual nature of jobs, but such persons cannot be appointed as permanent workmen or probationer to fill up any permanent vacancy. It is also submitted that the service of a Daily Rated Worker can be terminated on the ground of non-performance of duty or on the ground of inefficiency or unsuitability.

6. Learned counsel for the respondent No.1 puts reliance on a 4 judgment rendered by the Hon'ble Supreme Court in the case of Pavendra Narayan Verma Vs. Sanjay Gandhi P.G.I of Medical Sciences & Anr. reported in (2002) 1 SCC520
7. Heard learned counsel for the parties and perused the materials placed on

record.

8. The petitioner has challenged the award dated 10.07.2001 mainly on the ground that the petitioner was appointment as a permanent workman and the ground on which he was terminated, comes under the definition of grave misconduct under the Certified Standing Orders and as such the respondent No.1 ought to have initiated a full fledged enquiry before terminating him, but the same was not done and as such on this score alone the order of termination is liable to be quashed.

9. The appointment letter of the petitioner is required to be looked into so as to weigh the stand of the petitioner. In the appointment letter, it has been written in a clear and explicit term you will be initially/temporarily posted in C.P Chasnala Colliery, after your initial training as per rules. In the Certified Standing Orders dated 30.06.1965, the workmen have been categorized in Clause 3(a) as permanent, probationers, Badlies or substitutes, temporary and apprentices. Further, in Clause 3(b), permanent workman has been defined as a workman who is appointed for unlimited period or who has satisfactorily put in three months continuous service on permanent post as a probationer. Thus, the argument of learned counsel for the petitioner that he was appointment as a permanent employee is accepted. So far as the argument of learned counsel for the respondent No.1 that the petitioner was appointed as a temporary employee and as such he could have been terminated as per Rule 14(2) without issuing any notice, the same cannot be accepted, as in the appointment letter itself, it was stated that he would be 5 terminated from service on attaining the age of 58 years. It was also written in the termination letter that the conduct of the petitioner was not found satisfactory during the probationary period. However, on the basis of the aforesaid facts, it has also been urged that although the petitioner was permanently employed, he had to undergo training of three months as a probationer.

10. For the reason discussed hereinabove, I would now proceed to decide the case having treated the petitioner as a probationer. So far as the ground of the petitioner that a full-fledged enquiry was required to be initiated before terminating the petitioner, from the record, it transpires that while undergoing the training, the

petitioner remained absent from 23.03.1992 to 31.05.1992 without assigning any reason and as such he could not complete the training successfully and only thereafter, the Management-respondent terminated the petitioner stating The management has viewed your conduct and performance in duty after your joining service in the company. Your conduct has been found bad and performance very unsatisfactory during the probationary period and as such your services are not at all useful for the Company. Nothing has been brought on record by the petitioner or by the respondent No.1 to show that any other allegation was made by the Management before terminating the petitioner.

11. Now the question arises as to whether the reason for which the petitioner was terminated, amounts to misconduct and the same requires a full-fledged enquiry or not? 12. The Honble Supreme Court in the case of State Bank of India Vs. Palak Modi & Anr. reported in 2013 (1) JLJR (SC) 476, after citing various judgments on the point of termination of a probationer, has held as under:

20. The ratio of the above noted judgments is 6 that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general suitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

13. The Honble Supreme Court in the case of Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. & Ors. reported in (1997) 2 SCC191has held as under:

5. The petitioner challenged the order of termination in the High Court. The High Court without going into the question whether or not it is stigma, came to the conclusion that the respondents had totally lost confidence in the appellant and that he was totally unsuitable to the job for which he was employed and, therefore,

he was found not entitled to any enquiry. Consequently, it dismissed the writ petition. Shri Sehgal, learned senior counsel for the petitioner contends that the finding recorded amounts to a stigma; action taken without conducting enquiry and giving an opportunity to the petitioner, is violative of Article 311(2) of the Constitution and the rules made thereunder. Therefore, he is entitled to an opportunity of being heard and be dismissed only on the ground of misconduct and not by termination simpliciter. We do not agree with the learned counsel. The order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the word and performance of the duties were unsatisfactory, they are entitled to terminate 7 the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities, different complexion would arise. In this case, they have recorded the finding that the petitioner was regularly absent on one ground or the other. Under these circumstances, the respondents terminated his services. We do not find any illegality in the action taken by the respondents.

14. In the case of Pavendra Narayan Verma Vs. Sanjay Gandhi P.G.I of Medical Sciences & Anr. (Supra), the Hon'ble Apex Court has held as under:

28. Therefore, whenever a probationer challenges his termination the courts first task will be to apply the test of stigma or the form test. If the order survives this examination the substance of the termination will have to be found out.

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationers appointment is terminated it means that the probationer is unfit for

the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationers appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

30. As was noted in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences (SCC p. 73, para 28)

28. At the outset, we may state that in several cases and in particular in State of Orissa v. Ram Narayan Das it has been held that use of the word unsatisfactory work and conduct in the termination order will not amount to a stigma.

31. Returning now to the facts of the case 8 before us. The language used in the order of termination is that the appellants work and conduct has not been found to be satisfactory. These words are almost exactly those which have been quoted in Dipti Prakash Banerjee case12 as clearly falling within the class of non-stigmatic orders of termination. It is, therefore safe to conclude that the impugned order is not ex facie stigmatic.

15. On perusal of the aforesaid judgments of the Honble Supreme Court, it is clear that the employer has every right to judge the suitability of an appointee and if he is found unsuitable, he may be terminated without following the procedure enshrined under Article 311(2) of the Constitution of India. However, if an employee is dismissed on the ground of misconduct, then the authority is required to follow the principle of natural justice before taking the said decision.

16. It is also well settled that the language used in the termination order is not a conclusive evidence to determine as to whether the order is termination simpliciter or on the ground of misconduct. In the case in hand, the petitioner was appointed on 24.02.1992 and he absented himself from 23.03.1992 till 31.05.1992 and as such he was terminated on 01.06.1992. Thus, the order of termination cannot be

said to be passed on the ground of any misconduct, which requires a full fledged enquiry, rather it was passed for the reason that during the training period, the petitioner absented himself for considerable period and as such he was not found suitable for the job.

17. On perusal of the appointment letter dated 24.02.1992, which was exhibited as Ext. W-1 during industrial adjudication, it transpires that the petitioner-workman was offered an employment of Mazdoor in Daily Rated Category-I, subject to the condition that he would be posted in CPP at Chasnalla Colliery after initial training, as per the prescribed rules. The petitioner-workman was placed under initial 9 training as per the prescribed rules and during the training period, he was found not suitable and efficient and due to the said reason, the respondent-Management terminated him from service and in such case, there is no need of following the procedures, as laid down in the Certified Standing Orders. Admittedly, the petitioner was appointed vide appointment letter dated 24.02.1992 (Ext. W-1) and terminated from service vide letter dated 01.06.1992 (Ext. W-2). In the meantime, he absented himself from 23.03.1992 till 31.05.1992 i.e. for more than two months. It is well settled that an order of termination simpliciter of a temporary employee or a probationer or even a tenure employee without any stigma does not require any interference by the Court exercising the writ jurisdiction, however, the Court is not prevented from looking into the prevailing circumstances prior to issuance of the order of termination to find out whether the alleged inefficiency has been the real motive for issuance of the order of termination. The leaned Tribunal while considering the fact as to whether the order of termination has been issued in a bonafide manner, has considered the fact that initially the father of the concerned workman was an employee under the Management, however, the father of the concerned workman died in Chasnalla disaster as a result of which the mother of the petitioner-workman was provided employment under the Management, but since she fell seriously ill, she took voluntarily retirement and in her place, the respondent-Management provided employment to the petitioner-workman. The said fact indicates that the respondent-Management did not carry any malafide against the petitioner, rather the said gestures have been quite benevolent towards the petitioner. The petitioner-workman should not have avoided his responsibility of showing his efficiency and suitability towards the Management

during his training period. However, the petitioner-workman remained absent for a long period during his 10 training period and due to the said reason, the respondent- Management found the petitioner-workman unsuitable and inefficient leading to termination of his service. Accordingly, the reference was decided against the petitioner-workman holding, inter alia, that the action of the Management of Chasnalla Colliery of M/S IISCO Ltd. in terminating the service of the petitioner-workman w.e.f. 01.06.1992 is justified. In view of the above facts, I find that the learned Tribunal has rightly concluded that the decision taken by the respondent- Management to terminate the service of the petitioner-workman was bonafide in absence of any cogent proof to the effect that such termination was carrying any malafide or ill intention against the petitioner-workman.

18. The judgment relied upon by learned counsel for the petitioner in the case of Mahendra Singh Gil (Supra) shall have no application in the facts and circumstances of the present case.

19. In view of the above discussions and in the facts and circumstances of the case, I see no reason to interfere with the impugned award dated 10.07.2001 passed by the Presiding Officer, Central Government Industrial Tribunal No.2 at Dhanbad in Reference No. 147 of 1995.

20. The writ petition being devoid of merit is, accordingly, dismissed. (RAJESH SHANKAR, J) High Court of Jharkhand, Ranchi Dated 07.09.2017 Satish/A.F.R

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