

Sunil Modi ? Sunil Mudi Vs. M/S Eastern Coalfields Limited

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Court : Jharkhand

Decided On : May-21-2015

Appellant : Sunil Modi ? Sunil Mudi

Respondent : M/S Eastern Coalfields Limited

Advocate for Def. : Mr. Rajesh Lala

Advocate for Pet/Ap. : Mr. Mahesh Tewari

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 6444 of 2009
Sunil Modi @ Sunil Mudi, son of Late Dhanna Modi, resident of Village Hariharpur,
P.O. Poddardih, P.S. Nirsa, District Dhanbad Petitioner Versus 1. M/s Eastern
Coalfields Limited, having its Head Office at Sactoria, P.O. & P.S. Bishargarh,
District Burdwan (West Bengal) represented through its Chairman cum Managing
Director.

2. Chairman cum Managing Director, M/s Eastern Coalfields Limited 3. Director
(Personnel), M/s Eastern Coalfields Limited 4. General Manager (Personnel), M/s
Eastern Coalfields Limited., Sl. Nos. 2, 3 & 4, all having their respective offices at
Sanctoria, P.O. & P.S. Bishargarh, District Burdwan (West Bengal).

5. General Manager, Mugma Area, M/s Eastern Coalfields Limited, having his
office at Gopalpur, P.O. & P.S. Nirsa, District Dhanbad 6. Personnel Manager,
Mugma Area, M/s Eastern Coalfields Limited, having his office at Gopalpur, P.O. &

P.S. Nirsa, District Dhanbad.

7. Agent/Manager, Kumardubhi Colliery under Mugma Area, M/s Eastern Coalfields, having his office at Kumardubhi Colliery, at Mairha, P.O. Mairha, P.S. Chirkunda, District Dhanbad.

8. Personnel Manager, Kumardubhi Colliery under Mugam Area, M/s Eastern Coalfields, having his office at Kumardubhi Colliery, at Mairha, P.O. Mairha, P.S. Chirkunda, District Dhanbad. .. . Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : M/s. Mahesh Tewari & Rahul Dev, Advocate For the Respondents : M/s. Rajesh Lala & Arpit Kumar, Adv. ----- th CAV on:24 April, 2015 Pronounced on 21/05/ 2015 Per Pramath Patnaik, J.:

1. In the aforesaid writ application, the petitioner has inter alia prayed for issuance of a writ in the nature of mandamus commanding upon the respondents particularly respondent nos.5 and 6 to send to this Court all records appertaining to termination of service issued vide annexure-5 and for quashing and setting aside the letter of termination issued vide Ref. No.ECL/GM/MA/09/1468 dated 12/13.05.2009 (Annexure-6) and for reinstatement on the post of Underground Loader with payment of back wages.

2. The factual matrix as delineated in the writ application in a nutshell is that due to untimely death of the father of the petitioner in harness, the petitioner was appointed on compassionate basis as an Underground 2 Loader in the year 1995. The petitioner continued to discharge his duty diligently without any blemishes till first half of January, 2004 but due to Acute Bronchitis and Pneumonia the petitioner remained absent from duties without any sanctioned leave. A departmental proceeding was initiated against him on 02.11.2007 and the petitioner appeared in the said proceeding. During inquiry, the petitioner has apprised the Inquiry Officer relating to his illness which forced him to remain absent from duties with effect from 27.01.2004. The petitioner also pleaded before the Inquiry Officer that his absence has not caused any pecuniary loss to the company since he was an Underground Loader on piece rated basis, meaning thereby that wages were paid to him only on the basis of coal he would dig/cut and

there was no salary for any time rated benefit extended to the petitioner. The enquiry report was submitted and second show cause notice was issued to the petitioner on 04.12.2008, vide Annexure-2 to the writ application and in pursuance to the said show cause the petitioner filed his reply on 18.09.2007 and subsequently on 10.10.2007, vide annexures-3 and 4 to the writ petition. But, without considering the said replies in a right prospective the respondent no.5 has terminated the petitioner from services with immediate effect, vide annexure-6 to the writ petition.

2. Being aggrieved by the said termination order the petitioner left with no alternative of any efficacious remedy, has approached this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievance.

3. Per contra, a counter affidavit has been filed on behalf of respondent no.5 repelling the averments made in the writ application. In the counter affidavit, it has been inter alia stated that the petitioner was a regular absentee from duty and was not performing his duty properly. The details of the attendance of the proceeding of last three years is as follows: (i) 2001 -Petitioner has worked 110 days (ii) 2002 -Petitioner has worked 43 days (iii) 2003 -Petitioner has worked 67 days On previous occasions, the petitioner was warned but he continued with his habit and never tried to mend himself. But, on the present occasion the petitioner absented from his duty without any information and without taking leave/permission from the competent authority since 27.01.2004, which is a misconduct. Leave without permission is a misconduct under 3 Clause 26.29 of the Certified Standing Order applicable to the petitioner and his service condition. Accordingly, a charge sheet was issued to the petitioner on 18.05.2006, vide annexure-A to the counter affidavit and in pursuance to the said charge sheet, an Inquiry Officer was appointed as per Annexure-B to the counter affidavit and the petitioner was requested to participate in the departmental enquiry proceeding, vide Inquiry Notice dated 05.06.2007 and its reminder vide Inquiry Notice dated 09.07.2007 as per annexures -C and D to the counter affidavit. On conclusion of the enquiry, the petitioner was issued with the show cause and the reply submitted by the petitioner was found unsatisfactory. In the enquiry, the charge against the

petitioner was proved beyond any doubt and a copy of the enquiry report is annexed as Annexure-G to the counter affidavit. It would not be out of place to mention that the petitioner admitted his guilt and fervently pleaded not repeat same as per his written undertaking dated 24.10.2008, vide annexure-H and I to the counter affidavit. Thereafter, the petitioner was issued second show cause notice dated 12.02.2008 and to which the petitioner replied on 23.02.2008, vide annexures-J and K to the counter affidavit. After due consideration of the enquiry report and reply to the second show cause notice, the letter of termination of the petitioner dated 12/13.05.2009 has been passed by General Manager of Mugma Area of ECL, vide annexure-L to the counter affidavit. Against the order of termination, the petitioner has not filed any departmental appeal nor he has raised any Industrial Dispute and on account of alternate remedy the prayer has been made for rejection of the writ petition.

4. Heard Mr. Mahesh Tewari, learned counsel for the petitioner and Mr. Rajesh Lala, appearing for the respondents.

5. Learned counsel for the petitioner has strenuously urged that the respondent authorities being the creature of the Statue have acted beyond the four corners of the same in a cavalier fashion in terminating the services of the petitioner on the ground of absence from duty from 27.01.2004 without any valid and justifiable reason, which is nothing but a colourable exercise of power. The counsel for the petitioner has further submitted that by virtue of the impugned order, under annexure-6 the right of livelihood of the petitioner has been snatched away by the acts of the respondents, which is in clear violation of Article 14, 19 (i) (g) and 300 A of the Constitution of India. 4 6. Learned counsel for the respondents countering the impassioned argument advanced on behalf of the learned counsel for the petitioner has submitted that for almost same and similar relief the petitioner has filed writ petition before the Calcutta High Court with a direction to set aside the impugned order of dismissal and for reinstatement in service with back wages and the said fact has not been disclosed. It is also stated in the counter affidavit that for Wage Board Employees the Certified Standing Order is applicable and Clause 30 of the Certified Standing Order stipulates about the filing of an appeal against the order passed by the disciplinary authority within 45 days. Clause 31 of the

Certified Standing Order stipulates about the review of cases of punishment by an authority higher than the appellate authority. Moreover, a detail enquiry was conducted and the petitioner was participated in the departmental proceeding and there has been compliance of principles of natural justice and the order of termination has been passed by the disciplinary authority.

7. After perusing the documents on record and the rivalized submissions, the impugned order, vide Annexure-6 to the writ petition does not warrant interference by this Court due to following facts, reasons and judicial pronouncements: (I) On perusal of the charge sheet (Annexure-A), it appears that the charge sheet was issued on 18.05.2006 and the petitioner was absent from duty with effect from 27.01.2004 for more than two years which amounts to misconduct as per Clause 26.29 of the Certified Standing Order. Clause 26.29 of the said order which has been reflected in the charge sheet, envisages absence from duty beyond 10 days without sanctioned leave of sufficient cause or over staying beyond sanctioned leave without valid reasons, therefore, the charge sheet indubitably reflects unauthorized absence of the petitioner for more than two years which amounts to a misconduct as per the Certified Standing Order. (II) It appears from the enquiry report, vide annexure-G to the counter affidavit that the charge levelled against the petitioner has been fully established and proved beyond any doubt. Since, the alleged charge against the petitioner has been proved in the enquiry report, the disciplinary authority has rightly terminated the services of the petitioner. Moreover, the scope of judicial review under Article 226 of the Constitution of India is very limited and the writ Court cannot reappraise and re-evaluate the evidence adduced during enquiry nor the writ Court can substitute the decision of the disciplinary authority. In the instant case, there has been no procedural irregularity nor the punishment imposed is disproportionate or excessive so as to shock the conscience of this Court. (III) That the Apex Court in (2014) 4 SCC108(Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, has been pleased to hold that it is not an absolute proposition in law that whenever there is long unauthorized absence, it is obligatory on the part of disciplinary authority to record finding of wilful absence even when employee failed to show compelling circumstance for remaining absent. It is also not necessary to plead habitual absenteeism. Absence of determination by disciplinary authority that long

unauthorized absence was wilful, inconsequential and further held that unauthorized absence of employee as a misconduct cannot be put in straitjacket formula for imposition of punishment which depends on various factors. In the said case, the Honble Apex Court held that respondent was unauthorizedly absent for one year and seven months and had exhibited adamant attitude in not responding to repeated communications from employer. Hence, punishment of dismissal was not disproportionate to gravity of misconduct and doctrine of proportionality was not remotely attracted. The punishment is not shockingly disproportionate. The Honble Apex Court quoting a passage from Government of India Vs. George Philip (2006) 13 SCC1 held that this kind of fact cannot be countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organization.

8. As a cumulative effect of the facts, reasons and judicial pronouncements, I am not inclined to interfere with the impugned order (Annexure-6) and, accordingly, this writ petition is dismissed being devoid of any merit. (Pramath Patnaik, J.)
Saket/-

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