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Court : Jharkhand

Decided On : Dec-14-2004

Reported in : [2005(2)JCR145(Jhr)]

Judge : Ramesh Kumar Merathia, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : WP (S) No. 4917 of 2003

Appellant : Samrendra Choudhary

Respondent : Heavy Engineering Corn. Ltd. and ors.

Advocate for Def. : Rajiv Ranjan and; R. Mukhopadhaya, Adv.

Advocate for Pet/Ap. : Ramawar Choubey, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Ramesh Kumar Merathia, J.

1. Heard the parties.

2. Petitioner has prayed for quashing the order dated 23.5.2004 (Annexure-10/1) passed by the Chairman-cum-Managing Director, H.E.C. Ltd., (respondent No. 2) pursuant to the orders of this Court, affirming the order of his removal from service; and also for quashing, the order dated 21.5.1997 (Annexure-6) passed by the Senior Deputy General Manager (respondent No. 5) removing him from service on the ground of his habitual absence from duties without leave and for tampering with the Attendance Register; and also for quashing the Enquiry Report dated 4.3.1997 (Annexure-5); and for consequential reliefs.

3. The main grievance of the petitioner is that the respondent' No. 2 has not passed the impugned order dated 23.5.2002 in the light of the order of this Court dated 14.3.2002 passed in W.P. (S) No. 5007/01 (Annexure-8).

4. It appears that petitioner challenged the aforesaid enquiry report dated 4.3.1997 (Annexure-5) and the order dated 21.5.1997 removing him from service (Annexure-6) before this Court, vide WP (S) No. 5007/01, which was disposed of on 14.3.2002 (Annexure-3). The relevant portion of the said order reads as follows :

'... In view of the nature of the allegations levelled against the petitioner, the punishment of removal from service does not appear* to be commensurate. In that view of the matter, the matter is remanded to the respondent No. 2 who shall once again take into consideration the entire aspect, including the illness of the petitioner and his wife's mental state which perhaps was the reason forcing him to play truant. The respondent No. 2 is directed to pass a reasoned order in accordance with law within 15 days from the date he receives a copy of this order.....

With the aforesaid observations, this writ petition is disposed off.'

5. The management filed an appeal being LPA No. 298/2002, which was disposed of on 1.4.2003 (Annexure-9). The relevant portion of the said order reads as follows :

'... Counsel for the appellant instead of challenging the impugned order on merit made a limited submission that the aforesaid observation has created embarrassing situation to the authority concerned in deciding the matter afresh. We do not find any substance in the submission.

Learned Single Judge has directed the authority concerned to pass a reasoned final order afresh in the departmental proceeding against the appellant after considering entire aspect of the matter on its own merit and in accordance with law and, therefore, there is no occasion for any embarrassment and the apprehension is misconceived. This appeal is dismissed.'

6. In this manner, Annexure-8 order merged with Annexure-9 order. In other words, it was clarified that in spite of the observations of the learned Single Judge to the effect that the punishment of removal from service does not appear to be commensurate, the respondent No. 2 was directed to consider the entire aspects of the matter afresh on its own merit and pass a reasoned order in accordance with law. Pursuant to the said orders of this Court (Annexures-8 and 9), the respondent No. 2 has passed the impugned order (Annexure-10/1), wherefrom it appears that he has taken into consideration the entire aspects of the matter and has passed a reasoned order, which, in my opinion, needs no interference.

7. After giving further opportunity to the petitioner, the said order was passed. While passing the said order, inter alia, the following circumstances have been taken into consideration :

(a) From 1993, onwards, the petitioner was found in the habit of absenting himself unauthorizedly from duty without informing his superior competent authority. A departmental proceeding was initiated against him. Memorandum of charge dated 20.3.1996 was issued under the relevant rules to the effect that he failed to maintain absolute devotion to duties as he remained frequently absent from duties, thereby neglecting duty and disrupting the working activities of Power Supply Deptt. He was absenting from duties with effect from 29.1.1996 onwards without any sanctioned leave and permission. Even after specific direction dated 16.2.1996 to report duty, he absented.

(b) Petitioner committed another serious misconduct by fraudulently marking himself present post facto in the attendance register for the period from 29.1.96 to 2.2.1996 for which another memorandum of charge was issued dated 31.5.1996 to him for tampering with the attendance register.

(c) Petitioner was given ample opportunity to defend his case during the enquiry proceeding but he continuously remained absent and did not participate in the same. Accordingly, the enquiry was concluded ex parte in which the charges against him were found proved.

(d) Petitioner produced some papers of investigation of the year 1994 at Kolkatta, which showed that he was normal and the said reports did not justify his continued and prolonged habitual absence. Regarding his wife's illness, he produced the prescriptions of the year 1991 / 1992, which do not have any bearing on his unauthorized absence from 1994 to 1997.

(e) The company is having, a full-fledged hospital and the petitioner did not present himself or his wife before the Medical Officer of the company for treatment, if so required as per the rules/ provisions of the Corporation.

(f) Petitioner did not follow the rules regarding leave.

(g) The statutory safety precautions on noise level are observed by the Company in the Compressor House. All employees working there are medically examined regularly and none was diagnosed or reported about ill-effects of noise pollution and no complaint from any employee has been received.

(h) Petitioner himself being a responsible officer, i.e. Deputy Manager, was expected to implement the Safety and Health provisions for himself and for persons working under him in that area. He did not report of anything lacking or causing concern regarding health and safety of anyone including him. Hence, the petitioner's contention that his continued working in the plant had led to his illness is a lame excuse and is not tenable.

(i) During the years 1993, 1994 and 1995, he was either absent or on leave (most of the time absent) for 140 days, 149 days and 201 days respectively. He did not

show any sign of improvement and continued his habit of unauthorised absence even when the proceedings were instituted and going on against him. He attended his duties for 60 days during 1996 and only 3-5 days during 1997 till 21.5.1997 when he was removed.

(j) On the top of it, he committed serious misconduct by tampering with the attendance register.

(k) If such actions are taken lightly, it will give wrong message and adversely affect the discipline of the Company.

8. After hearing the parties and considering the materials on record, in my opinion, the respondent No. 2 has considered the matter in the light of the orders of this Court (Annexures-8 and 9). It further appears that while passing the said impugned order dated 23.5.2003, the respondent No. 2 has taken into consideration the relevant aspects of the matter as noticed above, which, in my opinion, needs no interference by this Court.

In the result, this writ application is dismissed.