Anilkumar K.V. Vs. Kerala State Electronics Development Corporation and ors.

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Court : Kerala

Decided On : Jul-24-2007

Reported in : (2008)ILLJ149Ker

Judge : Thottathil B. Radhakrishnan, J.

Acts : Industrial Disputes Act, 1947; Constitution of India, 1950 - Articles 12, 14, 16 and 21; Kerala State Electonics Development Corporation (Conduct, Discipline and Appeal) Rules, 1986 - Rules 4, 5, 5(6), 19 and 31; Indian Tourism Development Corporation Conduct Rules, 1978

Appeal No. : O.P. No. 21410/2001

Appellant : Anilkumar K.V.

Respondent : Kerala State Electronics Development Corporation and ors.

Advocate for Def. : M. Gopikrishnan Nambiar, Adv.

Advocate for Pet/Ap. : M.R. Rajendran Nair and; Rekha Vasudevan, Advs.

Disposition : Petition allowed

Judgement :
ORDER

Thottathil B. Radhakrishnan, J.

1. After completion of one year training with it, the petitioner was appointed as a Deputy Engineer in the service of the first respondent Corporation - KELTRON on June 2, 1991 and was confirmed on December 3, 1991 as per Exhibit P-3 order.

2. Along with his official duties in the service of the first respondent, the petitioner did some honorary work, for the Ernakulam District Panchayat. Later, that activity turned out to be one which called for his continuous involvement in the service of the Panchayat. This led to the petitioner seeking different slots of different types of leave and the first respondent granting such leave, though occasionally, with great reluctance and after notifying the petitioner that such exercise does not appear to be in the interest of KELTRON.

3. Be that as it may, after a particular spell of earned leave, the petitioner rejoined duty and applied for long leave without pay. That was not granted. He, however, continued to contribute his mite to the developmental activities of the District Panchayat rather than as an employee of KELTRON. This led the first respondents to take the view that the petitioner was unauthorizedly absent from duty since April 4, 2000. Accordingly, the petitioner was directed to show cause against forfeiture of his line in service, in terms of Rule 31 of the KELTRON - Conduct, Discipline and Appeal Rules, 1986, hereinafter referred to as the 'Rules'. He submitted his explanation as per letter dated April 22, 2000. KELTRON found that his explanation was not acceptable and accordingly, he was instructed to report for duty on or before May 10, 2000 as per Office Memo dated April 27, 2000. He failed to report for duty as directed. On such premise, it was deemed that as a necessary consequence, his lien was lost following the intimation given to him on April 13, 2000 and April 27, 2000, by the operation of Rule 31 of the Rules. Therefore, it was concluded that the petitioner has no lien, any more, in the service of KELTRON as he had abandoned his such employment. Resultantly, Exhibit P-1 was issued whereby the petitioner was informed of his loss of lien and that such loss of lien is being thereby confirmed and his name has been removed from the rolls of KELTRON and he is no longer its employee. He was advised to collect his outstanding dues. Petitioner submitted Exhibit P-l7 appeal against the aforesaid

decision to the Chairman of the Corporation on June 22, 2000. Stating that no action was taken on that appeal, this writ 1 petition is filed on 19-7-2001.

4. Petitioner seeks a declaration that Rule 31 of the Rules is ultra-vires Articles 14, 16 and 21 of the Constitution of India and is hence void and inoperative. He also seeks to quash Exhibit P-1 whereby he was intimated that it is confirmed that he had lost lien in employment and that his name has been removed from the rolls of KELTRON. He further seeks a declaration that he shall be deemed to have continued in the service of KELTRON with all consequential benefits.

5. It is submitted by the learned Counsel for KELTRON that, having regard to the fact that there are no disputed facts, question of law alone arise for decision and hence no counter affidavit.

Heard Adv. Rekha Vasudevan, for the petitioner and Adv. M. Gopikrishnan Nambiar, for the Corporation.

6. The learned Counsel for the petitioner argued that loss of lien from service in terms of Rule 31 is essentially a punishment when that rule is understood in the context of Rule 5(6) which states that without prejudice to the generality of the term 'misconduct', absence without leave or over-staying the sanctioned; leave for more than seven consecutive days without sufficient grounds or proper or satisfactory explanation would amount to misconduct. It is pointed out that the lien that is lost under Rule 31 is from service and not; merely from a post in the service and therefore, the loss of lien is nothing but termination of service and that the Explanation to Rule 19 of the Rules which enumerates the penalties, takes away only such termination of service as are 2 enumerated as Sub-clauses (a) to (d) of Clause (v) in the Explanation to Rule 19 from the purview of penalties and such exceptions do not include the loss of lien in terms of Rule 31. On such premise, it is argued that Rule 31 is essentially a rule that enables the imposition of punishment and its characterization as a term of contract, whereby there is a voluntary cessation, of employment by the employee abandoning the employment, is something that is unacceptable. It is further argued that having regard to the decisions of the Apex Court in D.K. Yadav v. J.M.A. Industries Ltd. : (1993)IILLJ696SC , Uptron India Ltd. v. Shammi Bhan : [1998]1SCR719 and

Lakshmi Precision Screws Ltd. v. Ram Bahagat : (2002)IIILLJ516SC . Rule 31 of the Rules is liable to be declared ultra-vires Articles 14, 16 and 21 of the Constitution and also to be held as an illegal and irrational term in a contract of employment. Reference was also made to the decision of the Division Bench of this Court in Joy Xavier v. Labour Court, Ernakulam 1994-II-LLJ-303 (Ke-DB) to argue that rules of natural justice have to be held to be binding and applicable in cases leading to cessation of office. On the question whether, in the facts and on the circumstances of the case in hand, affording an opportunity of pre-decisional hearing would have been a useless exercise, the learned Counsel for the petitioner relied on the decision of the Division Bench of this Court in Beemakunju v. F.C.I. 2001-II-LLJ-671 (Ker) and argued that in the nature of the case in hand, such a view ought not to be taken.

7. Per contra, the learned Counsel for KELTRON argued that the decisions referred I to on behalf of the petitioner are those relatable to the realm of workmen and hence, referable to the concept of retrenchment as available in the Industrial Disputes Act, 1947 and that the said decisions would be of no guidance to decide the issue in hand, which relates to the rules which are applicable to all non-workmen of KELTRON. Making copious reference to the different exhibits in the chronological order, it was argued that it has been demonstrated beyond any pale of doubt that the petitioner was never interested to contribute his might to KELTRON and it would not be a matter of concern for the Corporation whether the petitioner contributes to the growth of some other organization. It is further pointed out that the situation has resulted in petitioner's service, not being available to KELTRON. Reference was made to the decision of the Apex Court in Hindustan Paper Corporation v. Purnendu Chakrobarty : (1997)IILLJ704SC , wherein, a provision enjoining loss of lien of appointment was considered and upheld. The decision of the Apex Court in Aligarh Muslim University v. Mansoor Ali Khan : AIR 2000 SC2783 , was also referred to by the learned Counsel for KELTRON to argue that when the grounds for taking action under Rule 31 have been put to the employee, there is no violation of principles of natural justice. He fairly stated that the decisions of this Court in O.P. No. 12005/1998 and W.A. No. 404/1995, though in favour of KELTRON, were rendered sans the sustainability of Rule 31 being a matter in issue.

8. The petitioner's appointment as per Exhibit P-2 was confirmed with effect from December 3, 1991 as per Exhibit P-3. Therefore, he was conferred 'permanent status'. In West Bengal State Electricity Board v. Desk Bandhu Ghosh : (1985)ILLJ373SC , the Apex Court held that any provision in the service regulation enabling the management to terminate the service of a permanent employee by giving him a notice or pay in lieu thereof would be bad as violative of Article 14 of the Constitution. That view was reiterated in Central Inland water Transport Corporation Ltd. v. Brojo Nath Ganguly : (1986)IILLJ171SC . In O.P. Bhandari v. Indian Tourism Development Corporation Ltd. : (1986)IILLJ509SC , the Apex Court held a similar rule in the ITDC Conduct Rules, 1978 as violative of Articles 14 and 16 of the; Constitution. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress : (1991)ILLJ395SC after reviewing the case law, the Constitution Bench held that the service of a company; employee could not be terminated by a simple notice. Referring to the aforesaid decisions, it was laid down by the Apex Court in Uptron India (supra) that conferment of permanent status on an employee guarantees security of tenure. It is now well settled that the services of a permanent employee, whether employed by the Government, or Government company or Government instrumentality or Statutory Corporation or any other 'Authority' with in the meaning of Article 12, cannot be terminated abruptly and arbitrarily, either by giving him a month's or three months' notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect-either in the contract of service or in the Certified Standing Orders.

9. In D.K. Yadav. v. J.M.A. Industries Ltd. (supra) the Apex Court held as follows 1993-II-LLJ-696 at p. 700:

8. The cardinal point that has to be born in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

8. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice....

It was further held therein as follows at p. 701:

10. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive....

11. Therefore, fair play in action requires that, the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

10. Referring to the decision in D.K. Yadav (supra), the Apex Court laid down in Lakshmi Precision Screws (supra) that the process of putting an end to a contract of employment cannot be devoid of the basic principles of concept of justice and the doctrine of natural justice, fairness, equality and rule of law are in-built requirement of the basic concept of justice.

11. In view of the law as has been categorically laid down in Uptron India (supra) as noticed above, the principles emanating out of the decisions referred to above are not confined to workmen, who would be regulated by the Industrial Disputes Act and the order labour laws, but would also extend to those persons whose terms of employment and rights emanating out of their permanent status becomes matters justiciable on the touchstones of Articles 14 and 16 of the Constitution, in view of such Government companies and Government instrumentalities being authorities within the purview of Article 12 of the Constitution.

12. Rule 4 of the Rules requires that an employee shall, at all times, maintain absolute, integrity; maintain devotion to duty and conduct himself in a manner conducive to the best interests of the Corporation and shall do nothing which is unbecoming of an employee or is prejudicial to the interests of the Corporation. Rule 5 defines the term 'misconduct' for the purpose of the Rules and provides that without prejudice to the generality of the term 'misconduct,' the acts of omission and commissions enumerated under that rule shall be treated as misconducts. Clause (6) of that rule enumerates 'absence without leave or over-staying the sanctioned leave for more than seven consecutive days without sufficient grounds or proper or satisfactory explanation' as a misconduct. The impugned Rule 31 of the Rules provides that if an employee absents himself without leave for more than 7 days or remains absent for such a period beyond the period of leave granted, he shall be deemed as having voluntarily left and abandoned the KELTRON's services. Rule 31 reads as follows:

If an employee absents himself without leave for more than 7 days or remains absent for more than 7, days beyond the period of leave granted, he shall be deemed as having voluntarily left and abandoned the Corporation's services from the date of commencement of such unauthorized absence provided in all such cases of absence the employee fails to report for duty within the time specified in the notice served by Management to the employee.

Explanation: A notice sent by registered post by the corporation to the address of the employee noted in the Corporation's records as also to the address, if any indicated by the employee in the leave application shall be deemed good service

for this purpose.

13. Whatever be the consequences provided by Rule 31, the conduct attributable to the employee to visit him with the consequences under Rules 31 is immediately referable to the 'misconduct' enumerated at Clause (6) in Rule 5. The learned Counsel for the petitioner is, in this context, right in pointing out that Rule 19, which enumerates penalties, is relevant. Rule 19 classifies penalties into minor penalties and major penalties. In doing so. An Explanation is added to that rule whereby those actions enumerated under that Explanation to Rule 19 are treated as not amounting to a penalty within the meaning of that Rule. Such exception available under Clause (v) is termination of service which again gets classified into four categories. The relevant provisions in Rule 19 read as follows:

Rules 19. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee namely:

Minor Penalties

(a) Censure

(b) Withholding/barring of promotion.

(c) Withholding of increment(s) of pay with or without cumulative effect.

(d) Recovery from pay....

Major Penalties

(e) Reduction to a lower grade or post or to a lower stage in a time scale of pay....

(f) Removal from service which shall not be a disqualification for future employment.

(g) Dismissal.

Explanation:

The following shall not amount to a penalty within the meaning of this rule:

(i) Stoppage of an employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;

xxxxxx xxxxxx xxxxxx

xxxxxx xxxxxx xxxxxx

(v) Termination of Service.

(a) Of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment;

(b) of an employee appointed in a temporary capacity on the expiration of the period for which he was appointed or earlier in accordance with the terms of his appointment.

(c) of an employee appointed under a contract of agreement in accordance with the terms of such contract or agreement; and

(d) of any employee on reduction of establishment.

14. A reading of Rule 19 shows that termination of service on account of the employee absenting himself without leave for more than 7 days or on account of his remaining absent for more than 7 days beyond the period of leave granted is not an action which is exempted from the concept of penalty in Rule 19, though it is a misconduct in terms of Rule 5(6). Therefore, the penalty that an employee may invite for a misconduct referable to Rule 5(6) is a penalty that may follow either as a minor penalty or as a major penalty depending upon what the employer may impose. Hence, the decision of the Apex Court in Hindustan Paper Corporation (supra) does not apply to the facts of the case in hand. Loss of lien of an employee is a ground of termination of service that does not amount to a penalty within the meaning of the rule in the Hindustan Paper Corporation (Conduct. Discipline and Appeal) Rules which fell for consideration in that case.

15. Having regard to the fact that conferment of permanent status of an employee guarantees security of tenure, including in cases of person permanently employed in a Government company, as laid down in Uptron India (supra), it has to be considered whether overstaying the leave without permission is a ground of termination of lien, without treating it as a case of indiscipline. In Uptron India (supra), the Apex Court dealt with a rule which provided that the services of a workman are liable to automatic termination, if he over-stays a leave without permission for more than 7 days. That rule does not say that services of a workman who overstays leave for more than 7 days shall stand automatically terminated. The learned Counsel for KELTRON, therefore, points out that there is a distinction insofar as the rule in hand is concerned because. Rule 31 of the Rules provides for an automatic termination of the services and does not depend upon any order of termination by the employer as in the case of Uptron India (supra). This argument would have held good provided, the contents of Rule 31 are clearly segregable form the misconduct enumerated in Rule 5(6) of the Rules. Otherwise, Rule 31 would essentially be a penalty which is not exempted in terms of the Explanation to Rule 19. For the aforesaid reasons, the ratio in Uptron India (supra) and the decisions followed therein, as noticed above as also the ratio of Lakshmi Precision Screws (supra) apply to the rule in question. Rule 31 of the Rules is unfair, contrary to Rule of Law and infracts the equality principle enshrined in Articles 14 and 16 of the Constitution of India. It is an unfair term as a condition of service. Rule 31 of the Rules is, therefore, void and inoperative. It is so declared.

16. On the basis of the aforesaid declaration, it has to be considered whether the petitioner is entitled to a declaration that he shall be deemed to have continued in the service of KELTRON with all consequential benefits. Rule 31 having been found to be void, the employer the first respondent is entitled to treat the absence of the petitioner that was acted upon under Rule 31 as a situation amounting to a, misconduct and therefore, a misconduct on which the petitioner could be proceeded against. While this is a matter entirely left to the wisdom of the employer, it is matter of record, going by the exhibits, that while the petitioner had been repeatedly requesting KELTRON for leave, the employer had been extremely reluctant to grant leave. On the one hand was the request of the District

Panchayat that the services of the petitioner may be lent to it, while r on the other, the need on KELTRON for his services. As of now, it is a matter of record of this Court that the first respondent is a Government company which is facing proceedings before the BIFE. As noticed in Lakshmi Precision Screws (supra), justice oriented approach is the present trend in the Indian jurisprudence. Balancing the petitioner's entitlements on the one hand and the loss that may result to KELTRON on the petitioner being deemed to have been in service and entitled to all consequential benefits, on the other, in my considered view, all that the ends of justice require, in doing complete justice between the parties, is that it is declared that the petitioner will be deemed to have been in service as if the impugned Exhibit P-1 were not there, however that, petitioner will not be entitled to any emoluments referable to such placement till the date of this judgment and will not be entitled to any placement upsetting the present seniority and status of any of the other employees of KELTRON, since this judgment is being issued without hearing any of them. It is so declared. This judgment does not preclude KELTRON, if so advised, to initiate appropriate action against the petitioner in accordance with the Rules, except by recourse to Rule 31 which has been declared invalid. If any such action is proposed, that shall be initiated within a period of three months from the date of receipt of a copy of this judgment.

17. In the result, the writ petition is allowed to the extent of the declarations granted and directions and orders issued above. No costs.