

Lokender Singh Vs. R.S.E.B.

Lokender Singh Vs. R.S.E.B.

SooperKanoon Citation : sooperkanoon.com/768174

Court : Rajasthan

Decided On : May-08-1992

Reported in : 1992(1)WLN386

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 576 of 1989

Appellant : Lokender Singh

Respondent : R.S.E.B.

Disposition : Petition dismissed

Judgement :

Rajesh Balia, J.

1. Petitioner was first employed as casual labour on 1.5.1979. On completion of 240 days, the petitioner was taken on work-charge establishment vide Annx. 1 dated 5.1.1980. He went on three days casual leave with effect from 27.11.1984 which, according to the petitioner's representation dated 14th January, 1988, filed as Annx.4, and, according to the reply of the respondents; was extended upto 28th December, 1984. Thereafter, according to the petitioner, he reported back on duty on 13th and 14th September, 1986. According to the petitioner, he was sick and he had made applications for extension of leave. The petitioner was not taken on

duty on 13.9.1986 but was told that his case has been referred to the higher authorities for consideration whether he can be taken on duty or not. This fact of the petitioner's having been reported on duty on 13.9.1986 and that he was offered any such information is denied by the respondents. According to the respondents, since his absence from duty, the petitioner made first contact vide his representation dated 19.1.88 and in that letter, he falsely averred that he reported for duty on 13th and 14th September, 1986 at Sojat City. When the petitioner has not at all reported on 13.9.1986 then there was no occasion for giving him any reply for not taking him on duty.

2. The learned Counsel for the petitioner contends that in spite of making several representations thereafter, he has not been taken on duty. According to him, unless his services are terminated in accordance with law, either by following the procedure of holding an inquiry into the allegation of wilful absence from duty and a proper termination order is passed or his services are dispensed with in accordance with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'); the relationship of master and servant continues. There cannot be any automatic cessation of such relationship. Therefore, according to learned Counsel for the petitioner, the services of the petitioner have been brought to an end, against the principles of natural justice and being in violation of the provisions of the Act of 1947, the termination should be treated as void ab initio.

3. It is contended by learned Counsel for the respondents that the petitioner is not entitled to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. According to them, he remained wilfully absent after 28.12.1984, for a period of more than 3 years without any information or any leave application. He has falsely stated that he appeared to join his duty on 13.9.1986. He has falsely stated that he was informed about the pendency of his case before higher authorities. The petitioner has made false averments about the extension of leave application after 28.12.1984.

4. Apart from above conduct of the petitioner, it has been stated by the respondents that as per clause 9(h) of the Regulations of 1975, which governs the

terms of services of the petitioner, the petitioner had voluntarily terminated his contract of service. Clause 9(h) provides for deeming voluntary termination of contract of service in case an employee remains absent from duty without leave, for a fixed period. It is submitted that the petitioner's services were not terminated, nor it was treated to have come to an automatic end; but he was informed by registered notice dated 2.5.1985, after he has absented himself from duty for a period of 135 days without leave, calling upon his attention to clause 9(h) of the Regulations and giving him an opportunity to resume his duty by 30.5.1985. It was also made clear that his failing to assume duty by 30.5.1985 will be deemed that he has voluntarily left the services. This letter was sent at the home address of the petitioner which was returned with the endorsement of 'not found' but fact remains that the registered notice was sent to the residential address of the petitioner. He had not left any other address at which he could be communicated during the period of his absence. In these circumstances, according to learned Counsel for the respondents, only reasonable inference is that the petitioner has not availed the opportunity to join duty in spite of such opportunity having been offered to him, by deliberately avoiding the service of the notice by returning it back.

5. Therefore, it is a case in which it should be assumed that the petitioner has voluntarily left the services and the principle on which the contention of learned Counsel for the petitioner is founded on the premise that petitioner's services have been terminated by employer, is not at all applicable to the facts of the present case.

6. It was also contended by learned Counsel for the respondents that the petitioner is also guilty for laches. According to the petitioner, he had reported on duty on 13.9.1986 but was not taken back on duty. The petition which has been filed on 27th August, 1989 is grossly belated and this conduct of his alone is sufficient to disentitle him from getting any relief under Article 226 of the Constitution.

7. After careful consideration of the facts and circumstances of the case, I am of the opinion that the contention of the respondents merits acceptance.

8. The basic principle on which the contention of the petitioner is founded is too well-established to be disputed but the foundation for invoking said principle is that

the termination of services has been the result of any act of the employee. The said principle has no application where the employee terminates the contract of services voluntarily. Therefore, the basic question that arises for consideration in the present case is whether it is a case of termination of petitioner's services by the employer as contended by the petitioner, or, it is a case of voluntarily terminating the contract of service by the employee, as put forward by the respondents.

9. The fact that the petitioner did not report on duty voluntarily for a period of 2 years, is not disputed. The fact about the issuance of notice Ex. R/1 calling upon the petitioner to join his duty before a particular date before the provisions of Regulation 9(h) was pressed into service, is also not disputed. The fact that the petitioner has not availed the said opportunity on account of his conduct, cannot be held against employer for invoking the principle which he had made applicable in his case.

10. In view of these un-deniable facts, in my opinion, it is reasonable to infer from the conduct of the petitioner that the contract of services was not terminated by the employer but was voluntarily terminated by the employee, by his radicant conduct. Therefore, the contention of the petitioner that his services have been illegally terminated, cannot be accepted. '

11. That apart, from the facts narrated above that the conduct of the petitioner in making false averments concerning making of representations and applications for extension of leave, which are not supported by any material on record, and laches on the part of the petitioner, in approaching this Court . I do not find it to be a fit case to exercise jurisdiction under Article 226 of the Constitution of India.

The petition is accordingly dismissed.