National Engineering Industries Ltd vs Hanuman on 25 July, 1967

Equivalent citations: 1968 AIR 33, 1968 SCR (1) 54, AIR 1968 SUPREME COURT 33, 1968 LAB. I. C. 3, 1968 (1) SCJ 651, 1967 2 LABLJ 883, 1968 (1) SCR 54, 1967 2 SCWR 360, 15 FACLR 259, 1968 LABLJ 3, 33 FJR 49

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, G.K. Mitter

PETITIONER:
NATIONAL ENGINEERING INDUSTRIES LTD.

Vs.

RESPONDENT:
HANUMAN

DATE OF JUDGMENT:
25/07/1967

BENCH:
WANCHOO, K.N. (CJ)
BENCH:
WANCHOO, K.N. (CJ)
MITTER, G.K.

CITATION:
1968 AIR 33 1968 SCR (1) 54

ACT:
Industrial Disputes Act, 1947 (14 of 1947), ss. 33 and 33A--Standing Orders providing for automatic termination of services for over-staying leave beyond certain period-S. 33 whether applies when services terminated in above manner--Application under s. 33A, whether lies.
Constitution of India, Art, 136-Appeal by special leave against order of Labour Court--Supreme Court will interfere with finding of fact by quasi-judicial Tribunal only when they are perverse.

HEADNOTE:
The respondent was a workman in the appellant company. On the ground of over-staying his leave for more than eight days the company, relying on the relevant provision in the

Standing Orders, treated his services as having teen automatically terminated. The workman made an application under s. 33A of the Industrial Disputes Act before the Labour Court. The respondent's version that he had asked for extension of leave on medical grounds and had sent an application through another workman was believed by the Labour Court. That court therefore held that there was no automatic termination of the respondent's services and that he was entitled to make an application under s. 33A. The company appealed to this Court under Art. 136 of the Constitution.

HELD:(i) Ordinarily this Court is slow to interfere with findings of fact recorded by quasi-judicial Tribunals in an appeal under Art. 136 of the Constitution. But this Court does so if it is shown, ex facie, that the finding recorded is perverse. In the present case the respondent had been totally unable by evidence produced by him to establish that his absence beyond the period of leave originally granted was due to continued illness and therefore the finding of the Labour Court in his favour in this respect was perverse. [56D-E; 57C]

(ii) Standing Order (i) in Section G on which the appellant company relied in inartistically worded, but when the standing order provides that a workman will lose his lien on his appointment in case he does not join his duty within eight days of the expiry of his leave, it obviously means that his services are automatically terminated on the happening of the contingency. [57G]

Where a workman's service terminates automatically under the standing order s. 33 would not apply and so an application under s. 33A would not be maintainable, as there is no question in such a case of the contravention of s. 33 of the Act. [58C-D]

Chandri Bai Uma v. The Elephant Oil Mills Ltd., [1951] 1 L.L.J. 370 and Sahajan v. A. Firpo Company Ltd., [1953] II L.L.J. 686, approved.

Raghunath Enamels Ltd., v. Sri Surendra Singh, [1953] I L.L.J. 261, disapproved.

Yeshwant Sitaram Rane v. Goodlass Wall Limited, [1954] I L.L.J. 505 and Kanaksing Ramsing v. Narmada Valley Chemical Industries Limited, [1956] I L.L.J. 377, distinguished.

Buckingham and Carnatic Company Limited, v. Venkatayya and Anr. [1963] II L.L.J. 638[1964] 4 S.C.R. 265, applied.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 549 of 1967. Appeal by special leave from the Award dated December 23, 1966 of the Labour Court, Rajasthan, Jaipur in Complaint No. 6 of 1965.

Niren De, AdI. Solicitor--General, and B. P. Maheshwari, for the appellant.

M.K. Ramamurthi, Shyamala Pappu, R. Nagaratnam and Vineet Kumar, for the respondent.

The Judgment of the Court was delivered by Wanchoo, C.J.-This is an appeal by special leave in an in- dustrial matter and arises in the following circumstances. Respondent Hanuman was in the service of the appellant. He took leave from 3rd to 9th April, 1965 and in that connection a certificate from the Employees' State Insurance Dispensary (hereinafter referred to as the Dispensary) was produced. He should have joined on 10th April, 1965. but he did not do so. His case was that he had sent another certificate from the Dispensary on April 10, 1965 for further leave through one Prahlad Singh. Thereafter he was given a fitness certificate on April 19, 1965 and was required to join on 20th April, 1.965. He appeared to report for duty on 20th April, 1965, but he was not allowed to join on the ground that his service stood terminated. As an industrial matter was pending at the time in which he was concerned as a workman, he made an application under s. 33-A of the Industrial Disputes Act, No. 14 of 1947, (hereinafter referred to as the Act) for reinstatement.

The case of the appellant on the other hand was that Hanuman respondent was on leave from April 3 to April 9, 1965 on the basis of the certificate from the Dispensary. The appellant however contended that no certificate was received thereafter on April 10, 1965 through Prahlad Singh as alleged by Hanuman. Further Hanuman did not appear to rejoin till April 20, 1965. Consequently in view of s.o.

> (i) in Section G of the Certified Standing Orders Hanuman lost his lien on his appointment. The appellant's case thus was that Hanuman's service stood terminated automatically under the Standing Orders and no order as such was passed by the appellant terminating his service. In consequence there was no contravention of s. 33 of the Act and therefore Hanuman's application under s. 33-A was not maintainable.

Two questions thus arose before the labour court. The first was whether Hanuman continued ill from April 10 to April 19. 1965 and whether he had sent the certificate in support of that illness from the Dispensary, and the second was whether the application was maintainable under s. 33-A of the Act in view of the alleged automatic termination of Hanuman's service under the Standing Orders. On the first point the labour court held that Hanuman had continued ill from April 10 to April 19, 1965 and that he had sent the certificate through Prahlad Singh on April 10, 1965. On the second question the labour court seems to have held that the service of Hanuman was not automatically terminated under the Standing Orders and in any case the appellant should have taken his explanation and so there was denial of natural justice for the service of Hanuman was terminated without any enquiry. The labour court therefore decided in favour of Hanuman and ordered his reinstatement with all back wages.

In the present appeal, the appellant raises two points. It is first contended that the finding of the labour court that Hanuman continued ill from April 10 to April. 19, 1965 was perverse. Secondly, it is contended that the service of Hanuman stood automatically terminated under the relevant standing order; as such s. 33 was not contravened and no application under s. 33-A lay.

Ordinarily this Court is slow to interfere with findings of fact recorded by quasi judicial tribunals in an appeal under Article 136 of the Constitution. But this Court does so if it is shown ex facie, that the finding recorded is perverse. It does appear to us in this case that the finding that Hanuman continued ill from April 10 to April 19, 1965 is perverse. It is true that Hanuman stated that he had sent the certificate through Prahlad on April 10, 1965. In support of his statement he examined Prahlad Singh and Dr. Girraj Prasad who was in-charge of the Dispensary at the time when evidence was given in 1966. Prahlad Singh did not support Hanuman and was treated as hostile. Prahlad Singh had given an affidavit in favour of Hanuman but in his statement before the labour court he said that he did not remember the date when Hanuman fell ill and did not know on what date Hanuman had given him the certificate. It may be mentioned that the first medical certificate was sent through Prahlad Singh on April 3, 1965, but Prahlad Singh's evidence does not prove, that he gave the second certificate to the foreman of the appellant on April 10, 1965. As for Dr. Girraj Prasad he seems to have stated in his examination-in-chief that Hanuman was under his treatment from April 3 to April 19, 1965 and was given a fitness certificate to join from April 20, 1965. In cross-examination, however, he admitted that he had not issued the three certificates dated April 3, 10 and 19, 1965 and that he had not examined Hanuman on these three dates. He further stated that he had given his evidence on the basis of the record of the Dispensary. But it seems that the record of the dispensary was not before him when he gave the evidence, for he admitted that he had not been shown either the original certificate or the copies thereof. His evidence therefore was worthless in so far as corroboration of Hanuman's statement was concerned. The doctor who actually gave the certificates was never examined and no reason was given why he could not be examined. It is also remarkable that the fitness certificate which, according to Hanuman, was taken by him when he appeared on April 20, 1965 to join his duty has not been produced. It is not Hanuman's case that he had given that fitness certificate to the appellant and the appellant had suppressed that also. In the circumstances, it seems to us that the finding of the labour court that Hanuman continued ill from April 10 to April 19, 1965 is perverse, for both the witnesses produced by Hanuman in support of his case had not corroborated his statement. There is nothing on the record besides the mere statement of Hanuman to prove that he continued ill from April 10 to April 19, 1965. Even the fitness certificate was never produced before the labour court and it seems that the record of the dispensary was also never produced before the labour court; further Dr. Girraj Prasad though he stated that he was giving evidence on the basis of the record, did not refer either. to the original certificates or the copies thereof before giving his evidence. In these circumstances we cannot accept the finding of the labour court to the effect that Hanuman continued ill from April 10 to April 19, 1965 in the face of the appellant's denial that no certificate was sent to the appellant on April 10, 1965.

As to the second contention raised by the appellant, it appears from the standing order (i) in Section G that a workman who does not report for duty within eight days of the expiry of his leave loses his lien on the appointment. There is dispute between the parties as to what these words in the standing order; which evidences the conditions of service, mean. So far as Hanuman is concerned he admitted in his statement in cross-examination that under the standing order of a workman remained absent from duty for more than eight days his service stood terminated. This shows what the workman understood the standing order in question to mean. The standing order is inartistically worded, but it seems to us clear that when the standing order provides that a workman will lose his lien on his appointment in case he does not join his duty within 8 days of the expiry of his leave, it

obviously means that his services are automatically terminated on the happening of the contingency. We do not understand how a workman who has lost his lien on his appointment can continue in service thereafter. Where therefore a standing order provides that a workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens.

Reliance in this connection was placed on certain cases and we shall refer to them now. In Chandrabai Uma v. The Ele- phant Oil Mills Ltd.(1) the standing order provided that a workman would lose his appointment unless he returned within 8 days of the expiry of the leave and, gave explanation to the satisfaction of the authority granting leave of his inability to return before the expiry of leave. The Labour Appellate Tribunal held in that case that where a standing order provided for automatic termination of service, s. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 would not apply. That decision in our view lays down the correct law. Section 33 of the Act corresponds to s. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950. The position therefore would be the same under S. 33 of the Act. Where therefore a workman's service terminates automatically under the standing order, s. 33 would not apply and so an application under s. 33-A would not be maintainable, as there is no question in such a case of the contravention of s. 33 of the Act. But the words in the standing order in that case were slightly different, for they specifically provided that the workman would lose his appointment, and it is argued on behalf of the respondent that that case would not in the circumstances apply. But as we have already held there is no difference between saying that "the workman's lien would stand terminated" as in the present case and that "the workman would lose his appointment" as in that case. The next case to which reference may be made is Raghunath Enamel.v Ltd. v. Sri Surendra Singh (2). In that case the Labour Appellate Tribunal distinguished its earlier decision in Chandrabai Uma's case(1) because the words in that case were that if a workman remained absent for a certain period he would lose his lien and not that he would lose his appointment. The Labour Appellate Tribunal seems to have held that losing lien is different from losing appointment. With respect it seems difficult for us to appreciate what difference there is, for, we think, that once a workman loses his lien on his appointment he loses his appointment. We cannot therefore accept the distinction which was made by the Labour Appellate Tribunal in that case. In Sahajan v. A. Firpo Company Limited(3) the words of the standing order provided that "if the workman remains absent beyond the period of leave originally granted or subsequently extended he shall lose lien on this appointment...." In that case the Labour Appellate Tribunal followed the case of Chanda bai Uma(1) and not the case of Raghunath Enainels Ltd.,(1) though one of the members of the Tribunal was common to both. This

(1) [1991] I I.L.J. 370.

(2) [1953] I L.L.J. 261.

(3) [1953] II L. L. J. 686.

case is on all fours with the present case and was in our opinion rightly decided.

The next case to which reference may be made is Yeshwant Sitaram Bane v. Goodlass Wall Limited(1). That case was decided on its peculiar facts which have no parallel in the present case.

There the employee had applied for such leave which was due to him. But the employer did not grant the leave due and treated the service as automatically terminated as the employee had not joined within 15 days from the expiry of the original leave. It was on these facts that the Labour Appellate Tribunal interfered. That case therefore stands on its own facts.

The next case to which reference may be made is Kanaksing Ramsing v. Narmada Valley Chemical Industries Limited.(1) There also the words of the standing order were different and it provided for placing the workman on the list of Badlis if he appeared within 15 days of the expiry of his leave. That case therefore has no application to the facts of the present case.

The last case to which reference may. be made is Buckingham and Carnatic Company Limited v. Venkatayya and another(1). That case arose under the Employees' State Insurance Act (34 of 1948). The words of the standing order there were specific and laid down that "any employee who absents himself for eight consecutive working days without leave shall be deemed to have left the company's service without notice thereby terminating his contract of service." In the face of those words, s. 73 of the Employees' State Insurance Act was held inapplicable. Though the case is not on all fours with the present case because it deals with a provision of another law, the reasoning in that case would apply in the present case. We are therefore of opinion that Hanuman respondent's service stood automatically terminated for he did not appear for eight days after the expiry of his leave on April 9, 1965. In this view of the matter s. 33 cannot be said to have been contravened and s. 33-A will not apply.

It is however urged that some difference is made by the existence of another provision in the Standing Orders. In Appendix 'D' of the Standing Orders one of the Major Misdemeanours is "absence without permission exceeding ten consecutive days." That in our opinion is an alternative provision and the appellant in this case was free to resort to any one of the provisions, unless it is shown that resort to one particular provision was due to mala. fide. This is not the case of the respondent here. In the circumstances the earlier standing order in Section G must be held to (1) [1954] I L.L.J. 505.

(2) [1956] I L. L. J. 377.

(3) [1963] I L.L.J. 638=[1964] 4 S.C.R. 265.

have full force and effect and Hanuman respondent's service stood automatically terminated when he did not appear within 8 days of the expiry of his leave which was on April 9, 1965.

We therefore allow the appeal and set aside the order of the labour court reinstating Hanuman. The automatic termination of his service under the relevant standing order would thus stand. In view of the order of this Court dated March 20, 1967 made at the time of granting special leave, we order the appellant to pay the costs of the respondent. Further this Court had ordered then that stay would be granted on condition that the appellant would pay full wages to the respondents pending disposal of the appeal. We therefore order that whatever wages have been paid to the respondent upto now shall not be recovered by the appellant.

G.C. Appeal allowed.