M/S. Scooters India Ltd vs M. Mohammad Yaqub & Anr on 21 November, 2000

Author: S. N. Variava

Bench: S.R.Babu, S.N.Variava

CASE NO.:
Appeal (civil) 1471 1999

PETITIONER:
M/S. SCOOTERS INDIA LTD.

Vs.

RESPONDENT:
M. MOHAMMAD YAQUB & ANR.

DATE OF JUDGMENT: 21/11/2000

BENCH:
S.R.Babu, S.N.Variava

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J S. N. VARIAVA, J.

This Appeal is against an Order dated 13th May, 1998 by which the writ petition filed by the Appellant has been dismissed. Briefly stated the facts are as follows: The 1st Respondent was appointed as unskilled workman w.e.f. 9th September, 1974 and was then promoted to the post of a semi-skilled worker w.e.f. 7th June, 1975. On 1st August, 1976 the Respondent's name was removed from the roll of the Company under Standing Order 9.3.12. The said Standing Order reads as follows : "9.3.12 Any workman who remains absent from duty without leave in excess of the period of leave originally sanctioned or subsequently extended for more than 10 consecutive days, he shall be deemed to have left the services of the Company of his own accord, without notice, thereby terminating his contract of service with the Company and his name will, accordingly, be struck off the rolls."

The Respondent raised an industrial dispute, which was referred for adjudication to the Labour Court, Lucknow. By an Award dated 20th July, 1984, the Labour Court held that there was retrenchment. The Labour Court held that as the provisions of law, regarding retrenchment, had not been followed the termination was illegal. The Labour Court directed reinstatement with continuity

of service and full back wages. The Appellant filed the Writ Petition challenging the Award. The Writ Petition came to be dismissed by the impugned order dated 13th May, 1998. Mr. Swarup submitted that there was no retrenchment. He submitted that the Respondent had been suspended from 28th June, 1976 to 7th July, 1976 and was to join duty after 7th July, 1976. He submitted that the Respondent did not join duty. He submitted that the Respondent was personally advised by the Chief Personnel Officer of the Company to join his duty on 23rd July, 1976, failing which his name would be removed from the roll. Mr. Swarup submitted that the Chief Personnel Officer of the Company wrote a letter dated 24th July, 1976, calling upon the Respondent to join duties latest by 30th July, 1976, failing which his name would be removed from the rolls of the company. He submitted that the Respondent still failed to join duty. He submitted that under these circumstances the Appellant is entitled to remove the name of the Respondent from the roll of the company under the above mentioned Standing Order. He submitted that such removal does not amount to retrenchment. He relied upon the judgment in the case of Scooters India and Ors. vs. Vijai E.V. Eldred reported in 1998 (6) S.C.C. 549, wherein in respect of Standing Order 9.3.12, it has been observed as follows : "It is also extraordinary for the High Court to have held clause 9.3.12 of the standing orders as invalid. Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order."

On the other hand Mr. Chinnasamy has relied upon the case of Uptron India Ltd. vs. Shammi Bhan and Anr. reported in 1998 (6) S.C.C. 538. In this case it was held that such a standing order conferred a discretion upon the management to terminate or not to terminate the services of an employee who overstays the leave. It was held that the discretion had to be based on an objective consideration of all circumstances and material which may be available on record. It was held that questions which would naturally arise are what circumstances compelled the employee to proceed on leave, why he overstayed leave, was there any just and reasonable cause for overstaying leave, whether he gave any further application for extension of leave; whether any medical certificate was sent if he had, in the meantime fallen ill. It was held that such questions could only be answered by the management provided it was inherent in the provision that the employee against whom action was proposed to be taken on the basis of such a provision was given an opportunity of hearing. It was held that principles of natural justice had to be read into such a clause and the principles of natural justice had to be complied with. It was held that the employee had to be informed of the grounds for which action was proposed to be taken against him for overstaying the leave. It was held that a Standing Order which provided for automatic termination of service of a permanent employee would be bad if it did not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically. It must be mentioned that the authority in Scooters India's case (supra) was cited before this Court. In respect of that case it was held as follows : "22. Learned counsel for the petitioner has placed strong reliance upon a decision of this Court in Scooters India v. Vijay E.V. Eldred, 1996 (6) S.C.C. 549, in support of his contention that any stipulation for automatic termination of services made in the Standing Orders could not have been declared to be invalid. We have been referred to a stray sentence in that judgment, which is to the following effect :

> "It is also extraordinary for the High Court to have held clause 9.3.12 of the Standing Orders as invalid."

This sentence in the judgment cannot be read in isolation and we must refer to the subsequent sentences which run as under :

> "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail."

23. In view of this observation, the question whether the stipulation for automatic termination of services for overstaying the leave would be legally bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made were different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that :

> "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order."

This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this judgment, therefore, is wholly out of place."

We are in complete agreement with the ratio laid down in this case as well as the observations made by this Court in respect of the stray observation in Scooters India's case (supra). Therefore, it is clear that there could not be any automatic termination of the Respondent on the basis of Standing Order 9.3.12. Principles of natural justice had to be complied with. The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swarup had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labour Court in its Award sets out and accepts the Respondent's case that he had not been allowed to join duty. The Respondent has given evidence that even though he personally met Chief Personnel Officer he was still not allowed to enter the premises. The evidence is that in spite of slip Ext. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ext. W.2 had been signed by the Security Inspector of the Appellant. This showed that the Respondent had reported for work. As against this evidence the Appellant has not led any evidence to show that the workman had not reported for duty. Even though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla, was not examined by the Appellant. Further the evidence of the Senior Time Keeper of the Appellant established that the workman had worked for more than

240 days within a period of 12 calender months immediately preceding the date of termination of service. This was proved by a joint inspection report, which was marked as Ext. 45/A. It was on the basis of this material and this evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Order 9.3.12 could not have been used for terminating his services. In this view of the matter, in our view, the decisions of the Labour Court as well as High Court are correct and require no interference. Accordingly, the Appeal stands dismissed. There will, however, be no order as to costs.