

Pyare Lal Sharma vs Managing Director, Jammu & ... on 19 July, 1989

Equivalent citations: 1989 AIR 1854, 1989 SCR (3) 428, AIR 1989 SUPREME COURT 1854, 1989 LAB. I. C. 1941, (1989) 2 LAB LN 292, (1990) 1 LAB LJ 32, 1989 SCC (L&S) 484, (1990) 67 COMCAS 195, (1989) 3 COM LJ 70, 1989 (3) SCC 448, (1989) 2 CURLR 293, (1989) 3 JT 133 (SC)

Author: Kuldeep Singh

Bench: Kuldeep Singh, M.M. Dutt

PETITIONER:

PYARE LAL SHARMA

Vs.

RESPONDENT:

MANAGING DIRECTOR, JAMMU & KASHMIR INDUSTRIES LTD. & ORS. & V

DATE OF JUDGMENT 19/07/1989

BENCH:

KULDEEP SINGH (J)

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KULDEEP SINGH (J)

DUTT, M.M. (J)

CITATION:

1989 AIR 1854	1989 SCR (3) 428
1989 SCC (3) 448	JT 1989 (3) 133
1989 SCALE (2) 59	

ACT:

Jammu & Kashmir Industries Employees Service Rules & Regulations--R. 16.14---Termination of service--Provision of show cause notice sufficient safeguard against arbitrary action--Held regulation not arbitrary.

Regulation 16.14--Termination of service--Ground (a) & (b) Three months notice or pay in lieu thereof. Amended Regulation--grounds (c) & (d) unauthorised absence and taking part in politics--15 days notice required--No requirement of any other notice or pay in lieu thereof. Show cause for the period prior to amendment--Held amended regulation not operative retrospectively and the notice served on the employee was illegal and the order of termination had to be set aside. Also held termination on the basis of taking part in politics not maintainable as no show cause given.

Constitution of India 1950--Article 311(1) Employees of the company not civil servants--Cannot claim protection of Art. 311(1) of the Constitution of India nor the extension of that guarantee on parity--Employees governed by the provisions of Articles of Association and Regulations of the Company.

Natural Justice-- Principle--No one can be penalised for the action which was not penal on the day it was committed.

Delegated authority, acquires the power of appointing authority--Held M.D. who had been delegated the powers of the Board of Directors was legally competent to terminate the services of the employee.

HEADNOTE:

According to the Regulation 16.14 of the Jammu & Kashmir Industries Employees Service Rules & Regulations the services of the permanent employee could be terminated if the post is abolished or he is declared medically unfit after giving three month's notice or pay in lieu thereof and in case of temporary employee one month's notice or pay in lieu thereof.

This regulation was amended on April 20, 1983 by adding two more grounds namely, if the employee remains on an unauthorised absence or if he takes part in active politics, in such cases the services shall be terminated if he fails to explain his conduct satisfactorily within 15 days from the date of issue of notice and the management shall be empowered to take a decision without resorting to further enquiries.

Pyare Lal Sharma was employed as a Chemical Engineer by the Jammu & Kashmir Industries Ltd. hereinafter called 'Company'. The Company issued a show cause notice on 21.4.83 in terms of the added clauses for his unauthorised absence from duty. As no reply was submitted, the M.D. terminated his services by an order dated 14.6.1983. Sharma challenged the order of termination by way of a writ petition before the J & K High Court. Learned Single Judge allowed the Writ Petition on three grounds namely, violation of Rules of Natural Justice, that the Board of Directors having appointed Sharma, the M.D. who is subordinate authority could not terminate his services and that the regulation 16.14 was arbitrary and violative of Art. 14 of the Constitution of India. The Letters Patent Bench of the High Court dismissed the appeal of the Company but denied backwages to Sharma. Aggrieved by that order both the Company as well as Sharma came up in appeals before this court. While allowing the appeal of Sharma partially and dismissing the appeal of the Company, this Court,

HELD: That Regulation 16.14 was not arbitrary. The provision of show cause notice is a sufficient safeguard

against arbitrary action. Under grounds (a) & (b) of the Regulations three months notice or pay in lieu thereof is required. Regarding grounds (c) & (d) the regulations provide for 15 days notice to explain the conduct satisfactorily and there is no requirement of any other notice or pay in lieu thereof. [437C-D]

There is no provision in the Articles of Association or the regulations of the company giving same protection to the employees of the company as is given to the civil servants under Art. 311(1) of the Constitution of India. An employee of the Company cannot, therefore, claim that he cannot be dismissed or removed by an authority subordinate to that by which he was appointed. Since on the date of termination of Sharma's services the M.D. had the powers of the appointing authority he was legally competent to terminate Sharma's services. [437F-G]

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Grounds (c) & (d) in regulation 16.14 exclusively and individually are sufficient to terminate the services of an employee. Once it is established that an employee remains on an unauthorised absence from duty the only action which can be taken is termination of his services. Similar is the case when an employee takes part in active politics. The finding in the termination order cannot be sustained because no notice in this respect was given to Sharma but the order of termination can be supported on the ground of his remaining on unauthorised absence from duty. [437H; 438A-B]

State of Orissa v. Vidyabhushan Mohapatra, [1963] 1 Supp. SCR 648 and Railway Board v. Niranjan Singh, [1969] 1 SCR 548, relied upon.

It is a basic principle of natural justice that no one can be penalised on the ground of a conduct which was not penal on the day it was committed. The date of show cause notice being April 21, 1983 the unauthorised absence from duty which has been taken into consideration is from December 20, 1982 to April 20, 1983. Whole of this period being prior to the date of amendment of regulation 16.14, the same could not be made as a ground for proceeding under ground (c) of Regulation 16.14. The Notice served on the appellant was thus illegal and as a consequence the order of termination can not be sustained and has to be set aside. [438F-G]

When the termination order is set aside by the courts normally the employee becomes entitled to backwages and all other consequential benefits. In view of the facts and circumstances of this case the court ordered that only sixty percent of the backwages be paid to Sharma. Moneys already received by Sharma under orders of either this Court or High Court shall be adjusted and the balance paid to him. If the money already paid to Sharma is more than what has been ordered to be paid now then there shall be no recovery from him. [439A-C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3 1543 155 of 1985.

From the Judgment and Order dated 26.3. 1985 of the Jammu & Kashmir High Court in L.P.A. (W) No. 59 of 1984. For the Appellant In-Person in Civil Appeal No. 3 154/85 M.N. Tiku, Rakesh Tiku and Pandey Associates for the Respondents.

M.N. Tiku, Rakesh Tiku and Pandey Associates for the Appellants.

For the Respondent In-Person in Civil Appeal No. 3155/85. The Judgment of the Court was delivered by KULDIP SINGH, J. Jammu & Kashmir Industries Limited (hereinafter called 'company') is a company registered under the Indian Companies Act, 1956 and is wholly owned and managed by the State of Jammu & Kashmir. Pyare Lal Sharma was employed by the company as Chemical Engineer. His services were terminated by the Managing Director of the company on June 14, 1983. Sharma's writ petition was allowed by a learned Single Judge of the Jammu & Kashmir High Court. On appeal by the company the Letters Patent Bench upheld the judgment but denied back-wages to Sharma. This is how these two appeals, one by the company and the other by Sharma, are before us.

We may briefly notice the necessary facts. Pyare Lal Sharma joined the company as Assistant Chemical Engineer on July 12, 1972. In 1974 he was sent to England as management trainee but he returned back without completing the training. Sharma's conflict with the company started in 1976 when he filed a suit against the company in Jammu & Kashmir High Court with various reliefs including a direction that he be again sent to England on company's expense. The suit was dismissed and further appeal to the Division Bench was also dismissed. He then filed another suit in the Delhi High Court claiming Rs.50 lakhs as damages from the company but the same did not proceed on technical grounds. Thereafter, it seems, Sharma started suspecting mala-fide in every action of the company and resorted to court proceedings even on slight pretext. He challenged the order of transfer from Baramulla to the headquarters by way of suit in the Jammu & Kashmir High Court. Interim stay, initially granted, was vacated by the High Court. In December, 1979 he applied for leave on medical grounds without disclosing the ailment. He remained absent from December 7, 1979 to March 7, 1980 without any sanctioned leave. Disciplinary proceedings were initiated against him on the charge of unauthorised absence and he was placed under suspension on March 8, 1980. He filed Writ Petition No. 58/80 in the Jammu & Kashmir High Court against suspension. Ultimately Sharma expressed regrets and he was reinstated into service by an order dated May 15, 1980. In April, 1981 he was transferred from headquarters to one of the units. He again filed a writ petition in the Jammu & Kashmir High Court challenging the order of transfer but the same was dismissed. Thereafter he filed Writ Petition No. 4086 of 1982 in this Court which was heard by Chinnappa Reddy, J. (Vacation Judge) on 1st of June, 1982. The learned Judge passed the following order:

"Issue notice returnable on June 15, 1982. Notice be also served on the counsel for the State of Jammu & Kashmir Mr. Altar Ahmad. Mr. Altar Ahmad will take instructions from his clients and assist this Court to know the precise facts of the case which it is impossible to find from the petitioner. I have suggested to the petitioner that he may engage a counsel but he does not appear to be inclined to do so. Nor is he willing to be assisted by the counsel engaged by the court."

The writ petition was, however, dismissed as withdrawn on June 15, 1982. Sharma filed two more writ petitions being 293 of 1982 and 410 of 1982 in the Jammu & Kashmir High Court challenging the promotions of some other officers. Sharma absented from duty on September 8, 1982. He was asked to explain his absence. A para out of his reply is as under:

"I have been submitting charge sheet against you since last one year to authorities about your corrupt practices, communal character, and illegal financial advancement you have made but no action has been taken against you since you utilise political pressure and bribed the chairman."

Sharma was served with a charge-sheet dated September 24, 1982 and he was placed under suspension. Use of derogatory language in various communications was one of the charges against him. He submitted his reply to the charge-sheet on October 7, 1982. Part of the opening paragraph is as under:

"You have become frustrated, lost balance of mind and to cover the various irregularities committed by you for example You will be prosecuted for levelling false charge sheet and false charges against me. Coming to the charge sheet with above reverence I have to say as under."

On October 22, 1982 an enquiry officer was appointed to enquire into the charges against Sharma. He challenged the order of suspension by way of Civil Writ Petition 661 of 1982 in the Jammu & Kashmir High Court. The High Court stayed the suspension by its order dated December 20, 1982. The order of suspension having been stayed by the High Court it was incumbent on Sharma to have joined duty. But inspite of company's letters asking him to do so he remained absent. Sharma filed Writ Petition 471/82, Writ Petition 129/83 and Letters Patent Appeal 24/83 for payment of his salary and allowances for various periods which were granted by the High Court.

It is also on record that while in service Sharma unsuccessfully fought assembly elections on two occasions. He filed his nomination papers for contesting elections to the Lok Sabha from Baramulla constituency. But the nomination papers were rejected.

Regulation 16.14 of Jammu & Kashmir Industries Employees Service Rules and Regulations before amendment was as under:

"The service of the permanent employee shall be terminated by the company, if (a) his post is abolished or (b) he is declared on medical grounds to be unfit for further

service after giving three months' notice or pay in lieu thereof. For similar reasons the service of a temporary employee also be dispensed with after giving him one month's notice or pay in lieu thereof."

The above quoted regulation 16.14 was amended on April 20, 1983. Amended regulation is as under:

"16.14. the services of an employee shall be terminated by the Company if:

(a) his post is abolished, or

(b) he is declared on medical grounds to be unfit for further service, or

(c) if he remains on un-authorised absence, or (d) if he takes part in active politics.

In the case of (a) and (b) above the services shall be terminated after giving three months notice to a permanent employee and one month's notice to a temporary employee or pay in lieu thereof.

In the case of (c) and (d) above the services of an employee shall be terminated if he fails to explain his conduct satisfactorily within 15 days from the date of issue of notice. The management shall be empowered to take a decision without resorting to further enquiries.

By order of the Board of Directors."

The company issued a show cause notice dated April 21, 1983 in terms of clause (c) of amended regulation 16. 14. The notice was in the following terms:

"In compliance to the orders of the Hon'ble High Court Your suspension was stayed till further orders vide Order No. JKI/319/82 dated 21.12.82 issued vide endorsement No. Adm.(P) 80-65/4866 dated 21.12.82. From that date also you have continuously remained absent unauthorisedly from your duties. You are, therefore, served this notice to show cause within a period of 15 days as to why your services should not be terminated under rules of the Corporation."

No reply to the show cause notice was submitted by Sharma. By an order dated June 14, 1983 the Managing Director of the company terminated his service,. The termination order is reproduced as under:

"Shri Pyare Lal Sharma Chemical Engineer, Jammu and Kashmir Industries Limited has remained on unauthorised absence continuously from 21.12.82 (since the date of his suspension was stayed as per orders from the Hon'ble High Court). Shri Sharma was served with a notice under Jammu & Kashmir Industries Limited Employees Service Rules to show cause within a period of 15 days as to why his services should not be terminated. This notice was served to him under registered post but the same was received back in this office and later on delivered to him in person on 7.5.83 as

per his request. Shri Sharma has failed to explain his position.

It has now also been established that Shri Sharma was taking part in active politics during the period of his un-authorised absence and has filed nomination papers for contesting election from 1-Baramulla Parliamentary Constituency. Now that his unauthorised absence as well as his taking part in the active politics has been established, and in exercise of the powers vested in the management under Jammu & Kashmir Industries Employees Services Regulations the services of said Shri Pyare Lal Sharma Chemical Engineer J & K Industries Limited are hereby terminated."

Sharma challenged the order of termination by way of Writ Petition No. 70 of 1984 before the Jammu & Kashmir High Court. Learned Single Judge by his judgment dated October 16, 1984 allowed the writ petition on three grounds. The learned Judge found the impugned order violative of Rules of Natural Justice as no opportunity to show cause was afforded to Sharma in respect of the ground of taking part in active politics. It was also held that the Board of Directors having appointed Sharma, The Managing Director who is subordinate authority could not terminate his services. Finally, the learned Judge held regulation 16.14 to be arbitrary and as such violative of Article 14 of the Constitution of India.

The Letters Patent Bench of the High Court dismissed the appeal of the company but denied back-wages to Sharma. The Bench held that Sharma's services could not be terminated by an authority subordinate to the authority which appointed him. The Bench also found that either three months notice or salary in lieu thereof under regulation 16.14 was mandatory. The Division Bench did not agree with the other reasons given by the learned Single Judge in support of his judgment.

Mr. Pyare Lal Sharma appeared in person and argued his case. He has been of no assistant to us. During the course of arguments we suggested to Mr. Sharma to engage a counsel which he declined. We also repeatedly offered to him to have the services of a counsel engaged by the Court but he did not agree and insisted on arguing the case himself. From the pleadings of the parties, documents on the record, the judgment of the learned Single Judge and of the Letters Patent Bench and from Sharma's arguments the following points arise for our consideration:

1. Whether Regulation 16.14 is arbitrary and as such ultra vires Article 14 of the Constitution of India.
2. Whether three months' notice or pay in lieu of the notice period was required to be given under Regulation 16.14.
3. The termination order having been passed by the Managing Director who was an authority subordinate to the Board of Directors

which appointed Sharma, the order was bad on that ground.

4. Whether the impugned order is viola-

tive of rules of natural justice so much so that the ground of taking part in active politics was not mentioned in the show cause notice whereas it was relied upon in the termination order.

5. Whether the period of absence, which was prior to the date of coming into force of the amended Regulation 16.14, could be taken into consideration for invoking ground (c) of the Regulation.

We see no arbitrariness in Regulation 16.14. The Regulation has been framed to meet four different eventualities which may arise during the service of a company employee. Under this regulation services of an employee may be terminated (a) if his post is abolished or (b) if he is declared on medical grounds to be unfit for further service or (c) he remains on unauthorised absence or (d) if he takes part in active politics. In the case of (a) and (b) three months notice to a permanent employee and one month notice to temporary employee or pay in lieu thereof is to be given. In case of (c) and (d) a show cause notice, to explain his conduct satisfactorily, is to be given. So far as grounds

(a) and (b) are concerned there cannot be any objection. When a post is abolished or an employee is declared medically unfit for further service the termination is the obvious consequence. In the case of abolition of post the employee may be adjusted in some other post if legally permitted. Ground (c) has also a specific purpose. "Remains on unauthorised absence" means an employee who has no respect for discipline and absents himself repeatedly and without any justification or the one who remains absents for a sufficiently long period. The object and purport of the regulation is to maintain efficiency in the service of the company. The provision of show cause notice is a sufficient safe-guard against arbitrary action. Regarding ground (d) "acting politics" means almost whole time in politics. Company job and active politics cannot go together. The position of the civil servants who are governed by Article 311 is entirely different but a provision like grounds (c) and (d) in Regulation 16.14 concerning the employees of companies/corporations/public undertakings is within the competence of the management.

We do not agree with the Division Bench of the High Court that three months' notice or pay in lieu thereof was to be given to Sharma under Regulation 16.14. It is clear from the plain language of the regulation that three months notice or pay in lieu, is only required when termination is under ground (a) or (b). Regarding (c) and (d), the regulation provides for a 15 days notice to explain the conduct satisfactorily and there is no requirement of any other notice or pay in lieu thereof.

We may now take-up the third point. Sharma was appointed as Chemical Engineer by the Board of Directors. The powers of the Board of Directors to appoint officers of Sharma's category were delegated to the Managing Director on September 12, 1974 and as such from that date the Managing Director or became the appointing authority. Needless to say that employees of the company are not civil servants and as such they can neither claim the protection of Article 311(1) of the Constitution of India nor the extension of that guarantee on parity. There is no provision in the Articles of Association or the regulations of the company giving same protection to the employees of the company as is given to the civil servants under Article 311(1) of the Constitution of India. An employee of the company cannot, therefore, claim that he cannot be dismissed or removed by an authority subordinate to that by which he was appointed. Since on the date of termination of Sharma's services the Managing Director had the powers of appointing authority, he was legally

competent to terminate Sharma's services. The learned Single Judge allowed the writ Petition on the fourth point though the same did not find favour with the Division Bench. Grounds (c) and (d) in regulation 16.14, exclusively and individually, are sufficient to terminate the services of an employee. Once it is established to the satisfaction of the authority that an employee remains on unauthorised absence from duty, the only action which can be taken is the termination of his services. Similar is the case when an employee takes part in active politics. The finding in the termination order regarding taking part in active politics cannot be sustained because no notice in this respect was given to Sharma but the order of termination can be supported on the ground of remaining unauthorised absence from duty. This Court in *State of Orissa v. Vidyabhushan Mohapatra*, [1963] 1 Supp. SCR 648 and *Railway Board v. Niranjan Singh*, [1969] 1 SCR 548 has held that if the order can be supported on one ground for which the punishment can lawfully be imposed it is not for the courts to consider whether that ground alone would have weighed with the authority punishing the public servant. Thus there is no force in this argument.

This takes us to the last point which we have discovered from the facts. Regulation 16.14 before amendment consisted of only clauses (a) and (b) relating to abolition of post and unfitness on medical ground. The company had no authority to terminate the services of an employee on the ground of unauthorised absence without holding disciplinary proceedings against him. The regulation was amended on April 20, 1983 and grounds (c) and (d) were added. Amended regulation could not operate retrospectively but only from the date of amendment. Ground (c) under which action was taken came into existence only on April 20, 1983 and as such the period of unauthorised absence which could come within the mischief of ground (c) has to be the period posterior to April 20, 1983 and not anterior to that date. The show cause notice was issued to Sharma on April 21, 1983. The period of absence indicated in the show cause notice is obviously prior to April 20, 1983. The period of absence prior to the date of amendment cannot be taken into consideration. When prior to April 20, 1983 the services of person could not be terminated on the ground of unauthorised absence from duty under Regulation 16.14 then it is wholly illegal to make the absence during that period as a ground for terminating the services of Sharma. It is basic principle of natural justice that no one can be penalised on the ground of a conduct which was not penal on the day it was committed. The date of show cause notice being April 21, 1983 the unauthorised absence from duty which has been taken into consideration is from December 20, 1982 to April 20, 1983. Whole of this period being prior to the date of amendment of regulation 16.14 the same could not be made as a ground for proceeding under ground (c) of Regulation 16.14. The notice served on the appellant was thus illegal and as a consequence the order of termination cannot be sustained and has to be set aside.

When the termination order is set aside by the courts normally the servant becomes entitled to back-wages and other consequential benefits. This case has a chequered history. From 1976 onwards there has been continuous litigation and mistrust between the parties. The facts which we have narrated above go to show that Sharma has equally contributed to this unfortunate situation. In view of the facts and circumstances of this case we order that sixty per cent of the back-wages be paid to Sharma. Money already received by Sharma under orders of this Court or the High Court shall be adjusted and the balance paid to him. If the money already paid to Sharma is more than what we have ordered then there shall be no recovery from him. Civil Appeal 3154/85 is allowed to

the extent indicated above, Civil Appeal 3155/85 filed by the company is dismissed. C.M.P. 1213/88 is dismissed as infructuous. There shall be no order as to costs.

R.N.J.