Delhi Transport Corporation vs Sardar Singh on 12 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4161, 2004 (7) SCC 574, 2004 AIR SCW 4622, 2004 (6) SCALE 613, 2004 (2) ALL CJ 2057, 2004 (5) SLT 158, (2004) 6 JT 342 (SC), 2004 (6) ACE 568, 2004 ALL CJ 2 2057, 2004 (7) SRJ 435, 2005 (1) SERVLJ 48 SC, 2004 LAB LR 953, 2004 (6) JT 342, (2004) 22 ALLINDCAS 457 (SC), (2004) 7 SERVLR 2, (2004) 6 SUPREME 232, (2004) 6 SCALE 613, (2004) 22 INDLD 209, (2004) 4 LAB LN 1, (2005) 1 MAD LJ 40, (2004) 3 SCT 827, (2004) 3 ALL WC 2685, (2004) 3 CURLR 289, (2004) 113 DLT 258, (2004) 106 FJR 921, (2004) 102 FACLR 1031, 2004 SCC (L&S) 946

Author: Arijit Pasayat

Bench: S.N. Variava, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  9600 of 2003

PETITIONER:
Delhi Transport Corporation

RESPONDENT:
Sardar Singh

DATE OF JUDGMENT: 12/08/2004

BENCH:
S.N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T With C.A.Nos. 9601/2003, 9608/2003, 9607/2003, 9611/2003, 9602/2003, 9605/2003, 9613/2003, 9604/2003, 9606/2003, 9612/2003 and C.A. No. 137/2004.

ARIJIT PASAYAT, J.

As the controversies in these appeals are based on identical premises, they are taken up together for disposal by this common judgment.

Background facts leading to these appeals are as follows:

> The respondent in each case was working as a conductor in the appellant - Delhi Transport Corporation (hereinafter referred to as the 'employer'). Departmental proceedings were initiated against each one of them on the ground of misconduct due

to unauthorized long absence from duty; negligence of duties and lack of interest in the employer's work. The terms and conditions of appointment and service were governed by the applicable service regulations i.e. Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 (in short the 'Regulations'). According to the employer the unauthorized absence was indicative of negligence, and lack of interest in employer's work amounted to misconduct. Reference was made to Para 4(ii) and 19(h) of the Standing Orders issued under Para 15(1) of the Regulations. After finding the concerned employees guilty and being of the view that removal from service was the proper punishment, the Disciplinary Authority imposed punishment of dismissal/removal from service. Since an industrial dispute was already pending approval was sought for in terms of Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the Act'). According to Tribunal, proper enquiry was not held. It, however, granted opportunity to the employer to lead further evidence to justify its action. Employer led further evidence. On consideration of materials brought on record, Tribunal came to hold that availing leave without pay did not amount to misconduct. It noted that since employer had treated absence from duty as leave without pay, it indicated sanction of leave and, therefore, also there was no misconduct. According to the employer long absence without sanctioned leave clearly disclosed lack of interest in service and the concerned employee was guilty of misconduct. The approval sought for was refused by the Tribunal. The Tribunal did not accord approval primarily on the ground that in most cases the leave was treated as leave without pay and that being the position it cannot be said that the absence was unauthorized.

The employer approached the Delhi High Court and learned Single judge of the Court held that the disapproval by the Tribunal was not in order. The concerned employees preferred Letters Patent Appeals before the Delhi High Court. A Division Bench of the Court by the impugned judgment disposed of several L.P.As. being of the view that the Tribunal's conclusions were in order and the learned Single Judge was not correct in his conclusions.

In support of the Appeals learned counsel for the appellant- employer Corporation submitted that the Division Bench of the High Court has missed to notice the true effect of paras 4(ii) and 19(h) of the Standing Orders. Erroneously it was concluded that leave without pay meant grant of leave. It is nothing but keeping the record straight and for the purpose of maintaining correct record of service. It did not amount to sanction of leave. The Standing Order clearly stipulates that the leave was to be obtained in advance. Above being the position, the Division Bench was not justified in interfering with the orders of the learned Single Judge.

In response, learned counsel for the concerned employees submitted that where the record shows that the absence was treated as leave without pay, it meant that leave was granted and mere long absence does not per se show lack of interest in work, something more was necessary for the purpose and the Tribunal therefore was

justified in its view.

We have examined the factual position in each case. In C.A. No. 9600/2003 the absence was 171 days between 1.11.1987 to 31.10.1988. In C.A. No. 9601/2003 the absence was 92 days between January 1991 to October 1991. In C.A. No. 9608/2003 there was 105 days absence between 1.1.1991 to 30.11.1991. In C.A. No. 9607/2003 the absence was 294 days between 13.3.1991 and 1.1.1992. In C.A. No. 9611/2003 the absence was 95 days between January, 1987 to August, 1987. In C.A. No. 9602/2003 the absence was 137 days between 1.1.1993 to 30.11.1993. In C.A. 9605/2003 the absence was 188 days between 1.1.1992 to 15.7.1992.

Additionally a similar absence was there in 1990,1991 and 1998 for 81 days, 129 days and 45 days respectively. In C.A. No. 9613/2003 the absence was 166 days between January 1991 to December, 1991. In C.A. No. 137/2004 the absence was 272 days between 1983 upto August, 1985.

In all these cases almost the whole period of absence was without sanctioned leave. Mere making of an application after or even before absence from work does not in any way assist the concerned employee. The requirement is obtaining leave in advance. In all these cases the absence was without obtaining leave in advance. The relevant paras of the Standing Order read as follows:

"4. Absence without permission:-

(i) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness.

In the case of sudden illness he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the D.T.S. In no case shall an employee leave station without prior permission.

(ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his service with the Organisation.

19. General Provisions:- Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as mis-conduct:

(a).....

(h) Habitual negligence of duties and lack of interest in the Authority's work."

Clause 15 of the Regulations so far as relevant reads as follows:

"2. Discipline:- The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Atuhority:-

(i).....

(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority.

....."

When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

Great emphasis was laid by learned counsel for the respondent- employee on the absence being treated as leave without pay. As was observed by this Court in State of Madhya Pradesh v. Harihar Gopal (1969(3) SLR 274] by a three-judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination that is for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the Governing Standing Orders unauthorized leave can be treated as misconduct.

Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para 4 of the Standing Order shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized.

The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave.

That being the factual position, the Tribunal was not justified in refusing to accord approval to the order of dismissal/removal as passed by the employer. The learned Single Judge was justified in holding that the employer was justified in passing order of termination/removal. The Division Bench unfortunately did not keep these aspects in view and reversed the view of learned Single Judge.

We, therefore, allow these appeals and affirm the view taken by learned Single Judge while reversing that of the Division Bench.

The appeals are allowed to the extent as indicated above.

In this appeal there was 190 days of unauthorised absence between 1.1.1989 to 31.12.1989. It is noticed that the Tribunal did not give any opportunity to the management to lead evidence being of the view that adequate opportunity had been granted earlier. We find that the factual aspects were not examined and it is a fit case where the Tribunal ought to have granted a further opportunity to the management (employer) to place material in support of its case. That having not been done, we think it would be appropriate to remit the matter back to the Tribunal to consider the matter afresh after granting due opportunity to the parties before it.

Civil appeal is disposed of accordingly.

In this appeal the absence was 132 days between 1.1.1989 to 31.12.1989. According to the appellant there was an admission regarding the alleged misconduct. The Tribunal does not appear to have considered the entire matter in its proper perspective, in particular, the effect of admission as claimed. We, therefore think it appropriate to remit the matter back to the Tribunal with a direction to the Tribunal to permit the parties before it to place materials in support of their respective stands, we make it clear we have not expressed any opinion on merits.

Civil Appeal is accordingly disposed of.

In this appeal the absence was 170 days in 1991. The Tribunal in this case held that the enquiry was proper. But following its earlier view that unauthorized absence was not misconduct, it did not accord approval. If the Tribunal holds that the enquiry is proper then no further evidence was necessary to be produced. In view of what has been observed supra, the view of the Tribunal, that there was no misconduct, does not appear to be justified. The appeal is allowed, judgment of the Division Bench is set aside and that of the learned Single Judge is restored.