Supreme Court of India
Hindustan Paper Corpn vs Purnendu Chakrobarty & Ors on 30 October, 1996
Author: Venkataswami.
Bench: B.P. Jeevan Reddy, K. Venkataswami

PETITIONER:
HINDUSTAN PAPER CORPN.

Vs.

RESPONDENT:
PURNENDU CHAKROBARTY & ORS.

DATE OF JUDGMENT: 30/10/1996

BENCH:
B.P. JEEVAN REDDY, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T VENKATASWAMI. J.

Leave granted.

Heard learned counsel for the parties at length. The appellant-Corporation on January 5, 1989 passed an order invoking Rule 23(vi) E of the Hindustan Paper Corporation Conduct Discipline and Appeal Rules (hereinafter called "the Rules"). That order was to the effect that the first respondent herein must be deemed to have lost his Lien on his appointment with the Corporation/Mill.

The first respondent has successfully challenged the said order of the appellant before the High Court of Guwahati and thus. the appellant is before us.

The first respondent entered the services of the appellant as a Fire Fighting Officer and was eventually promoted on 28.8.1985 as Assistant Manager (Security & Fire- fighting). On may 26. 1988 the body of one shanti Rani Chakrabarty, sister-in-law of the first respondent. was found in the house of the first respondent. On 27.5.1988. the first respondent applied casual leave. On the next day. an FIR was lodged aginst the first respondent and others under Section 302/201 read with Section 34 IPC by Karim Ganj Police. On 3.6.1988. the first respondent after the expiry of casual

leave sent an application for Earned Leave for 11 days giving the reason 'personal affair' and mentioning his leave address as U/S PWD Dispur, Gauhati. On 6.6.1988 the Senior Manager of the appellant received a message from the Police to direct the first respondent to report to the police station. On 7.6.1988 the Senior Manager informed the police that the first respondent has sent an application for Earned Leave. Again the police requested to intimate the whereabouts of the first respondent. On l4,6.1988 the appellant informed the police that the whereabouts of the first respondent not known. However. the permanent address of the first respondent as available in the official record. was supplied to the police. Thereafter. the appellant sent series of leave applications dated 21.6.88. 14.7.88. l3.9.88. 28.8.88. 13.9.88. 29.9.88. 16.10.88 and 5.11.88 without minding to find out whether previous applications for leave have been sanctioned or not. These leave applications initially did not disclose any reason and subsequently it mentioned `on medical grounds' without enclosing any medical certificate and without disclosing his leave address. The appellant-Corportion again received on 28.11.1988 a communication from the police that the first respondent was wanted as an accused in a murder case. ln view of that the Appellant-Corporation by a communication dated 30.1l.1988 informed the first respondent that his leave on medical grounds was not sanctioned as his applications were not supported by medical certificates and that he was liable to be treated as an unauthorised absentee. He was. therefore. called upon to submit his explanation, if any within 15 days of receipt of the letter. He was also incidentally informed that he was required by the Superintendent of Police, Karim Ganj in connection with the murder. In response to the above communication from the appellant-Corporation. the first respondent submitted his reply baldly stating that he was suffering from chest pain for quite some time and that he had consulted specialist outside HPC for personal reasons and due medical cercificate Will be produced at the time of joining. He also informed the Corporation that he knew that he was required to appear before the Police and that he would report to the police as per rules. It is under these circumstances that the appellant-Corporation passed the order dated 5.1.l989 invoking Rule 23 (vi) E the Rules.

The appellant aggrieved by the said order moved the Guwahati High Court by filing Civil Rule No. 288 of 1992 under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench. on appeal by the appellant-Corporation, agreeing with the arguments advanced on behalf of the first respondent set aside the order of the appellant-Corporation dated 5.1.1989 and directed re- instatement of first respondent with 50% back wages.

When the Special Leave Petition came up for admission this Court while issuing notice passed an order in the following terms:

> "In the light of the sub-clause (E) of Clasue VI of Rule 23. the validity of which is stated not to have so far been pronounced upon by this Court in the context of a Public Sector Corporation. a notice shall be issued to the respondents."

Before actually going into the validity of the said Rule it would he beneficial to appreciate the facts little more critically, which will be helpful to come to the correct conclusion.

The first respondent is not a workman to avail or invoke the provisions of the Industrial Disputes Act 1947. He is governed by the Rules framed by the Corporation in this regard. We have already noted that in view of the pendency of criminal case registered against him, the first respondent without disclosing that fact has been sending applications for leave commencing from 21.6.1988 ending with 5.11.1988. Copies of the application for leave are tiled in the paper book along With copies of medical certificates produced by the first respondent. not before the appellant- corporation on time. but long subsequently. Initially, as noticed earlier. the applications for leave did not disclose any reason. Later on, in the application for leave dated 13.8.1988, the reason given was suffering from heart disease'. Again in the application dated 13.9.1988. the reason given was heart disease since long. The same reason was given in the applications dated 29.9.1988 16.10.1988 and 5.11.1988 It is very relevant to note that according to the medical certificates, copies of which are now produced which are dated 4.5.1988 onwards ending with 21.01.89. nowhere it was stated that he was suffering from heart disease. Further. nature of the sickness was mentioned in the certificate and in spite of that the same was not disclosed correctly in the leave applications. It is also clear that those certificates were available and inspite of that not enclosed alongwith the leave applications. From this one has to draw the inference that either the medical certificates are not genuine in the sense that they were not obtained then and there or the first respondent deliberately did not enclose them along with the leave applications. Even today no proper explanation is forthcoming from the first respondent on this aspect. With this background we shall now set out the relevant rule:-

> Rule 23, PENALTIES The following penalties may be imposed on an employee. as hereinafter provided. for misconduct committed by him or for any other good and sufficient reasons. Minor Penalties
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> a) censure:
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> b) withholding of increment(s) of pay with or without cumulative effect:
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> c) withholding of promotion;
>
> d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders.
>
> Major Penalties
>
> e) reduction to a lower grade or post. or to a lower stage in a time scale:
>
> f) removal from service which shall not be a disqualification for future employment ;
>
> g) dismissal;
>
> Explanation: The following shall not amount to a penalty within the meaning of this rule.

i) withholding of increment of an employee on account of his work being found unsatisfactory or not being of the required standard. or for failure to pass a prescribed test of examination:

ii) stoppage of an employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar:

iii) non-promotion, whether in an officiating capacity or otherwise , of an employee to a higher post for which he may be eligible for higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

iv) reversion to lower grade or post, of an employee officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;

v) reversion to his previous grade or post, of an employee appointed on probation to another grade, or post during of at the end of the period of probation, in accordance with the terms of his appointment;

vi) TERMINATION OF SERVICE A) of an employee appointed on probation. during or at the end of the period of probation. in accordance with the terms of his appointment: B) of an employee appointed in a temporary capacity otherwise than under a contract or agreement. on the expiration of the period for which he was appointed. Or earlier in accordance with the terms of his appointment:

C) of an employee appointed under a contract or agreement. in accordance with the terms of such contract or agreement:

D) of any employee on reduction of establishment; and E) Loss of lien on his appointment by an employee:

1. Proceeding on leave without prior sanction and remaining unauthorisedly absent for more than 8 consecutive days.

and/or

2. Over-staying his sanctioned leave beyond the period originally granted or subsequently extended formore than 8 consecutive days."

In the light of the above Rule, in particular Rule 23

(vi) E, the appellant-Corporation factually by communication dated 30.11.1988 informed the first respondent that the leave applications have not been supported by medical certificates; that period

must be treated as unauthorised absent' and if he has got aything to say on that aspect he has to send the reply within 15 days from the date of receipt of that letter. His reply was that he was suffering from chest pain for quite some time and the medical certificates will be produced at the time of joining. To say the least, that should not be the attitude of an employee. First of all. he was expected to take the leave ordinarily with prior sanction and extend the same after the earlier one was sanctioned by the appropriate authority. Right from the beginning his applications were not only not in proper form but were not supported by any medical certificates to justify the claim of the first respondent. At least the first respondent should have replied properly by enclosing the medical certificates or should have come forward with a true case. He did neither. lt is in that context that the appellant-corporation invoked the said Rule. namely. Rule 23(vi) E.

Mr. P P Rao. senior counsel appearing for the appellant-Corporation fairly in our view rightly conceded that the Rule. namely. Rule 23(vi) E has to be construed by reading into it the Principles of natural justice. Otherwise by reading it literally, it would amount to arbitrary and unreasonable vesting of authority and liable to be struck down. According to the learned counsel. if only the first respondent had properly responded to the show cause notice the Corporation might not have taken the extreme step of cutting off the appointment of the first respondent with the Corporation.

We consider that in view of this concession made by the learned counsel on behalf of the appellant Corporation that the said Rule must be read and given effect to. subject to the compliance of the principles of natural Justice. It cannot be said that the rule is arbitrary or unreasonable or ultra vires Article 14 of the Constitution. In other words, before taking action under the said clause an opportunity should be given to the employee to show cause against the action proposed and if the cause shown by the employee is good and acceptable, it follows that no action in terms of the said clause will be taken. Understood in this sense. it can not be said that the said clause is either unreasonable or voidable of Article 16 of the constitution.

Mr. Sanjay Parikh. Learned counsel appearing for the first respondent however. vehemently contended that in view of the recent judgment of this Court in D.K. Yadav vs. JMA ndustries Ltd (1993) 3 SCC 259 which has considered number of earlier judgments of this Court including Hindustan Steel Ltd. vs. Presiding Officer, Labour Court (1976) 4 SCC 222: L. Robert D` Souza vs. Executive Engineer. Southern Railway (1982) 1 SCC 645: Delhi Transport Corpn. V. D.T.C. Mazdoor Congress 1991 supp (1) SCC 600, the judgment and order of the High Court cannot be assailed.. According to the Learned counsel. before passing the impugned order against the first respondent, the appellant-Corporation should have conducted a full fledged order. He also invited our attention to the reasonings given by the Division Bench of the High Court.

The Devision Bench of the High Court by confirming the order of the learned single Judge appears to have fell into an error in correct appreciating the scope of Rule 23. According to the learned Judges of the Division Bench. the loss of lien is a major penalty and therefore. attracts Rule 25 which provides that no major penalty can be imposed without holding an inquiry under the Rules. This view of the Division Bench led them to pass the following observation.

> "Admittedly. no inquiry has been held and the alternative submission of substantial compliance of the Rules as already discussed above, has been held to be illusory. It cannot therefore be said in absence of any inquiry whatsoever that the deliquent writ petitioner deliberately abstained from duty on a feigned or pretended ground of illness. It was a matter of inquiry..

We have extracted Rule 23 in full. The explanation to the Rule specifically states that certain items enumerated thereunder shall not be treated as a penalty at all within the meaning of Rule 23. For our case the relevant sub clause is (vi) E which says that proceeding on leave without Prior sanction and remaining unauthorisedly absent for more than 8 consecutive days; and/or over-staying his sanctioned leave beyond the period originally granted or subsequently extended for more than 8 consecutive days would result in loss of lien of the appointment of the employee. In this case we have seen that the first respondent had proceeded on leave without prior sanction and remained unauthorisedly absent for more than 6 months consecutively which obliged the appellant-Corporation to issue communication to the first respondent calling upon him to explain. Unfortunately. the first respondent. for reasons best known to him. has not availed himself of the opportunity as seen earlier but replied in a half-hearted way which resulted in the impugned order. Therefore. under the circumstances it cannot be said that the principles of natural justice have not been complied with or the circumstances require any enquiry as contemplated under Rule 25. In the case cited by the learned counsel for the first respondent. this Court has held "that the law must. therefore, be now taken to be well-settled that procedure prescribed tor depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute on statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fianciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of nature justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice to put it negatively, to prevent miscarriage of justice. it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both."

On a consideration of the entire facts, we are of the view that the test laid down by this Court, as extracted above has been satisfied by the appellant-Corporation and therefore when viewed from the point of Rule 23(vi) E, there was no good reason for the High Court to interfere with the impugned order of the appellant-Corporation dated 5.1.1989.

While ordering notice, this court has directed the appellant to pay 1/5th of the arrears to the first respondent within 3 months. lt is stated that order has been complied with. It is also brought to our notice that the first respondent is due to rctire shortly within few months. Taking the totality of the facts and circumstances of the case and having due regard to the services rendered by the first respondent. the ends of justice would be met if the appellant-Corporation is directed to give all pensionary and terminal, benefits to the first respondent treating the case to the first respondent as compulsory retirement on and from 5.1.1989. We direct accordingly . the amount already paid pursuant to the interim direction of this Court is not liable to be refunded by the first respondent

and not to be adjusted against the terminal benefits payments. if any.

The appeal is accordingly disposed of. However. there will be no order as to costs.