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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.6387 of 2006

(Arising out of order dated 27-9-2006 in Civil Appeal No.7/CGIR Act/A-II/2006 of the learned State Industrial Court, Chhattisgarh, Raipur)

Santosh Kumar Sharma, S/o Shri Hiramani Sharma, Aged about 28 years, R/o Quarter No.527, Bacheli, Distt. Dantewada (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Co. Ltd., Through the Additional Superintending Engineer (O&M), CSPDCL, Jagdalpur, Distt. Baster.

2. The Chairman, State Industrial Court, Raipur (C.G.)

3. The Presiding Officer, Labour Court, Jagdalpur (C.G.)

---- Respondents

For Petitioner:	Mr. Harshal Chauhan, Advocate.
For Respondent No.1:	Mr. Ghanshyam Patel, Advocate on behalf of Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/08/2017

1. Questioning legality, validity and correctness of the order passed by the Industrial Court reversing the order passed by the Labour Court and setting aside the order of reinstatement without back-wages, this writ petition has been preferred by the petitioner/ delinquent employee.

2. Mr. Harshal Chauhan, learned counsel appearing for the petitioner, would submit that the Industrial Court interfered with the well reasoned and speaking order of the Labour Court and came to the

conclusion to set aside the order passed by the Labour Court. The reasonings and findings recorded by the Labour Court are justified and sustainable in the eye of law and therefore the order impugned passed by the Industrial Court deserves to be set aside.

3. Mr. Ghanshyam Patel, Advocate, appearing on behalf of Mr. Abhishek Sinha, learned counsel for respondent No.1, would submit that the order passed by the Industrial Court is well reasoned and strictly in accordance with law and need not be interfered with and deserves to be maintained, as such, the writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties and perused the order impugned as also the record of the Court below with utmost circumspection.

5. The petitioner was appointed as Line Attendant on 15-9-2003 in the Chhattisgarh State Electricity Board. The petitioner fell ill and applied for grant of leave on 9-12-2003 and the said application was repeated on 8-1-2004 with a medical certificate that he is suffering from Hepatitis B and also on 6-4-2004, thereafter, he did not file any application for his absence praying leave. Finding his absence from 9-12-2003 to 13-12-2004, he was subjected to departmental enquiry in which he was proceeded ex parte and only after recording the statement of one H.N. Kori, AG-II, his services were terminated to which he assailed before the Labour Court and the Labour Court by order dated 27-9-2005 held that domestic enquiry is not in accordance with law and misconduct of the

petitioner for remaining unauthorised absence has not been proved and therefore the order of termination is liable to be set aside and the petitioner is entitled for reinstatement. On appeal filed by the respondent CSPDCL, the Industrial Court rested its decision only on the ground that the petitioner was a probationer and his services were not found satisfactory and as such, his services have been terminated. The Industrial Court also held that the medical certificate was not proved strictly in accordance with law by examining the doctor.

6. The Labour Court has clearly held the domestic enquiry to be illegal and that the employer has failed to prove the misconduct during the course of trial before the said Court. The Labour Court has further came to the conclusion that the proceeding was ex parte and the petitioner fell ill, he made three applications for grant of leave and on 5-5-2004, father of the petitioner has also made application that his son was ill, as soon as he will be fit, he will resume his duty. Medical certificates have already been filed as Exs.P-1, P-2 and P-3.

7. The Industrial Court has altogether took a new and different ground which was not put-forth by the respondent CSPDCL that the petitioner was probationer and therefore his services have rightly been terminated finding his services unsatisfactory, that was neither the ground raised by the respondent CSPDCL before the Labour Court nor the ground available to the respondent CSPDCL in view of the fact that the CSPDCL has focused on the ground of

misconduct of the petitioner and mainly on the ground that his services were not found satisfactory. Therefore, on this ground, the Industrial Court could not have interfered with the order of the Labour Court.

8. Now, the next ground on which the Industrial Court interfered with the order of the Labour Court is that though medical certificate has been produced by the petitioner but the doctor who gave medical certificate was not examined.

9. A Constitution Bench of the Supreme Court in the matter of **The State of Orissa and another v. Murlidhar Jena**[1] held that the enquiry held by the Administrative Tribunal is not governed by the strict and technical rules of the Evidence Act and in conducting the enquiry, the Tribunal shall be guided by rules of equity and natural justice and shall not be bound by formal rules relating to procedure and evidence.

10. Likewise, in the matter of **Major U.R. Bhatt v. Union of India**[2], the Supreme Court has held that the Enquiry Officer is not bound by the strict rules of the law of evidence.

11. In the matter of **Bank of India and another v. Degala Suryanarayana**[3], the Supreme Court has clearly held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such

1 AIR 1963 SC 404
2 AIR 1962 SC 1344
3 (1999) 5 SCC 762

evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. The Supreme Court observed in para 11 of the report as under: -

> "11. ... Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. ..."

12. Recently, similar proposition has been held by the M.P. High Court in the matter of **Devi Charan Tiwari and another v. The State of M.P. and others**[4], decided on 10-7-2017.

13. Thus, in view of the aforesaid legal proposition, the finding recorded by the Industrial Court that strict rule of evidence is applicable and the doctor granting medical certificate ought to have been examined cannot be sustained. The order impugned passed by the Industrial Court is set aside. The case is remitted back to the Industrial Court for deciding the appeal filed by the respondent CSPDCL afresh strictly in accordance with law meeting with the

4 (2017) SCC OnLine MP 961

findings recorded by the Labour Court within a period of three months from the date of receipt of a copy of this order. Both the parties will appear before the Industrial Court, Raipur on 18-9-2017.

14. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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