

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 253 of 2019

(Arising out of order dated 08.04.2019 passed by the Learned Single Judge in WPL No. 82 of 2019)

- Toran Singh Tamrakar S/o Late Sukhdev Prasad Tamrakar Aged About 51 Years R/o 108 - G, Risali Sector, Bhilai, Tahsil And District Durg Chhattisgarh.

---- Appellant

Versus

- Chief Executive Officer, Bhilai Steel Plant, Through Department Mahager Shri P.R. Deshmukh, Coke Oven, BSP Bhilai, District Durg Chhattisgarh.

---- Respondent

For Appellant : Shri Tarun Dansena, Advocate.

For Respondent : Dr. Saurabh Kumar Pande, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Sanjay K. Agrawal, Judge

Judgment on Board

Sanjay K. Agrawal, J.

28.06.2019

1. Heard Mr. Tarun Dansena, learned counsel for the Appellant/Writ Petitioner and Dr. Saurabh Pande, learned counsel for the Respondent/BSP.
2. This Appeal is directed against the order dated 08.04.2019 passed by the Learned Single Judge in WPL No. 82 of 2019, by which the Appellant's substantive writ petition calling in question the order passed by the Industrial Court dated 12.02.2016 has been dismissed affirming the order of the Labour Court dated 16.07.2015 by which the Labour Court has declined to grant the application under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 filed by Appellant challenging his order of termination passed by the Respondent/BSP.

3. The Appellant herein was a regular employee of the BSP with effect from 31.12.1989. At the relevant point of time, he was Technician in the Department of Mechanical Maintenance of the said plant. He remained absent from June, 2009 to December, 2009 for which he was served with show cause notice on 19.05.2010 that he remained absent from duty without prior permission and sanction of leave and that is misconduct, which he has committed in terms of Standing Order of BSP (Absence from duty without prior permission and sanction of leave). The Appellant herein during the enquiry proceeding on 28.08.2010, admitted the charges and in view of the admission of charges by the Appellant, further enquiry was not conducted and the enquiry officer declared the enquiry proceeding to be completed and consequently, the Disciplinary Authority on 22.10.2010 considered the matter and decided to impose penalty of removal from service with immediate effect, which the Appellant questioned by filing an application under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960. The Labour Court by its order dated 13.05.2015 held that charges of misconduct against the Appellant are fully established and postponed the matter for hearing on the question of punishment and ultimately, on 16.07.2015 rejected the application, finding that the punishment inflicted upon the Appellant is strictly in accordance with law and no interference is required. In turn, appeal has been taken by the Appellant herein which was affirmed by the Industrial Court on 12.02.2016. Any how, the Petitioner could not question the order of the

Industrial Court right in time before the Writ Court under Article 226/227 of the Constitution of India and ultimately, he filed WPL No. 82 of 2017 on 18.03.2019. The learned Single Judge by its impugned order declined to interfere with the order of the Industrial Court on the ground that there is 3 years' delay in filing the writ petition which is now being assailed before this Court under Section 2(1) of Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.

4. The Appellant is the person who stood terminated from service way back on 22.10.2012 though he preferred an appeal before the Industrial Court, in which he remained unsuccessful, but he could not prefer writ petition within reasonable period before this Court but in paragraph 7 of the reply to the writ petition, he has clearly stated that he was unwell after the order of the Industrial Court and he was not aware about the remedy available against the order of the Industrial Court and also on account of poor financial condition, he could not prefer writ petition right in time and therefore, delay occurred. The writ petition has been dismissed at the admission stage itself, there is no material on record to hold that delay is deliberate and on account of some *mala fide* act on the part of the Petitioner.
5. The Supreme Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy**¹ held that if delay is not deliberate on account of some *mala fide* action on part of the person who has come to the Court seeking relief and is not on account of delaying tactic, then it is to be considered liberally.

¹ (1998) 7 SCC 123

6. Taking into consideration the reasons assigned by the Appellant herein in paragraph 7 of the writ petition, which remained uncontroverted, though the writ petition was not entertained in admission stage, but the fact remains that the Appellant suffered order of termination dated 22.10.2010 and he is contesting his case before the Labour Court and Industrial Court and with some delay, he had filed the writ petition before this Court, the delay of 3 years in approaching this Court cannot be said to be deliberate. Declining exercise of writ jurisdiction, particularly when an employee is suffering termination for the last 9 years, is unjustified. In view of that, we are inclined to grant the writ petition so far as the delay part is concerned and to set aside the said order.
7. Now, two courses are available for us. The first option is either to remit the matter before the learned Single Judge to re-decide the matter on merits and the second option is to hear the parties on merits of the case itself, which is the matter arising from the order of Labour Court and the Industrial Court. We chose to follow the second path, as after hearing learned counsel for the parties, we have reached to the conclusion so far as the misconduct is concerned that is having been admitted by the delinquent servant and it is proved that he remained absent unauthorisedly for 104 days, which is duly recorded by the Enquiry Officer in the order sheet dated 28.08.2010, which the Labour Court has also found established and which has also been affirmed by the Industrial Court.

8. In that view of the matter, we have heard Mr. Tarun Dansena and Mr. Saurabh Kumar Pande on the merits particularly on the question of quantum of punishment awarded to Appellant herein and with their consent, the matter is being disposed off finally on merits.
9. It is the case of Mr. Dansena, learned counsel for the Appellant, that for the unauthorized absence of 104 days, the Appellant could not have been punished with the penalty of removal from service, whereas it is the case of Mr. Pandey, learned counsel for BSP that penalty imposed is proportionate or commensurate with the misconduct committed by the Appellant. Mr. Pandey also submits that as the Appellant was addicted to consuming of liquor for which he has also suffered jaundice and for the same, he was earlier also inflicted with penalty, therefore, his service cannot be retained.
10. As stated above, the Appellant having been admitted the charges of 104 days absence, misconduct has rightly been found proved by the Labour Court and the Industrial Court. But the question is whether the penalty inflicted i.e. removal from service is commensurate with the guilt, which he has admitted. It would be appropriate to extract the charges which are as follows :

“ANNEXURE-I

STATEMENT OF CHARGES

Shri Toran Singh Tamrakar, P.No. 897056, T. No.1624 while working as Techn. In Mech. Maint. Section is charged with the following act of misconduct under Standing Orders (Plant) clause 29(v).

**“ABSENCE FROM DUTY WITHOUT PRIOR PERMISSION AND
SANCTION OF LEAVE**

Sd/-

(AM Patel)

Dy. General Manager (M & S)
Coke Ovens & CCD

ANNEXURE-II
STATEMENT OF ALLEGATIONS ON THE BASIS OF WHICH
CHARGES ARE FRAMED AGAINST SHRI TORAN SINGH
TAMRAKAR, P.NO.897056, T.NO.1624, TECH. MECH. MAINT.
SECTION OF COKE OVENS AND COAL CHEMICALS DEPTT.

Shri Toran Singh Tamrakar, P. No.897056, T. No.1624, while working as Techn. in Mech. Maint. Section of CO & CCD has remained absent from duty without prior permission or sanction of leave in as much as he remained absent from duty for following dates (days)

Months	Dates (days) on which remained absent	Total No. of days absent
Jun'09	1 to 22	22
Jul'09	4,6,14 to 18 & 19 to 27	15
Aug'09	17	01
Sept.'09	19 to 30	12
Oct.'09	1 to 31	31
Nov.'09	1,2,3,24 to 30	10
Dec.'09	1,2 & 21 to 31	13
	GRAND TOTAL	104 days

Shri Toran Singh Tamrakar has, thus, committed an act of misconduct under Standing Orders (Plant).

11. A careful perusal of the aforesaid statement would show that the Appellant was only charged for absence from duty without prior permission and sanction of leave. There is no charge that he is addicted to consuming of liquor and therefore he used to remain absent; there is no charge that he had earlier committed the minor misconduct; or he is addict of liquor etc. or he is chronic defaulter in performance of duty.
12. In above connection reference may be made to a decision of the Supreme Court in the matter of **Krushnakant B. Parmar v. Union of India & Anr²**, in which Their Lordships of the Supreme have held that

² 2012 AIR SCW 1633

in a departmental enquiry, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct. Their Lordships further held that absence from duty without any application or prior permission may amount to unauthorized absence, but it would not be willful. Paragraphs 17 and 18 of the report read as follows: -

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful.

18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.”

13. Similarly, in the matter of **Chhel Singh v. M.G.B. Gramin Bank Pali, and Ors.**³, the Supreme Court has held that in order to hold a person guilty for unauthorized absence from duty, the unauthorized absence from duty must be willful and deliberate. In paragraph 15 of the report, Their Lordships of the Supreme Court observed as under: -

“15. ... There was no allegation that the appellant’s unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant’s absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration

³ 2014 AIR SCW 6539

though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the doctors without any valid reason and on the ground of 24 days delay.”

14. In the matter of **Ahmedabad Municipal Transport Service v. Dashrathbhai Balubhai Brahmakshatriya**⁴, the Gujarat High Court has held that notwithstanding the past record of similar misconduct, once the Tribunal came to the conclusion that there was justifiable cause for the unauthorized absence for which charge-sheet was served and penalty was imposed, the post record of unauthorized absence would lose its significance.
15. Considering the matter and following the principles of law laid down by the Supreme Court in the aforesaid decisions, we are unable to hold that penalty of removal inflicted to the Appellant is proportionate to misconduct which he has admitted by remaining absent for 104 days. We, accordingly, while affirming the misconduct on the part of the Appellant, set aside the penalty of removal inflicted to him and hereby remand the matter to the Labour Court to consider only the question of inflicting penalty to Appellant other than the penalty of termination.
16. Since the matter is instituted by a person, who was suffering termination since 22.10.2010, we direct the Labour Court to hear the parties on the question of punishment within a period of two months from the date of receipt of a copy of this order.

⁴ 1996 II L.L.J. 544

17. Office is directed to communicate the order of this Court to the Labour Court forthwith. Parties are directed to appear before the Labour Court on 22.07.2019 as agreed by them.
18. The writ appeal stands finally disposed off.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

Chandra