

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 7200 of 2011**

Smt. Lal Mani, W/o Shivbaran, Aged about 35 years,
R/o Village Karampur, Post Kumda Colliery, P.S. and
Sub Tahsil Bishrampur, Tahsil Surajpur and Distt.
Surguja, Chhattisgarh.

---Petitioner

Versus

1. South Eastern Coalfields Limited, Through Chairman-cum-Managing Director, Seepat Road, Basant Vihar Bilaspur, Chhattisgarh.
2. Area Manager, South Eastern Coalfields Ltd., Rehar Gayatri Jairam Sub Area Distt. Surguja, Chhattisgarh.
3. Mines Superintendent O/o Mines Superintendent, Jainagar, 5/6, Mines, South Eastern Coalfields Limited, Bishrampur Area, P.S. and Post Office Bishrampur, Distt. Surguja, Chhattisgarh.

---Respondents

For Petitioner :- Mr. S.P. Kale, Advocate

For Respondents :- Mr. Atul Ku. Kesharwani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/09/2021

1. Petitioner herein calls in question the legality, validity and correctness of order dated 06/11/2009 (Annexure P/1) passed by respondent No. 2 by which petitioner's husband namely Shivbaran has been

terminated from service finding him guilty of misconduct on account of unauthorized absence.

2. It is the case of the petitioner that her husband was working with the respondent/SECL in Roof Bolder Category. During the course of his employment, he sustained certain injury and he was admitted in Central Hospital, Bishrampur but during the treatment, he went missing from hospital on 23/04/2006 which was informed to the respondent authorities as well as a missing person's report was also lodged by her in the Police Station, Bishrampur registered as Missing Person No. 02/2006. Thereafter, by memo dated 16/11/2006, respondent No. 3 directed the petitioner to produce the copy of the written complaint made by her in the Police Station and subsequently, it was submitted by the petitioner on 24/11/2006. Then, on receiving the letter dated 23/06/2007 stating that respondents have issued charge-sheet against her husband on 24/06/2006 and informing the petitioner that departmental enquiry will be initiated against her husband, petitioner replied to that letter and informed the Enquiry Officer that her husband has gone missing since 23/04/2006 from the Hospital where he was admitted for treatment and therefore, enquiry against her husband be stayed till any

information regarding his whereabouts is received, but departmental enquiry was initiated ex-parte against petitioner's husband and by impugned order dated 06/11/2009 (Annexure P/1) he was removed from service. On receiving the said information about her husband being removed from service, petitioner sent a legal notice to the respondent authorities on 22/11/2010 for cancellation of entire disciplinary action which was initiated against her husband but no action has been taken by the respondent authorities. By way of this writ petition, the petitioner is challenging the order dated 06/11/2009 (Annexure P/1), which she obtained under the Right to Information Act, on the ground that the complete departmental enquiry has been conducted in violation of principles of natural justice.

3. Return has been filed by the respondents supporting the impugned order passed by the respondents stating inter alia that though the charge-sheet was served to petitioner and her husband's residence but still nobody appeared and thereafter, departmental enquiry has been initiated ex-parte and ultimately, petitioner has been removed from service.

4. Mr. S.P. Kale, learned counsel for the petitioner, would submit that admittedly, petitioner's husband went missing on 23/04/2006 from the hospital during his treatment for the injury that he sustained during the course of his employment under respondent/SECL which was duly informed to the respondent authorities, yet without inquiring about the whereabouts of petitioner's husband, respondents issued charge-sheet against him on 24/06/2006 and without serving it upon her husband, they conducted ex-parte departmental enquiry and ultimately, removed him from service vide order dated 06/11/2006 (Annexure P/1), which is ex-facie illegal, without jurisdiction and without authority of law, as such, it deserves to be set aside. He would also rely upon the decision rendered by this Court in the matter of Himanshu Namdeo & Ors. v. Dena Bank & Ors.¹.

5. Mr. Atul Kumar Kesharwani, learned counsel for the respondents, would support the impugned order and submit that according to the applicable Standing Orders, enquiry has been conducted as the charge-sheet was served to petitioner and her husband's residence and since he remained absent, departmental enquiry was initiated and completed and accordingly, petitioner's husband, having been

¹ WA No. 188 of 2016 decided on 19/11/2019

found guilty of misconduct, he has been removed from service, which is strictly in accordance with law, as such, the instant writ petition deserves to be dismissed. He would also submit that the decision relied upon by the petitioner i.e. Himanshu Namdeo (supra) would not be applicable in the instant case and is clearly distinguishable as in that case, decree had been passed declaring that the missing person has died (civil death) which is not the case herein.

6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

7. It is not in dispute that petitioner's husband was hospitalized on account of injury sustained by him during his employment under respondent/SECL and it is the case of the petitioner that her husband went missing from the hospital on 23/04/2006 and she lodged a missing person's report regarding the same in the Police Station, Bishrampur and she also informed about her husband went missing to the respondents/SECL on 23/04/2006, in the meanwhile, after two months on 24/06/2006, charge-sheet is said to have been issued against her husband and since he was already missing, the charge-sheet is

said to have been served to their house, but there is no evidence on record that shows the charge-sheet was actually served to petitioner's husband. Thereafter, departmental enquiry was initiated against petitioner's husband ex-parte and ultimately, he has been removed from service by order dated 06/11/2009 (Annexure P/1) on the ground of unauthorized absence.

8. The question for consideration would be whether departmental enquiry can be proceeded ex-parte against a person who is missing and on that basis, the order of punishment passed against him/her can be justified ?

9. In this regard, the decision rendered by this Court in Himanshu Namdeo (supra) can be noticed herein profitably wherein it has been held as under :-

"13. On going through the materials on record, the undisputed fact remains that the person by name, Bhola Nath Namdeo, who was working as 'Assistant Branch Manager' in the respondent Bank, was found missing from 14.11.1996. Annexure-A filed along with the appeal, which is the 'missing report' dated 16.11.1999, was submitted by none other than the Branch Manager of the respondent Bank. There is no case for the respondent Bank, that after filing of the missing report, the delinquent employee had appeared at any point of time or that the charge sheet (Annexure R-1) issued on 11.9.1997 was served to him, asking for his explanation. As a matter of fact, a charge sheet was issued in the year 1997, referring to some delinquency in connection with some loans sanctioned by the delinquent employee i.e. after his missing on 14.11.1996. Another charge sheet was issued

to the delinquent on 8.6.1998 (Annexure R-2) referring to his unauthorized absence. No case is put up by the respondent Bank that the above charges were actually served to the delinquent employee, enabling him to set-up the defence. The domestic enquiry was finalized by the Enquiry Officer and findings were rendered as per Annexure R-3 report dated 13.8.1998. As per Annexure R-4, the report of the Enquiry Officer was accepted and the Disciplinary Authority inflicted the punishment of dismissal from service on 31.12.1998, which was communicated to the petitioners/ appellants vide Annexure P-8 dated 12.2.1999.

14. As mentioned above, despite the elaborate hearing and scrutiny of the records, the date/s on which the charge sheets (Annexure R-1 & R-2) were served upon the delinquent employee are not brought on record. We required the learned counsel for the respondent Bank to refer to any pleading in this regard or the proceedings filed before the Court to infer that the charge sheets were actually served to the delinquent employee to infer that he did not attend the enquiry despite service of charge sheets, so as to sustain the course of action. This Court also asked whether any 'paper publication' was made, especially since the delinquent employee was admittedly missing. No positive answer could be furnished from the part of the respondent Bank. There is no such reference, as to the service of charge sheets, anywhere in the enquiry report (Annexure R-3). The proceedings reveal that the charge sheets were issued in the name of the delinquent employee in the year 1997-98, after his missing from duty and his place of residence from 14.11.1996 and this fact was brought to the notice of the police by the Branch Manager of the Bank itself on 16.11.1996. If the person concerned was missing, how the charge sheets could be served upon him, is a matter of serious concern. If the charge sheets were not served upon the delinquent employee, how the enquiry could be validly proceeded further, ultimately arriving at a finding on guilt by the Enquiry Officer; followed by upholding of the said finding by the Disciplinary Authority, leading to imposition of punishment? It is settled law, that the

'master and servant relationship' cannot be cut-off quite arbitrarily and the proceedings can be finalized only after serving charge sheet, if at all there is any instance of misconduct, and after affording an opportunity of hearing to prove the innocence. Since the respondents have not pleaded that the charge sheets were actually served upon the employee or that the issuance of charge sheets was ever published in any newspaper, with instruction to appear for answering the charges in the domestic enquiry and since no material/ document has been produced before this Court in this regard, the course of action pursued by the respondent Bank finding the missing employee as guilty of any misconduct cannot be held as sustainable under any circumstance. This is more so, since what happened to the missing person is not discernible. Whether he has been abducted by anybody, whether he has been murdered by anybody or whether he has sustained any serious injuries and later succumbed to the same are not known. The Civil Court has already declared his 'civil death' after seven years, in appropriate proceedings. In such case, a pragmatic view, with humanitarian approach, has to be taken.

15. It is true that domestic enquiry may not be practical in certain exceptional circumstances. Even on taking the present case as one such instance, since the charge sheets could not be served before missing of the employee, the 'master and servant relationship' could have been cut-off, after publication of a notice in this regard. In other words, it could only be a "termination/removal simplicitor" from service and not with reference to any finding on guilt with regard to the alleged lapse in connection with the loan transactions or such other allegations.

16. Viewed in the above circumstances, we are of the view that the course pursued by the respondent Bank is wrong, unsustainable and is liable to be interdicted and we do so. As a natural consequence, we set aside the findings rendered by the learned Single Judge in the writ petition declining to entertain the case projected by the petitioners/appellants. "

10. Reverting to the facts of the present case in light of the aforesaid legal analysis, it is quite vivid that in the instant case, petitioner's husband was never served with charge-sheet as he was missing and that resulted into ex-parte departmental enquiry initiated against him by the respondent/SECL and finding him guilty of misconduct he has been removed from service for unauthorized absence. It is the case of the petitioner that her husband went missing from the hospital on 23/04/2006 and it is not the case of the respondents that after the issuance of the charge-sheet, at any point of time, the charge-sheet was served to her husband. No document has been brought on record to show that petitioner's husband himself was served with the charge-sheet for alleged misconduct and therefore, the departmental proceeding initiated against him was justified. As such, the entire ex-parte departmental enquiry initiated against petitioner's husband which led to his removal from service finding him guilty of misconduct vide order dated 06/11/2009 (Annexure P/1) has resulted into denial of defending the charge-sheet issued against him following the principle of law laid down in the matter of Himanshu Namdeo (supra). Petitioner, being the wife of the SECL servant namely

Shivbaran, is quite competent to question the removal of her husband from service by way of this writ petition in absence of her husband as mentioned herein-above. Accordingly, the impugned order dated 06/11/2009 (Annexure P/1) removing petitioner's husband from service is hereby quashed. Respondents are directed to consider the issue of grant of consequential monetary service benefits to the petitioner from the date of issuance of charge-sheet to her husband till the date of termination of her husband in accordance with law. At this stage, Mr. S.P. Kale, learned counsel for the petitioner, would submit that petitioner would also be entitled for retiral dues. The petitioner is at liberty to claim the same in accordance with law.

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

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet