



2024: DHC: 2523



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 12th March, 2024**

+ W.P.(C) 5408/2017
OM PRAKASH

..... Petitioner

Through: Mr. Gaurav Bhatt, Advocate.
versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Sarvan Kumar, Ms. Savita
Kumari and Ms. Sunita Shukla,
Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

"(a) Call for Complete records of the proceedings which led to the passing of the impugned award and notification by Respondent No. 1 and on a perusal thereof, appropriate order, direction of writ in the nature of certiorari or such other writ as may be considered appropriate by the Hon'ble Court may kindly be passed for quashing and setting aside the impugned award of the Central Government Industrial Tribunal cum Labour Court dated 19.02.2015 and notification dated 24.02.2015 in ID No. 55/08 and thereby direct the Respondent no.2 to reinstate the petitioner herein.

(b) Pass any other or further order which this Hon'ble Court deems fit in the facts and circumstances of the case."



2. The brief facts necessary for the adjudication of the instant petition is as follows:

- a) The petitioner was appointed as a helper in the office of respondent no.2/ Chief Construction Engineer (R& D) MP vide appointment letter dated 25th July, 1995 bearing reference no. Admin/1128/OP/CCE (R&D) MP.
- b) On 21st May, 1999, the petitioner's services were terminated by respondent no. 2, pursuant to which, he sent a legal notice to the respondent no. 2 regarding the aforesaid termination. Subsequently, three other reminder notices dated 21st November, 2006, 16th January, 2007 and 1st December, 2008 was also sent to the respondent no.2. The petitioner filed claim before the competent authority regarding the aforesaid termination.
- c) The competent authority made reference bearing No. L-14012/15/2008/(IR(DU) under clause (d) of sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (hereinafter called 'Act') vide an order dated 1st December, 2008. The reference process was initiated and the competent authority held that an industrial dispute existed between the petitioner as well as the respondent no. 2.
- d) Consequently, the petitioner filed his claim petition before the learned Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi and the learned Tribunal passed an award dated 19th February, 2015, dismissing the claim of the petitioner.



- e) Aggrieved by the same, the petitioner has filed the instant petition.
3. Learned counsel appearing on behalf of the petitioner submitted that the learned Tribunal in the impugned order failed to appreciate that the petitioner proved the averments stated in the claim petition and no contradictory statement was made by the petitioner in his cross-examination.
4. It is submitted that the petitioner was diligently working with the respondent no.2 and fulfilled all his duties to the satisfaction of his superiors, without any complaints from his superior.
5. It is submitted that on 8th July 1998, the petitioner's mother suddenly fell gravely ill and received treatment at the hospital. Consequently, the petitioner verbally informed the relevant officials at the respondent no.2 's office regarding his absence from the work.
6. It is further submitted that the petitioner's father passed away on 8th August 1998, therefore, the petitioner had to take care of his family and he had verbally communicated the same to the concerned official of the respondent no.2.
7. It is submitted that on 21st May 1999, the services of the petitioner were illegally terminated by the respondent no.2 by not granting a fair opportunity to defend his case despite the fact that the petitioner wrote several letters to the authorities but it was of no avail.
8. It is submitted that the petitioner was then compelled to send a legal notice dated 23rd August 2006, and had also sent three reminder notices subsequently to the respondent no. 2, however, the respondent failed to reply to any of the notices.



9. It is submitted that during the course of proceedings before the learned Tribunal at the time of cross-examination the petitioner specified his reasons for taking leaves. He further stated that he informed the concerned official of the respondent department verbally about his absence.

10. In view of the aforesaid submissions, the petitioner prays that the instant writ petition may be allowed and the reliefs as sought by the petitioner may be granted to him.

11. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the averments and submitted to the effect that the present petition has been filed upon vexatious and frivolous grounds as the petitioner was on probation period and was not performing his duty properly during the said period. Moreover, despite an extension of the probation period, the petitioner did not perform satisfactorily, thereby leading to his termination from the service as a final measure by the respondent.

12. It is submitted that the petitioner has not approached this Court with clean hands as he concealed the material facts of the case and had fabricated certain facts to claim the relief. It is further submitted that twenty-nine notices had been sent by the respondent no.2 which was accepted by the petitioner but he never paid any heed to them, thus, he was always given a fair opportunity of being heard.

13. It is contended that despite the facts that various notices were served to the petitioner, he failed to return to work, hence the respondent no. 2 terminated his services.



14. It is submitted that the impugned Award has correctly held that the petitioner's statement during cross-examination by the Authorized Representative lacked consistency. Consequently, the learned Tribunal deemed the solitary statement of the petitioner unreliable and lacking credibility, thus precluding reliance on it.

15. It is further submitted that the evidence presented by the respondent no.2 management was considered credible, as nothing significant was extracted during its cross-examination by the counsel representing the petitioner.

16. In view of the aforesaid submissions, learned counsel appearing on behalf of the respondents submitted that the instant writ petition being devoid of any merit is liable to be dismissed by this Court.

17. The matter was heard at length with arguments advanced by the petitioner in person as well as the learned counsel appearing on behalf of the respondents. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.

18. It is the case of the petitioner that the petitioner took leave for his mother's treatment and his services were wrongfully terminated on 21st May 1999 without giving him a reasonable opportunity to defend his case.

19. On the other hand, the respondent has contended that the petitioner was served with various notices as well as show- cause notice, however the petitioner did not reply to the same. Pursuant to which, the respondent



terminated the service of the petitioner.

20. At this juncture, this Court deems it fit to reiterate the settled position of law pertaining to treatment of unauthorized absence of the employee by the employer.

21. Unauthorized absence refers to situation wherein the employee is on leave without sanction/ approval from the employer. Such an act tantamount to misconduct on the part of the employee. The employer may choose any of the two course of action i.e., *firstly* the employer may condone the unauthorized absence of the employee by accepting the explanation given by him and sanctioning leave for the period of the unauthorized absence. *Secondly*, the employer may treat the unauthorized absence of the employee as misconduct, therefore, hold an enquiry and impose a punishment on the employee for the misconduct.

22. It is pertinent to note that a request for condonation of unauthorized absence shall be limited to a reasonable number of days or months. Moreover, the reason for such absence shall be sudden such as bereavement in the family, any serious illness, etc. hence, circumstances should be such that the employee was compelled to take such unauthorized leave as no other recourse was available to him.

23. In cases, where the employee who is unauthorizedly absent from work does not report back to work or where the explanation given by the employee is not satisfactory, the employer will take recourse to disciplinary action with regard to the unauthorized absence.

24. It is a settled position of law that when an employee is on



unauthorized absence, then the onus is on the employee to prove that he was not on an unauthorized leave. Such disciplinary proceedings may result in imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.

25. In cases where the disciplinary committee is of the view that the appropriate punishment in the case is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence whereas in other cases, it is pertinent to pass some consequential order pertaining to how the period of absence shall be treated with in the service record.

26. The Hon'ble Supreme Court in the judgment of ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108*** enunciated the law pertaining to unauthorized absence as follows:

*“22. The learned counsel for the respondent has commended us to the decision in **Krushnakant B. Parmar v. Union of India** [**Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609**] to highlight that in the absence of a finding returned by the inquiry officer or determination by the disciplinary authority that the unauthorised absence was wilful, the charge could not be treated to have been proved. To appreciate the said submission we have carefully perused the said authority. In the said case, the question arose whether “unauthorised absence from duty” did tantamount to “failure*



of devotion to duty” or “behaviour unbecoming of a government servant” inasmuch as the appellant therein was charge-sheeted for failure to maintain devotion to duty and his behaviour was unbecoming of a government servant. After advertent to the rule position the two-Judge Bench expressed thus : (SCC pp. 181-82, paras 16-18)

“16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether ‘unauthorised absence from duty’ amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. 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.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”

23. We have quoted in extenso as we are disposed to think that the Court in Krushnakant B. Parmar case [Krushnakant B.



*Parmar v. Union of India, (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609] has, while dealing with the charge of failure of devotion to duty or behaviour unbecoming of a government servant, expressed the aforesaid view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful. On an apposite understanding of the judgment *Krushnakant B. Parmar case [Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609]* we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.*

24. In this context, it is seemly to refer to certain other authorities relating to unauthorised absence and the view expressed by this Court. In *State of Punjab v. P.L. Singla [State of Punjab v. P.L. Singla, (2008) 8 SCC 469 : (2008) 2 SCC (L&S) 719]* the Court, dealing with unauthorised absence, has stated thus : (SCC p. 473, para 11)

“11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the



period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.”

25. Again, while dealing with the concept of punishment the Court ruled as follows : (P.L. Singla case [State of Punjab v. P.L. Singla, (2008) 8 SCC 469 : (2008) 2 SCC (L&S) 719] , SCC pp. 473-74, para 14)

“14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.”

26. In Tushar D. Bhatt v. State of Gujarat [(2009) 11 SCC 678 : (2009) 2 SCC (L&S) 668] , the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organisation such an approach and attitude of the employee cannot be countenanced.”



27. In view of the aforesaid judgment, it is a settled position of law that the unauthorized absence is absence of an employee from his/ her work which amounts to misconduct on the part of the employee. The onus is entrusted upon the enquiry authority to ensure that such absence shall be willful.

28. This Court also deems it apposite to reiterate the scope of adjudication under Article 226. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

29. Now this Court will peruse the relevant portion of the impugned Award and the same has been reproduced herein below:

“Workman in support of its case filed his affidavit. Wherein he mentioned as follows:-

1. That the deponent is the workman /claimant in the above mentioned Petition and fully conversant with the facts and circumstances of the case, and as such she is competent to swear this affidavit.

2. That the deponent states that the claimant was appointed as a helper in the above mentioned office vide appointment letter no. Admin /1128/OP /CCE (R& D) MP dated 25th July, 1995, since then the claimant had been working properly, satisfactorily and obeying to the superior officers and had not



given any chance of complaint.

3. That the deponent states that the claimant could not attend his duty since 8th July, 1998 because the mother of the claimant namely Mrs. Kasturi was serious ill and was treated from Orthnonva Institute of Advance surgery and Research TCML House No. 23, Pushp Vihar, Community Centre, Delhi- 110062, hence the claimant was looking after him mother in this connection the claimant had informed to the office. d. fhat the deponent states that the father of the claimant Sh. Ram Phool has also expired 08.08.1998 since then the claimant was facing many problems and was not in a position to attend his duty due to heavy shocked of the death of his father and serious illness of his mother alongwith the wife of the claimant is also ill. The claimant due to continuous illness of his family members he gone under depression.

5. That the deponent states that the claimant was permanent in the office of the respondent and' hhs been terminated from her service on 21.0.1999.

6. That the deponent states that the termination of service of the claimant was unlawfull and illegal and unjust and without adopting the due process of law. The claimant did not given any sufficient opportunity to defend himself nor any show cause notice was ever served upon him. The termination of service of the claimant is against the law and constitution of India. Since, the termination of services of the claimant not only the claimant has been suffering but also suffering his entire family and dependent.

7. That the deponent states that the claimant has been regularly visiting the officer of the respondent regarding his reinstatement in the services but the respondent have linger on the matter on one pretext or the other.

8. That the deponent states that the present notice be treated in continuation to the earlier legal notice-'dated 23.08.2006. It is pertinent to mention herein that the notice was duly served upon the management /respondent but the respondent has not



replied for the same. Thereafter the workman also sent a reminder notice in continuation of the notice vide reminder dated 21.2.2007, which was also served upon the respondent but again they did not respond to the same.

9. That the application /workman is a family man and there is no other source of income except this Job. So after termination, the applicant /workman had been regularly appear on the respondent and demanded from the management for his reinstatement but the applicant /workman was not allowed to enter in the premises. Hence the applicant /workman presented the present Petition before the Hon'ble Court of labour commissioner Central Govt. New Delhi.

10. That the workman had filed a case before the Ministry of Labour, Shram Mantralaya Govt. ,of India /Bharat Sarkar and after considering all the facts and circumstances of the case, the desk officer of the above said authority has passed an order thereby holding that " an dispute exists between the employee in relations to the management of MP , DRDO and their workman in respect of the matter specified in the schedule hereto annexed. "The authority after exercising the power conferred by clause (d) of sub section (1) and sub section 2(a) of section 10 of the ID. Act 1947 referred the above said dispute for deciding the following issue:

"Whether the action of the management of the Chief Construction Engineer (R &D) MP, DR190, Development Enclave, Rao Tula Ram Marg, Behind Headquarters Camp, Post Bag No.8, .Delhi Cantt, Delhi in terminating the services of Sh. Om Prakash, Ex-helper w.e.f. 30.06.1999 is just, fair and legal? If not, to what relief the workman is entitled to?

11 That the act of the management is illegal and unconstitutional and termination of the services of the applicant /workman and neither paid the earned salary and nor paid the funds and other consequential benefit to the applicant/workman.

12. That the deponent states that deponent has filed certain



document in regard to prove his claim. The letter dated 01.12.2008 referring the dispute to the Hon'ble Court for adjudication is Ex. As WE-1/1. The copy of the various legal notices dt. 21.11.2006, 16.01.2007, 21.2.2007 23.08.2006 alongwith the postal receipts are Ex. WE1/2 (Colly). The copy of the medical records of the wife of the workman /claimant is Ex. WE1/3(Colly). The copy of the medical records of the mother of the claimant /workman are Ex. WE-1/4 (Colly). The copy of the bill receipts of payment of Smt. Asha and Smt. Kastauri Devi, wife and mother of the claimant/workman are Ex. WE1/5 (Colly). The copy of various letter issued by.the claimant to the respondent /opposite party dt. 15.12.2007, 31.12.2007, 15.12.2007, 9.5.99, are. Ex. WE-1/6 (Coolly) . The copy of letter issued by the respondent to the petitioner dt. 23.2.99, 30.06.99 are Ex. WE-1/7 (Colly) . The copy of the Identity card issued by the respondent to the petitioner is Ex. WE-1/8 (Colly). The copy of the Election I.Card and ration card Ex. WE-1/9 (Colly) . The copy of various letter issued by the claimant to the respondent/opposite party dt. 09 7 1997 10.3.1999, 20.06.1999, 10.08.1998, 27.02.1999, 30.07.1999 are Ex. WE-1/10 (Colly). If that the deponent states that due to illegal termination the workman is unemployed even till now.

14. That the statement made in this affidavit are true and correct.

He tendered his affidavit on 25.06.2013 and he was cross-examined on same day when he was cross-examined by Ld. A/R for the management. He could not remain stable on his statement to support his case. Hence, solitary statement of workman/claimant is not reliable and credible. So, reliance cannot be placed on it. . Moreover, evidence of management through its witness MW1 is worthy of credence because nothing could be extracted out in his cross-examination by Ld. A/R for the workman. In these circumstances, evidence on record does



not justify the claim of workman/claimant. Who remained absent for long term without any plausible reason in his probation period of employment when he was temporary employee. So, question of determination No.1 is liable to be decided in favour of management and against workman which is accordingly decided. As question of determination No.1 has already been decided-in favour of management and against workman. So, Workman is entitled to no relief. Hence, reference is liable to be decided against workman and in favour of management and his claim statement is liable to be dismissed. Reference is accordingly decided and claim statement is accordingly dismissed. Award is accordingly passed.”

30. The learned Labour Court stated that the petitioner tendered his affidavit on 25th June, 2013 and was cross- examined by the respondent no.2. During the time of his cross- examination, the petitioner was not consistent with his statements regarding his leaves taken by him. Therefore, the learned Labour Court held that the solitary statement of petitioner cannot be relied upon by this Court.

31. The learned Court further pointed out the fact that the evidence of management through its witness is credible and nothing could be extracted out in the management’s witness by the petitioner. Since, the petitioner was unable to prove his case, the learned Labour Court held that the petitioner is not entitled to any relief.

32. This Court is of the view that the learned Labour Court has rightly held that since there is discrepancies in the cross- examination of the petitioner, he is unable to prove that he was on an authorized leave



therefore, the petitioner is not entitled to any relief. Furthermore, the learned Labour Court rightly opined that the respondent no.2 management's witness is much more credible and there was no consistency in the evidence.

33. In light of the aforesaid submissions, this Court is of the view that the impugned award does not suffer from any illegality and does not warrant any intervention of this Court by way of issuance of any writ. The petitioner has not been able to make out a case in its favour.

34. The writ of certiorari cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition. The petitioner is not aggrieved by any such violation of the rights of the petitioner, which merits intervention of this Court with the impugned award.

35. Accordingly, this Court upholds the impugned award dated 19th February, 2015 and notification dated 24th February 2015 in ID No. 55/08 by the learned Central Government Industrial Tribunal, Delhi and the instant petition stands dismissed. Pending applications, if any, also stands dismissed.

36. Accordingly, the instant petition stands dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 12, 2024

dy/db/av

Click here to check corrigendum, if any