

Indian Oxygen Employees' Union

Vs

State of T. N. Another

Slp (Civil) No. 1126 Of 1990

(Dr. T.K. Thommen, K.N. Saikia JJ)

26.11.1990

ORDER

1. The petitioner which is a Union of employees seeks to espouse the cause of one of its members, the concerned employees, whose service had been terminated by respondent 2, the management, on January 20, 1979. According to the management, the service of the employee had been terminated in terms of the Standing Orders which provide for automatic termination by reason of unauthorised absence from duty. The Union contended that the order of termination was void for the rules of natural justice had been violated as no notice had been issued to the employee and no inquiry was conducted.
2. It is, of course, the case of the management that a notice had been issued, but it was returned unserved. Whatever it be, cannot be gainsaid that the termination of the employee was without an inquiry.
3. The respondent government declined to make a reference of the dispute concerning the employee to the appropriate Labour Court. Challenging the said order of the government, the Union approached the High Court. The High Court, by the impugned judgment, rejected the Union's writ petition and made various observations on the merits of the case. According to the High Court, the employee had ceased to be a workman upon termination of his service. The employee was not entitled to any inquiry for his service had been terminated by reason of the Standing Orders which allowed automatic termination in case of unauthorised absence. The High Court further observed that the writ petition was belated by reason of delay of two years after the government declined to make the reference.
4. Mr. Ramamurthi, appearing for the Union, submits that the High Court was wrong in making the observation which it did. He contends that there was no delay because the employee had made representations to the government to reconsider its decision. He further says that, whether or not the employee had, as observed by the High Court, ceased to be a workman, it is the privilege of the Union to espouse his cause because he, who is one of its members, is aggrieved by the order of the management.
5. Mr. Gopal Subramanian, appearing for the management, submits that by contract it had been specifically provided that absence from duty without sanction would entail automatic termination of service, and no employee whose service was so terminated can complain of absence of inquiry. Counsel appearing for the respondent State submits that the government had on the earlier occasion applied its mind to the question and made an order which was sustained by the impugned judgment of the High Court.

6. Having heard counsel on all sides and perused the records, we are of the view that the matter requires re-consideration by the government on the merits and without regard to the observations of the High Court on the question involved.

7. Accordingly, we direct the respondent government to consider the various aspects of the question without regard to the observations of the High Court in the impugned judgment and pass an order as to whether or not the dispute in question requires to be referred to the appropriate Industrial Court. The government shall make the order within two months from today, failing which it will be open to the petitioner Union to re-approach this Court on the questions involved. Subject to this, the special leave petition is disposed of. No costs.

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