SUPREME COURT OF INDIA

New India Assurance Co. Ltd

Vs

Vipin Behari Lal Srivastava

Appeal (civil) 5213 of 2006

(Dr. Arijit Pasayat and S.H. Kapadia)

21/02/2008

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the appellant questioning the correctness of the Award dated 28.1.1998 passed in Industrial Dispute No. 111 of 1987 passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur, Uttar Pradesh (in short, 'the Tribunal'). The award was passed in the reference made by the Central Government, Ministry of Labour, referring the following dispute for adjudication of the Tribunal:"Whether the action of the management of New India Assurance Company Limited in removing Sri Vipin Behari Lal Srivastava, typist, Allahabad from service w.e.f. 15.6.1985, is legal and justified? If not to what relief the concerned workman is entitled?"

2. The controversy lies within a very narrow compass. The respondent was working as a permanent typist at the Allahabad branch of the appellant-New India Assurance Co. Ltd. Alleging that he had

unauthorizedly remained absent for more than 600 days, a charge sheet was issued. An Enquiry Officer was appointed and after completion of enquiry and on consideration of the enquiry report, the respondent was removed from service by order dated 15.6.1985. Thereafter, a dispute was raised and the reference was made, as noted above. The Tribunal came to hold that during the period in question, i.e., 25.9.1982 to 5.6.1984, the respondent was suffering from Tuberculosis and he had applied for medical leave and since the management did not pass any order on his leave applications, the concerned workman cannot be held responsible and, therefore, he was not absent unauthorizedly from duty. Accordingly, the order of removal was set aside and order was passed directing reinstatement with full back wages and consequential benefits including continuity of service. The same was challenged before the High Court. By the impugned order, the High Court observed that though the respondent had remained absent, his absence with leave stood condoned by virtue of the letter dated 3.8.1984 issued by the Branch Manager of the appellant Company by which the respondent was called back to work. It was further observed that the Tribunal had also recorded that the management did not pass any order on the leave application and, therefore, it had to be implied that leave had been sanctioned. But it was noted that by virtue of a stay order passed in a writ petition, the proceedings before the Tribunal had remained stayed for about six years and, therefore, the respondent was not entitled to back wages for the whole period, but was entitled from 28.1.1998 i.e. from the date of the award. A Letters Patent Appeal was filed before the Division Bench of the High Court which dismissed holding the same to be not maintainable.

3. In the present appeal, the order passed by the learned Single Judge has been questioned.

4. Learned counsel for the appellant submitted that there was no condonation of the absence of the leave as has been noted by the Tribunal and the High Court; on the contrary, in the letter in question it was categorically stated that the prayer for leave even without pay cannot be granted. Therefore, he was directed to join the duty immediately and failing which it was to be presumed that he was not interested in the job and it shall also be presumed that he had abandoned the job. It was also pointed out that with a view to test the correctness of the stand that respondent was ailing, the Deputy Medical Officer was sent to the house of the respondent along with a senior officer but the respondent was found absent and it was gathered that he was hale and healthy. With reference to the relevant Rules, it is submitted that there was no scope for claiming leave as a matter of right and sick leave can only be granted on certain conditions being fulfilled which were not fulfilled by the respondent.

5. In response, learned counsel for the respondent submitted that the respondent was suffering from Tuberculosis for which there is ample material. The authorities insisted on a certificate from the Chief Medical Officer but did not write directly to the said Officer though requested by the respondent. Several applications for leave were made but they were not dealt with by the appellant and, therefore, the Tribunal and the High Court were justified in directing reinstatement.

6. The main basis for conclusion of the High Court for assuming condonation of the absence is the

letter dated 3.8.1984. The same needs to be quoted in full. It reads as follows:

"THE NEW INDIA ASSURANCE CO. LTD

REGISTERED

3rd August 84

Mr. V.B.L. Srivastava

Sr. No. 6074

51, Talab Nawal Rai

New Bairadhana

Allahabad

Dear Sir,

This is with reference to your letter of 31st ultimo. You are aware that no leave is due & we cannot grant you any further leave even without pay. You are, therefore, required to join your duty immediately, failing which we shall presume that you are no more interested in the job & we shall also presume that you have abandoned the job.

Thanking you,

Yours faithfully,

Sd/-

Sr. Divisional Manager"

7. A bare look at it shows that there was no condonation of the absence without leave as held by the High Court. On the contrary, it was clearly indicated that no leave was due and even leave without pay cannot be granted. Therefore, direction was given to join back immediately failing which certain presumptions were to be drawn as noted above.

8. The case of the appellant was really not of abandonment but of an unauthorized absence.

9. The Rules governing "leave" read as follows

"(1) General Principles Governing Grant of Leave:

The following general principle shall govern the grant of leave to the employees:

(a) Leave cannot be claimed as a matter of right.

(b) Leave shall be availed of only after sanction by the competent authority, but one day's casual leave may be availed of without prior sanction in case of unforeseen emergency, provided the head of the office is promptly advised of the circumstances under which prior sanction could not be obtained"

(4) Sick Leave:

(c) Sick Leave can be granted to an employee only on production of a medical certificate from a Registered Medical Practitioner, which term would include Homeopathic, Ayurvedic and Unani doctor also provided they are registered medical practitioners.

(d) The certificate should state as clearly as possible the diagnosis and probable duration of treatment ."

10. As noted above, sick leave can be granted only on the production of a medical certificate from a Registered Medical Practitioner clearly stating as far as possible the diagnosis and probable duration of treatment. There was no such indication in the certificates purported to have been furnished by the respondent. It is to be noted that the respondent even did not join after receipt of the letter dated 3.8.1994. The charges against the respondent, inter alia, were as follows:

"(i) Willful insubordination and disobedience of lawful and reasonable orders of his superiors

(ii) Absence without leave, without sufficient grounds or proper or satisfactory explanation

(iii) Absence from his appointed place of work without permission or sufficient cause"

11. In Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd. & Ors. [(2005) 5 SCC 337] this Court, inter alia, observed as follows:

"14. What fell for consideration before the Industrial Tribunal was the interpretation and/or applicability of the said settlement. The Industrial Tribunal committed an error of record insofar as it proceeded on the basis that the said settlement had not been proved. The settlement being an admitted document should have been considered in its proper perspective by the Industrial Tribunal. Clause (2) of the said settlement is a complete code by itself. It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties. A bare perusal of the said settlement clearly shows that it is for the employee concerned to submit a proper application for leave. It is not in dispute that after the period of leave came to an end in June 1983, the workman did not report back for duties. He also did not submit any application for grant of further leave on medical ground or otherwise. It is in that situation the memorandum dated 2.11.1983 was issued and he was asked to join his duties. It is furthermore not in dispute that despite receipt of the said memorandum, the workman did not join duties pursuant whereto he was served with a notice to show cause dated 31.12.1982. He was required to resume his duties by 15.1.1984. The Bank received a telegram on 17.1.1984 and only about a month thereafter he filed an application for grant of leave on medical ground. It is not the case of the workman that any leave on medical ground or otherwise was due to him. Opportunities after opportunities indisputably had been granted to the workman to explain his position but he chose not to do so except filing applications for grant of medical leave and that too without annexing proper medical certificates.

18. Mere sending of an application for grant of leave much after the period of leave was over as also

the date of resuming duties cannot be said to be a bona fide act on the part of the workman. The Bank, as noticed hereinbefore, in response to the lawyer's notice categorically stated that the workman had been carrying on some business elsewhere.

19. We cannot accept the submission of Mr. Mathur that only because on a later date an application for grant of medical leave was filed, the same ipso facto would put an embargo on the exercise of the jurisdiction of the Bank from invoking clause 2 of the bipartite settlement.

20. It may be true that in a case of this nature, the principles of natural justice were required to be complied with the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance of the requirements of the principles of natural justice."

12. In view of the factual position, when tested on the touchstone of the principles of law and governing rules, the inevitable conclusion is that the impugned order of the High Court passed by the learned Single Judge dismissing the writ petition, i.e. C.W.P. No. 1720/1998, by order dated 20.1.2006 cannot be sustained and is set aside. The order passed by the departmental authorities directing removal of the respondent from service is maintained.

13. The Appeal is allowed without any order as to costs.