Montoor Ahmed Vs. the Presiding Officer Industrial Tribunal and ors.

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Court : Guwahati

Decided On : Feb-15-1971

Judge : P.K. Goswami, C.J. and B.N. Sarma, J.

Appellant : Montoor Ahmed

Respondent : The Presiding Officer Industrial Tribunal and ors.

Judgement :

P.K. Goswami, C.J.

1. This application under Article 226 of the Constitution of India is directed against an order of the Industrial Tribunal holding that an application under Section 33A of the Industrial Disputes Act is not maintainable in law. In that view of the matter, the Tribunal rejected the application.

2. The case of the employee was that he went on leave on 10-4-69 to return on 8-5-69. He had been to his native place in Bihar. Leave was extended up to 25-5-69. Even thereafter he did not report till 20-6-69. Meanwhile the employer taking recourse to para. 12 of the standing orders removed the petitioner's name from the roll by an order dated 18-6-69.

3. Para. 12 of the standing orders reads as follows:--

12. Overstay of leave:

If a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he returns within 8 days of the expiry of the leave and explains to the satisfaction of the General Manager or any other officer authorised by him, his inability to return before the expiry of the leave.

The impugned order clearly refers to this provision of the standing orders.

4. Mr. Das, the learned Counsel for the petitioner, submits that there is an additional ground given in the order, namely that the employee was a 'habitual absentee'. The presence of this ground, says Mr. Das, visits the petitioner with a penal consequence which, according to him is tantamount to an order under para 18(xvii), which recites 'habitual absence without leave or absence without leave for more than 8 consecutive days' and this clause describes the acts and omissions constituting misconduct. We have gone through the whole order but we are unable to accept the submission of the learned Counsel that this order was intended to be one under para 18 (xvii) of the standing orders. Although the words 'habitual absentee' are inserted in the order, we

do not think that has controlled the entire order passed by the employer. We may have taken a different view if the employer had used the terms of the standing orders, namely 'habitual absence without leave'. This, of course, is significantly absent in the impugned order.

5. We are, therefore, clearly of opinion that this order was passed by the employer invoking para 12 of the standing orders which provides for automatic termination of service if the employee does not return within eight days of the expiry of the leave and explains to the satisfaction of the employer about his inability to return before the expiry of the leave. Admittedly, the employee returned more than 23 days after the expiry of the extended period of leave and there is no evidence that he also made any attempt to explain the absence to the satisfaction of the employer within 8 days of the extended leave. That being the position, it is clearly a case in accordance with the provisions of the standing orders regarding the termination of service simpliciter for overstaying leave and it is not a case of gross misconduct, as urged by Mr. Das. Section 33, therefore, is not clearly attracted to a case of this nature as under Section 33(2) it is only when an employee is discharged or dismissed for misconduct that an application for approval is necessary. If any authority is needed for this proposition, we may refer to a decision of the Supreme Court in the case of National Engineering Industries Ltd. Jaipur v. Hanuman 1967--II L.L.T. 883, where their Lordships have observed as follows:

Where, therefore, a workman's service terminates automatically under the Standing Order Section 33 would not apply and so an application under Section 33A would not be maintainable, as there is no question in such a case of the contravention of Section 33 of the Act.

The present case is clearly governed by the above decision.

6. There is no merit in this application which is dismissed. We may observe that dismissal of this application would not disentitle the petitioner to raise an industrial dispute if so advised. There will be no order as to costs.

B.N. Sarma, J.

7. I agree.

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