2025:CGHC:26933

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 5110 of 2011

Reserved on :20.03.2025

Delivered on : 23.06.2025

M. Mohan Rao, Aged 49 Years, Ex-Technician Machine Shop No. 2, P.N.No. 148777, Bhilai Steel Plant, Bhilai Distt. Durg (CG), R/o. J-12, C, Maroda Sector, Bhilai, District Durg (CG)

... Petitioner

versus

1. Managing Director, Bhilai Steel Plant, Tahsil & District Durg (CG)
2. Labour Court, Durg
3. State Industrial Court, Chhattisgarh, Raipur

... Respondents

For Petitioner	:	Mr. Sudeep Johri, Advocate
For Respondent No. 1	:	Dr. Saurabh Kumar Pande, Advocate

Hon'ble Shri Narendra Kumar Vyas, J.

CAV ORDER

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India assailing the appellate order dated 29.04.2011 passed by the State Industrial Court, Raipur in Civil Appeal No. 56/C.G.I.R.A./A/11/2010 affirming the order dated 27.07.2010 passed by the Labour Court in case No. 1/A/45/CGIR/2003 by which the application of the petitioner challenging his termination from service has been rejected.

2. Brief facts of the case are that:-

(A) The petitioner was working as Technician since 1988 with the respondent No. 1 and he remained absent for 140 days from 01.05.1994 to 17.09.1994 without sanctioned leave from the

Management, therefore departmental enquiry was conducted and vide order dated 18.08.1995 his services were terminated.

(B) Being aggrieved with the order of termination, the petitioner has preferred an application under Section 31(3) of the M.P.I.R. Act, 1960 before the Labour Court Durg on 24.04.2003 alleging that the enquiry has been conducted in violation of principle of natural justice where no proper opportunity of hearing was given to him. It has also been stated that the punishment of termination from service passed by the management is disproportionate to the alleged misconduct and has prayed for reinstatement with full back wages.

3. Respondent No. 1 has filed written statement and also raised objection regarding delay in filing the application contending that:-

(A) Without justifiable reasons, the petitioner remained absent for 140 days without sanctioning the leave from the management which is a major misconduct under the certified standing orders of the company, accordingly he was charge-sheeted on 28.10.1994 wherein following charge was leveled against the petitioner:

“habitual absence from duty unauthorizedly from May, 1994 without leave/prior intimation/sanction of leave”

(B) It has also been contended that the respondent has conducted the departmental enquiry in accordance with principle of natural justice. The record of the enquiry also reflects that on 03.06.1995 the petitioner himself admitted the charges of remaining absent for 140 days and prayed for condoning the misconduct committed by him. The respondent vide order dated 22.08.1995 has passed the order of termination from service. It has been further contended that his termination order was proportionate to the misconduct committed by

him. It has also been stated that the application is barred by limitation as his services were terminated in the year 1995 whereas he has filed the application before the Labour Court in the year 2003 after lapse of 8 years whereas the Section 62 of C.G.I.R. Act provides limitation of one year. It has also been stated that he has never got sanctioned the leave, therefore, his services have been rightly been terminated for such long absenteeism and would pray for dismissal of the application.

4. The petitioner has filed reply to the objection raised by the respondent stating that he has also preferred an appeal against the order of termination on 07.09.1995, 04.10.1995, 06.11.1995, 03.05.1996, 06.12.1996, 09.04.1997, 05.10.1997, 03.02.1998, 10.12.1998, 04.03.1999 and 10.05.1999 for disposal of the appeal for his re-appointment but the same has not been considered, therefore, he has filed the application in the year 1999, as such it has been prayed for condoning the delay.

5. The Labour Court has framed as many as four issues and vide order dated 09.10.2006, the Labour Court has decided the issue with regard to departmental enquiry wherein it has been held that the enquiry has been conducted in violation of principle of natural justice. Accordingly, it has vitiated the Departmental Enquiry, therefore, the respondent No. 1 was granted an opportunity to lead evidence to prove the misconduct committed by the petitioner. The respondent No. 1 has challenged this order by filing misc. application under Section 67 of C.G.I.R. Act before the Industrial Court and the learned Industrial Court vide its order dated 25.01.2007 has dismissed the miscellaneous application filed by the respondent No. 1. Thereafter, the case was taken up for evidence of respondent No. 1 who in turn examined the witnesss namely A.K. Shrivastava who in the evidence has clearly stated that the petitioner

has neither got sanctioned of the leave nor submitted an application for leave and he remained absent from service. The respondent No. 1 has also examined Mr. Siddharth Kumar Das who has stated that on previous occasion also the petitioner was punished for remaining absent from duty. The labour Court after appreciation of evidence, material on record, vide its order dated 27.10.2010 has dismissed the application. The Labour Court while dismissing the application has recorded its finding that the petitioner remained absent from 01.05.1994 to 17.09.1994 i.e. about 140 days without sanction of the leave which is a major misconduct as per the standing order of the Bhilai Steel Plant and thereafter he has filed an application for challenging the termination in the year 2003, as such, it cannot be said that the petitioner was serious towards his duty and has held that the punishment is proportionate to the misconduct.

6. Being aggrieved with this order, the petitioner has preferred civil appeal before the Civil Court which has been rejected on 29.04.2011 by the Industrial Court and the Industrial Court while rejecting the appeal has recorded its finding that the termination of petitioner from service as he remained absent for 140 days without sanctioning leave, is just proportionate to the misconduct and cannot be said excess to the misconduct, accordingly it has rejected the same. Learned Industrial Court has also recorded its finding that the application is barred by the limitation as application has been preferred after 08 years of termination from service on 24.04.2003 and accordingly, it has rejected the same as barred by limitation also. Being aggrieved with these orders, the petitioner has preferred this writ petition.

7. Learned counsel for the petitioner would submit that both the Courts below have committed illegality in recording its finding that the

application is barred by limitation as the petitioner has already preferred an appeal before the Appellate authorities which has not been decided, as such, the rider of Section 62 of the MPIR Act will not be applicable. He would further submit that even otherwise the provision of Limitation Act is applicable in the Labour Laws and the petitioner has submitted justifiable reason in not preferring the application before the Labour Court within one year from the date of termination, as such, both the Courts below should have condoned the delay. He would further submit that the punishment imposed upon the petitioner is harsh to the alleged misconduct committed by the petitioner. Thus he would pray for quashing of the orders as aforestated.

8. Per contra, learned counsel for respondent No. 1 would submit that the impugned orders are legal, justified and do not call for interference as the petitioner was absent for 140 days from service without got sanctioning leave or submission of application which is major misconduct as per the Certified Standing orders of the company and would pray for dismissal of the writ petition.

9. I have heard learned counsel for the parties and perused the record placed on record with utmost satisfaction.

10. From the submission made by the parties, the points emerged for determination of this Court are:-

> “(I) Whether the Courts below were justified in dismissing the application preferred by the petitioner as barred by limitation?
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> (II) Whether the punishment of termination imposed upon the petitioner for absentism is proportionate to the misconduct or not?

11. To determine Issue No. 1, it is expedient for this Court to extend the relevant provisions of Chhattisgarh Industrial Relation Act as well as Section 29 of Limitation Act which reads as under:-

> "**29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).**
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> (2)Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
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> (3)Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.
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> (4)Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."
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> **Section 62. Commencement of proceedings**— Proceedings before a Labour Court shall be commenced-
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> (i) in respect of a dispute falling under clause (a) of paragraph (A) of sub-section (1) of Section 61 within two years from the date of the dispute; Provided that—
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> (a) if the dispute is connected with the termination of the services of an employee, such proceedings shall commence within a year from the date of termination of the services of the concerned employee;
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> (b) nothing contained in the foregoing provision shall apply if the concerned employee had made an approach before the 30th day of July, 1976 in accordance with the provisions contained in sub-section (3) of section 31 as it stood before the said date and in that case the provisions contained in sub-section (3) of section 31 and clause (i) of this section shall be applicable as they had been before the said date;
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> (c) Where an employee had preferred an appeal or representation against an order of termination under any rule, regulation or standing orders to the competent authority within the period prescribed for such appeal or representation or where no such period is prescribed within three months of the order of termination, such proceedings may be commenced within one year from the date of the disposal of the appeal or representation, as the case may be.
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> (ii) in respect of matters specified in clause (c) of paragraph (A) of subsection (1) of section 61, within three months of the commencement of the strike, lockout, stoppage, closure or of the making of the change on an application made by the

> employer, the representative of employees, any employee directly affected thereby or by the Labour Officer;
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> Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under the Act, after the expiry of three months from the date on which such change was made."

12. From bare perusal of Section 29 of the Limitation Act, it is quite vivid that there is no specific exclusion of provisions of Limitation Act, 1963 and Section 4 to 24 both would apply. From the provisions of Section 62 of the C.G.I.R. Act, it is quite vivid that if the legislature intends to exclude the provisions of the Limitation Act it could have said so in a specif term. Even otherwise, the C.G.I.R. is a benevolent and beneficial statute, in absence of categorical and unequivocal mandate by the legislature it would not be appropriate to state that a claim of an employee would be thrown over boat as he has not approached the Labour Court within the time frame and in view of no exclusion of limitation Act, it is applicable to the proceedings before the Labour Court. The applicability of Section 29 of the Limitation Act, 1963 and in Chhattisgarh Industrial Relation Act, 1960 has already been considered by the Hon'ble Full Bench of MP High Court in case of ***Mohd. Sagir Vs. Bharat Heavy Electricals*** *reported in* ***2004 (2) MPLJ 359*** wherein the Full Bench has held as under:

> "31. In view of the aforesaid premises, we arrive at the following conclusions:-
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> (i) The exposition of law set out in the case of *Vijay Singh* (supra) to the effect that the provisions of Limitation Act would not apply to an application preferred under Section 5 of the Adhiniyam (Act No. 3 of 1977) the same being an original proceeding in the nature of a declaratory suit as a different type of limitation has been prescribed under the special statute, is not correct.
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> (ii) The decision rendered in the case of *Narayan Singh* (supra) does not state the law correctly as far as it pronounces that Limitation Act is not applicable to a proceeding under Section 62 of MPIR Act.
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> (iii) The language employed under section 62 of the MPIR Act does meet the twin requisite ingredients to have the applicability

of section 29(2) of the Limitation Act and ergo, the said provision does get attracted.

(iv) An employee who prefers an application under section 62 of MPIR Act beyond the limitation prescribed therein can always file an application under section 5 of the Limitation Act and it would be open to the Labour Court to condone the delay if sufficient grounds have been shown.

32. Let the matter be placed before the learned Single Judge for dealing with the same in accordance with law."

13. Thus, as per Section 29 of the Limitation Act, 1963 and in view of the fact that there is no specific exclusion of Limitation Act, as such provisions of Section 5 of the Limitation Act, 1963 will applicable in the proceedings under Section 62 of the C.G.I.R. Act.

14. Now coming to the facts of the case, it is quite vivid that the petitioner has preferred the appeal before the management which was pending thereafter, he has filed the application before the Management which has not been decided, as such, it cannot be held that the application is barred by limitation, thus both the Courts below have committed illegality in dismissing the application preferred by the petitioner on the count of delay and latches. Accordingly, Point No. 1 is answered in favour of the petitioner.

15. So far as Point No. 2 is concerned, the record of the case would clearly demonstrate that the petitioner remained absent from 01.05.1994 to 17.09.1994 for 140 days and prior to it also he remained absent for which he has been punished on 03 occasions i.e. on 11.12.1992, 28.02.1994 & 28.10.1994 and the tenure of the petitioner is only 08 years wherein he has been punished on several occasions before issuance of punishment order of termination. From perusal of record, it is quite vivid that the petitioner was punished for remaining unauthorized absent by punishment of warning in the year 1992, thereafter reduction of pay without cumulative effect in the year

1993 and down grading from L-4 to L-3 for period of 03 years in the year 1994. These facts have also been admitted by the petitioner as evident from Ex.D/3 submitted before the Labour Court. Thus, there was sufficient material for respondent No. 1 to record its finding that the petitioner is habitual absenteeism. Even the petitioner has not placed any record that he has submitted the application for leave which has been sanctioned and unless the leave has been sanctioned by the competent authority it will remain unauthorizly. The Hon'ble Supreme Court in case of ***Gujarat Electricity Board & Another vs. Atmaram Sungomal Poshani*** reported in ***1989 (2) SCC 602*** wherein the Hon'ble Supreme Court in paragraph 6 has held as under:-

> "6. There is no dispute that the respondent received the aforesaid letter as he sent a reply to the Superintending Engineer on April 20, 1974, a copy of which was annexed as Annexure 'J' by the petitioner, to his petition before the High Court. By that letter respondent stated that he was waiting for the decision of his representation made for reconsideration of his transfer from Surat to Ukai and therefore, the question of his remaining on unauthorised leave was misconceived. Since the respondent had not obtained any sanctioned leave for his absence his absence from duty was unauthorised. No Government servant or employee of any public undertaking has a right to be absent from duty without sanction of leave, merely on account of pendency of representation against the order of transfer."

16. Thus, record of the case clearly establishes that the petitioner is habitual absentee and he remained absent for 140 days, I am of the view that the punishment is proportionate to the misconduct committed by him. Even otherwise it is well settled position of law that the imposition of punishment is managerial function of the management and unless the punishment is so shocking or touches the conscious of the Court it should not be interfered by the Court. The Hon'ble Supreme Court has in case of ***The State of Rajasthan & Others vs. Bhupendra Singh*** reported in ***2024 INSC 592*** has held as

under:-

> “26. In Union of India v K G Soni, (2006) 6 SCC 794, it was opined:
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> ‘14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.
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> 15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.’ (emphasis supplied)
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> 27. The legal position was restated by two learned Judges in State of Uttar Pradesh v Man Mohan Nath Sinha, (2009) 8 SCC 310:
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> ‘15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.’
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> 28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above- enumerated authorities caution against. The present coram, in Bharti Airtel Limited v A S Raghavendra, (2024) 6 SCC 418, has laid down:
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> ‘29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the

> High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.' (emphasis supplied)"

17. In the light of the above stated legal position and considering the law laid down by the Hon'ble Supreme Court, it is quite vivid that both the Courts below have committed illegality in holding the application to be barred by limitation, but has not committed any illegality or irregularity in recording its finding that the petitioner remained absent for 140 days and he has also past antecedents of remaining absent for which he has been punished on so many occasions which clearly establishes that he is habitual of remaining absent from duty. As such, punishment of removal from service imposed upon the petitioner is proportionate to the misconduct committed by him.

18. Considering the entire fact and material on record, I am of the view that both the Courts below have not committed any illegality in rejecting the application of the petitioner for reinstatement. Consequently, the impugned order dismissing the application by the Labour Court and affirmed by the Industrial Court for misconduct are legal, justified and the petitioner is not entitled to get any relief though it has been held by this Court that the application filed by the petitioner under Section 31(3) of the C.G.I.R. Act, is not barred by limitation.

19. The writ petition is liable to be dismissed and accordingly it is dismissed. No order as to cost.

Sd/-

(Narendra Kumar Vyas)
Judge

Bhumika