HIGH COURT OF GUJARAT (*D.B.*)

AHMEDABAD ELECTRICITY CO LTD
Versus
MUKESH JUGGALKISHORE JADAV

Date of Decision: 04 July 2005

Citation: 2005 LawSuit(Guj) 834

Hon'ble Judges: R S Garg, Ravi R Tripathi

Eq. Citations: 2005 2 GLR 1765, 2005 3 GLH 120, 2005 107 FLR 795, 2006 LabIC 1449, 2005 10 GHJ 181

Editor's Note:
Constitution of India - Art 226 - Service law - Termination - Over staying leave - If it is presumed that the workman has abandoned the work a notice must be given to him - Appellant undisputedly did not issue any notice to workman and as such has committed violation of the principles of natural justice - Learned single Judge approving judgment of Industrial Court is upheld then workman will have to be deemed to be permanent employee

Held - Impugned order are confirmed

Final Decision: Application dismissed

Advocates: H L Raval, Nanavati Associates, S N Shelat

R. S. Garg, J.

[1] The appellant, being aggrieved by Order dated 1st November, 2001, passed in Special Civil Application No. 2995 of 2001 by the learned single Judge rejecting the Writ Application and confirming the order dated 21st March, 2001 passed by the Industrial Court in Appeal (IC) No. 29 of 2000, is before this Court.

[2] The submission of the learned Counsel for the appellant is that as the employee overstayed the leave and did not report back within 15 days of the last date of the granted leave, the Establishment was justified in presuming that he has abandoned work. His further submission is that in accordance with Standing Order 14(5), as the employee did not report back to duty within 15 days of the expiry of his leave, he could

not even be taken on the temporary rolls. The further submission is that the Industrial Court, so also the learned single Judge, were unjustified in holding that in accordance with the observance of the principles of natural justice, an order deeming him to be terminated could not be presumed.

[3] On the other hand, learned Counsel for the other side, submitted that the Industrial Court, so also the learned single Judge, in accordance with the dictum of the Supreme Court, have clearly observed that in absence of a notice, which is the bare minimum requirement of the principles of natural justice, it could not be presumed that the respondent is terminated.

[4] It is to be noted that the learned Counsel for the appellant, during the course of arguments, submitted that the workman was taken to the rolls as a temporary employee and as he again committed misconduct, he was removed from service. His submission is that the second termination is pending consideration before the Labour Court.

[5] Standing Order 14(5) is in relation to overstaying leave. The same reads as under:

> '5. Overstaying
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> An employee remaining absent beyond the period of leave originally granted or subsequently extended, shall be liable to lose his lien on his appointment unless he returns within eight days of the expiry of the sanctioned leave and explains to the satisfaction of the authority granting leave his inability to resume immediately on the expiry of his leave. An employee who loses his lien under the provisions of this Standing Order but reports for duty within fifteen days of the expiry of his leave, shall be kept as a temporary employee; if he so desires and his name shall be entered in the waiting list for permanent workers. An employee, not returning for duty within fifteen days of the expiry of his leave shall be treated as having left service from the date on which he was due to return to work.
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> (6) Any employee who is not satisfied with the order of the officer authorised to grant leave may appeal to the Manager from such order and if aggrieved by the Manager may further appeal to the Managing Agents, but under no circumstances will an appeal be entertained by the Managing Agents unless it has been first made to the Manager and his decision obtained."
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> The requirement of law, in accordance with the judgement of the Supreme Court, is that before it is presumed that the workman has abandoned the work, a notice must be given to him. The submission of the appellant's Counsel is that as the workman himself appeared with an application that in view of the Standing Order,

he was ready to be included in the list of the temporary employees and as such, there was no need of issuing any further notice to him. The question has been duly considered by the learned single Judge.

[6] In our considered opinion, a simple application by a person belonging to the lower strata would not seal his fate, especially, when he is fighting against the mighty opponent. A person, who is hand to mouth or hardly meets both the ends, if is thrown out of rolls and somebody tells him to make an application for reemployment and he makes an application, then filing of such application would not be sufficient unless it is brought on the record that he was explained the pros and cons and before he submitted the application, he was told that he is terminated. The appellant, undisputedly, did not issue any notice to the workman and as such, has committed violation of the principles of natural justice. The judgement of the Supreme Court is clear on the point.

[7] So far as the subsequent action against the respondent-workman is concerned, the same should not deter this Court even for a minute because the said action has been taken against a temporary employee and not against a permanent employee. If the judgement of the learned single Judge, approving the judgement of the Industrial Court, is upheld, then, the respondent-workman will have to be deemed to be a permanent employee for all practical purposes. Any action taken against him, treating him to be a temporary employee, would certainly not survive.

[8] After giving our anxious consideration to the provisions of law, the judgements of the Supreme Court and the language employed in the Standing Order 14(5), we are of the opinion that the appellant has failed to make out a case for interference. The appeal is dismissed.

[9] Consequently, the Civil Application is also rejected.