

Writ Petition No.14783/2016**23.09.2016**

Shri Uttam Maheshwari, learned counsel for petitioner.

Heard on admission.

Grievance raised by the petitioner is against order dated 23.05.2014; whereby, the appropriate Government has referred the dispute to the Labour Court for adjudication as to :

“क्या श्री मनोज पटेल पिता श्री सुखलाल पटेल का सेवा पृथकीकरण वैध एवं उचित है? यदि नहीं तो वे किस सहायता के पात्र है एवं इस संबंध में नियोक्ता को क्या निर्देश दिये जाने चाहिये?”

It is the case of the petitioner that in conciliation proceeding held on 16.06.2006 the petitioner had assured to continue the services of respondent No.3. However, from August 2012 respondent No.3 started absenting. He was put to notice on 13.09.2013. In response thereof, respondent No.3 gave a legal notice alongwith form from ESI Corporation that he has claimed wages for the period of absent on medical grounds. Respondent No.3 raised a dispute before Assistant Labour Commissioner on 18.09.2013. In response to notice from Assistant Labour Commissioner the petitioner vide reply dated 25.10.2013 informed that respondent No.3 has been placed under suspension and a departmental enquiry is commenced.

Learned counsel for the petitioner, however, is not certain as to under which statutory provision the departmental

enquiry is initiated and in contemplation thereof respondent No.3 is placed under suspension.

If the standard standing order under M.P. Industrial Employment (Standing Orders) Act, 1961 is applicable then as per SSO 12 (3)(6)(iii) suspension is a major punishment and as per SSO 12(4) punishment can only be imposed if proved guilty of misconduct in the manner provided under clause (a) to (f) of SSO 12(4). That, clauses (g)(h) & (i) of SSO 12(4) stipulates :

“(g) In case of an employee other than the one belonging to the clerical, technical or supervisory staff the manager can suspend him pending enquiry into an alleged major misconduct for a period not exceeding four days.

(h) The manager may suspend a clerical, technical or supervisory employee for a period of three months pending enquiry into major misconduct alleged against him and shall pay suspension allowance to such employee at the rate of half of the average wage;

(i) The order of suspension shall be in writing and may take effect immediately on communication thereof to the employee. If no action is taken within a period of six months then the amount of wages for the period of suspension shall be payable in full.”

These compliance since are not forthcoming from the reply filed by the petitioner, the Assistant Labour Commissioner is well justified in holding that there exist an industrial dispute.

Trite it is that the suspension is a temporary cessation of work, a broad nomenclature given to it in the reference order

will not vitiate the reference as there exist an industrial dispute. It is for the Labour Court to exercise the discretion vested in it under Section 11 A of 1947 Act.

And if the SSO is not applicable to the petitioner then also there being a cessation of work with the suspension of respondent the reference thereof under the nomenclature "पृथकीकरण" will not vitiate the reference.

It has been observed in V.P.Gindroniya vs. State Madhya Pradesh AIR 1970 SC 1494 :

"6. Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry. against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him, which act is also called suspension. The right to suspend as –a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service, at the same time keeping in force the master's obligations

under the contract. In other words the master may ask his servant to refrain from rendering his service but he must fulfill his part of the contract.”

The petitioner, however, has not come out with the contract as would have ascertained whether the suspension of respondent No.3 is a termination or temporary cessation of service. Be that as it may. Since there exist the industrial dispute, the impugned order cannot be faulted with.

Consequently, petition fails and is dismissed in limine.

(SANJAY YADAV)
JUDGE

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