
(2000) 07 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3007 and 4984 of 1999

Ambuja Cement Easter Ltd. and another	APPELLANT
Vs	
Industrial Court Bench, Raipur and others	RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Constitution of India, 1950 — Article 227
Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3), 65
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) 2 JLJ 98 : (2001) 3 LLJ 1254 : (2001) 2 MPHT 3 : (2001) 1 MPLJ 156

Hon'ble Judges : Mr. S.K. Kulshrestha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Kulshrestha, J.

The petitioner-employer has filed W.P. No. 3007 of 1999 against the order dated 14-5-1999 (Annexure P-II) passed by the Industrial Court, Raipur in Appeal No. 120/MPJR/98 by which the Industrial Court has directed reinstatement of second respondent-Niranjan Lal Yadav in service. The respondent No. 2 has filed petition W.P. No. 4984 of 1999 challenging the very order in so far as the Industrial Court has declined to award back wages.

The second respondent (employee) had filed an application before the Labour Court, Raipur under the provisions of Section 31 (3) of the M.P. Industrial Relations Act (hereinafter referred to as the "Act") challenging termination of his service by the petitioner. According to the case set up by the said respondent, he had been appointed as an Electrician on 27-7-1987 and while he was rendering service on the said post, he was served with a charge-sheet dated 7-5-1991 alleging that he, on 3-5-1991 at about 6.30 p.m., along with his companions had abused and assaulted Rajendra Kumar Jaiswal, Loding Supervisor in the employment of the petitioner. A domestic enquiry was conducted and thereafter

the respondent-employee was terminated by order dated 21-8-1991. According to the respondent, the enquiry conducted by the employer was not in consonance with the provisions of the Standard Standing Orders and the principles of natural justice had not been observed in that he had not been granted adequate opportunity to defend himself and the Inquiry Officer appointed by the employer had not acted impartially. It was also alleged that the misconduct alleged against the employees was neither during the employment nor within the premises of the Establishment and had, therefore, no nexus with the employment of the respondent-employee with the employer but was a personal dispute outside the factory premises which did not constitute any misconduct as defined in the Standard Standing Orders. The respondent-employee, therefore, claimed reinstatement with full back wages.

The petitioner resisted the claim of the employee on the ground that the incident had taken place just outside the factory gate and was subversive of discipline and constituted a major misconduct under Clause 12 (f) of the Standing Orders, the respondent-employee was afforded full opportunity to defend himself and it was only on the basis of the report of the Inquiry Officer who was an independent person that the charge levelled against him was fully proved, the order of dismissal was passed.

The Labour Court, by order passed on 18-4-1996, held the enquiry to be valid and upheld the finding of misconduct recorded in the domestic enquiry but still awarded ex- gratia amount of Rs. 22,000/- to the employee against which the Parties preferred appeals u/s 65 of the Act before the Industrial Court, Raipur. The Industrial Court, by its order dated 1 -5-1997, remanded the case to the Labour Court. The Labour Court, Raipur again up-held the findings of the Inquiry Officer but awarded an ex-gratia amount of Rs. 72,000/- to the employee by order dated 6-4-1998. Against the said order, both the parties preferred appeals before the Industrial Court and the Industrial Court by the impugned common order, has directed reinstatement of the employee without back wages against which these petitions have been filed.

Learned counsel for the petitioner has pointed out that the Industrial Court while upholding the finding that the incident had taken place as alleged, committed a grave error in holding that the same did not constitute any misconduct under Clause 12 of the Standard Standing Orders as the same had not occurred either during the hours of work or within the premises of the Establishment and, therefore, had no nexus with the employment. The Industrial Court observed that from the statement of the victim of the assault namely Shri Jaiswal, it was clear that the complainant-employee and delinquent employee were both members of different Unions and the incident was an outcome of their Union affiliations/activities which had no direct nexus with their employment.

Learned counsel for the petitioner-employer has submitted that in view of the fact that M.P. Industrial Employment (Standing Orders) Act, 1961 and the Rules of 1963 framed thereunder were applicable in the case of the petitioner

undertaking, disciplinary action could be taken for the misconduct enumerated in Clause 12 (f) of the Standard Standing Orders ("S.S.O." for short) annexed to the Rules and since the conduct of the respondent-employee duly brought home against him in the domestic enquiry amounted to misconduct within the meaning of Clause 12 (f) of the S.S.O., the Industrial Court committed a grave error in holding to the contrary and directing reinstatement of the employee. Learned counsel for the respondent-employee, on the contrary, has supported the finding of the Industrial Court and has pointed out that even as per the case set up by the employer, the incident had occurred outside the premises of the undertaking and that too after the working hours and since it had no nexus with the employment, the employee could not have been proceeded against for misconduct under the provisions of the S.S.O. The short question, in view of the rival submissions, that arises for consideration is whether on the allegations on which the disciplinary enquiry was held and the respondent-employee was terminated, it could be said that he was guilty of misconduct as enumerated in Clause 12 (f) of the S.S.O.

Learned counsel for the petitioner-employer has referred to the decision of the Supreme Court in *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*,) in support of his submission that the fact that the assault was committed outside the factory, would not take it out of the Standing Order enumerating commission of an act subversive of discipline or good behaviour within the premises or precincts of the establishment as it is not the place where the act which is subversive of discipline or good behaviour, is committed but the place where the consequence of such an act manifests itself that is relevant. Reference has also been made to the decision in *Bapubhai Mohanbhai Vs. Mahila Sahakari Udyog Mandir*, and to the decisions of the Allahabad High Court in *Ram Asre and others Vs. Labour Court* (1990 LLR 330) of Punjab and Haryana High Court in *P.G. Institute of Medical Education & Research Vs. Labour Court* [1990 (1) LLJ 70] and of Madras High Court in *M. Krishnan Vs. Management of Tarrace Estate* (2000 LLR 402) in support of his contention that the act of the respondent-employee complained of had though occurred outside the gate of the establishment, yet it constituted misconduct enumerated in Clause 12 (f) of the S.S.O. on account of the effect of the act clearly being subversive of discipline within the premises. Learned counsel for the respondent-employee has, on the other hand submitted by reference to the decision in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, relied upon by the learned counsel for the petitioner that it being a penal statute, it has to be strictly construed and the act not falling within the enumerated misconduct cannot be treated to be so merely on account of the assumption of its remote or likely effect to render the words of "limitation" occurring in the provision wholly redundant. Learned counsel has proceeded further to submit that since the conclusions drawn by the Industrial Court are based on appreciation of evidence and the supervisory jurisdiction under Art. 227 of the Constitution is limited to see whether the subordinate Tribunal has acted within the scope of its

jurisdiction, no ground is made out warranting interference in the finding in exercise of the power under Art. 227 of the Constitution of India and merely on the hypothesis that another view is also possible, interference cannot be made. Reference has been made to the decision of the Supreme Court in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, and in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, . On the claim made by the respondent-employee in the petition filed by him, learned counsel has invited attention to the decision of the S.C. in *H.S. Chandra Shekara Chari Vs. The Divisional Controller, KSRTC and Another*, and has contended that once the charges are not established, the order of reinstatement with full back wages should follow.

In *M.E. & R. Industries*, the relevant Standing Order 24 (1) considered by the Supreme Court was with regard to the commission of any act subversive of discipline or good behaviour within the premises or precinct of the establishment. The act for which the workman was charged in the said case, had taken place in a train outside the premises of the establishment and it was contended before the Supreme Court that since the misconduct under the Standing Order 24 (1) was restricted to acts within the premises of the establishment, the employee workman could not have been punished for the said act even if the same was proved. It was observed by their Lordships that in their opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" referred not to the place where the act subversive of discipline or good behaviour was committed but where the consequence of such an act manifested itself. The observations contained in Paragraph 6 of the report read as follows:--

"6, On the question of misconduct the relevant Standing Order is Standing Order 24 (1) which is in these terms :--

"24. The following acts and omissions on the part of a workman shall amount to misconduct:

(1) Commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment;

It was not disputed before us that the allegation of assault, if proved, would be an act subversive of discipline; what was contended on behalf of the respondent was that the alleged assault having taken place in the train between Thana and Mulund which was obviously outside the premises or precincts of the establishment was not covered by Standing Order 24 (1). The Labour Court also found that the alleged assault did not amount to misconduct under Standing Order 24 (1) which, it was held, was restricted to acts and omissions inside the premises of the establishment. In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself. In other words, an act wherever committed, if it has the one effect of subverting

discipline or good behaviour within the premises or precincts of the establishment, will amount to misconduct under Standing Order 24 (1). We are unable to agree that Standing Order 24 (1) leaves out of its scope and act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in question. Such a construction in our view would be quite unreasonable."

In *Ram Asre and others* (supra), the Hon'ble Allahabad High Court, while construing the acts subversive of discipline and efficiency within the Mill premises, enumerated as misconduct under Clause 23 applicable in the said case, observed that since assault had taken place in front of the factory gate and since the Junior Officer concerned had come out of the factory after finishing his work, it amounted to misconduct, within Mill premises. In *P.G. Institute of Medical Education* (supra), the question was whether the punishment of dismissal was disproportionate or unreasonable while in the case of *M. Krishnan* (supra), where Domestic Enquiry was under the Standing Orders for riotous and disorderly behaviour and the workmen were dismissed, it was held that their acquittal by the High Court for the offence punishable u/s 302 of IPC did not vitiate the Domestic Enquiry as the Criminal Case and the Domestic Enquiry were on different charges.

The contention of the learned counsel, in view of the decisions referred to above, is that although the incident had taken place outside the place of work and not during working hours, yet in view of clause (1) of the S.S.O.12, since it was subversive of discipline and good behaviour, which was its likely result within the premises, its effect was within the premises of the undertaking and, therefore, the Industrial Court ought not to have set aside the order of dismissal by holding that it did not constitute any misconduct under the S.S.O. For proper appreciation of the contention of the learned counsel, it is first necessary to refer to the misconduct enumerated in clause (f) of the S.S.O. 12 (1), which reads as extracted below:--

"12 (1) (f). Drunkenness, riotous or disorderly behaviour, during working hours at the undertaking or conduct, endangering the life or safety of any person, intimidation, physical duress, or any act -subversive of discipline."

Before comparison of the S.S.O. 12 (1) (f) with the provisions which were before Their Lordships in *M.E. & R. Industries* (supra) and *M/s. Glaxo Laboratories Ltd.* (supra), it is necessary to refer to the observations in the case of *Glaxo Laboratories Ltd.* with regard to the approach in construing the provision such as the one under consideration. After referring to the language of the Standing Order 22 enumerating drunkenness, fighting, inducement or disorderly behaviour, use of abusive language and other acts such as assault or threat subversive of discipline and efficiency committed within the premises of the establishment or in the vicinity thereof as misconduct, it was observed that the employer has hardly any extra territorial jurisdiction and he is not the custodian of general law and order situation nor the Guru or mentor of his workmen for

their well regulated cultural advancement and if power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be, was conferred upon the employer, the contract of service may be reduced to contract of slavery. It was further observed that since on proof of misconduct penalty can be imposed, it cannot be disputed that it is a penal provision which must receive strict construction because for penalty to be enforced, it should be quite clear that the case is within both, the letters and spirit of the statute. Distinguishing the provision from the provision considered by the Supreme Court in ME. & R. Industries, it was observed that if the expression "committed within the premises of the establishment or in the vicinity thereof" is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it a weapon of torture and, therefore, the words of limitation must cut down the operation of the clause and should not receive a construction as to make the words of limitation wholly redundant. Relevant paragraphs in which these observations are contained read as extracted below :--

"13. After reading Clause 10, Mr. Shanti Bhushan contended that the expression "committed within the premises of the establishment or in the vicinity thereof" can qualify only the expression any act subversive of discipline and efficiency and any act involving moral turpitude but not the earlier portion of the clause. Numerous acts of misconduct have been collocated in Clause 10 such as drunkenness, fighting, incident or orderly behaviour, use of abusive language, wrongfully interfering with the work of other employees etc. Says Mr. Shanti Bhushan that these acts of misconduct are per se misconducts that each one of them cannot have any correlation to the time or place where it is committed and each one of them is an act of misconduct irrespective of the time and place where it is committed. Expanding the submission, it was urged that drunkenness is such a socially reprehensible action that if it is committed within the premises of the establishment or in the vicinity thereof or anywhere else at any point of time it would nonetheless be an act of misconduct comprehended in Clause 10 and punishable under Standing Order 23. If this construction were even to be accepted the employer will have more power than the almighty State because State chooses to punish drunkenness in public place. But on the construction canvassed for if a man consumes liquor in his own house with the doors closed and gets drunk, the employer can still fire him. If a man uses abusive language towards his close relation in his own house with closed door, the employer would be entitled to fire him, and this approach overlooks the purpose of prescribing conditions of service by a statute. To enable an employer to peacefully carry on his industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. The employer has hardly any extraterritorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the workmen outside the duty hours and

at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment. When the broad purpose for conferring power on the employer to prescribe acts of misconduct that may be committed by his workmen is kept in view, it is not difficult to ascertain whether the expression "committed" within the premises of the establishment or in the vicinity thereof would qualify each and every act of misconduct collocated in Clause 10 or the last two only, namely, "any act subversive of discipline and any act involving moral turpitude". To buttress this conclusion, one illustration would suffice. Drunkenness even from the point of view of prohibitionist can at best be said to be an act involving moral turpitude. If the misconduct alleging drunkenness as an act involving moral turpitude is charged, it would have to be shown that it was committed within the premises of the establishment or vicinity thereof but if the misconduct charged would be drunkenness the limitation of its being committed within the premises of the establishment can be disregarded. This makes no sense. And it may be remembered that the power to prescribe conditions of service is not unilateral but the workmen have right to object and to be heard and a statutory authority namely, Certifying Officer has to certify the same. Therefore, keeping in view the larger objective sought to be achieved by prescribing conditions of employment in certified Standing Orders, the only construction one can put on Clause 10 is that the various acts of misconduct therein set out would be misconduct for the purpose of Standing Order 22 punishable under Standing Order 23, if committed within the premises of the establishment or in the vicinity thereof.

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The decision proceeds on the language of the Standing Order which came for interpretation before this Court. There is a marked difference between the language of Clause 10 of Standing Order 22 under which action is proposed to be taken by the appellant in this case and Standing Order 24 (1) that came for interpretation in that case. Clause (1) of Standing Order 24 which was before the Court in that case did not refer to such specific acts of misconduct as drunkenness, fighting, indecent or disorderly behaviour, use of abusive language etc. If a workman is involved in a riot or indulge in fighting somewhere far away from the premises of the establishment, it has not causal connection with his performance of duty in the industrial establishment in which he is employed. Further in that case, the Court put a wide construction on a penal measure but did not choose to set out its reasons for departing from the well-established principle that penal statutes generally receive a strict construction. A statute is regarded as penal for the purpose of construction if it imposes fine, penalty or forfeiture other than penalty in the nature of liquidation of damages or other

penalties which are in the nature of civil remedies. It is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning. (See Halsbury's Laws of England, 4th Edn., Vol. 44 paras 909-910 at page 560).

It cannot be seriously questioned that Standing Order 22 is a penal statute in the sense that it provides that on proof of misconduct penalty can be imposed. It cannot be disputed that it is a penal statute. It must, therefore, receive strict construction, because for a penalty to be enforced, it must be quite clear that the case is within both the letter and the spirit of the statute. If the expression committed within the premises of the establishment or in the vicinity thereof is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it a weapon of torture. A clause with a statutory flavour like legislation must at all costs be interpreted in such a manner that it would not operate as a rogue's charter [Devis and Sons Ltd. Vs. Atkins (1977) ICR 662]. If any misconduct committed anywhere irrespective of the time-place content where and when it is committed is to be comprehended in Clause 10 merely because it has some remote impact on the peaceful atmosphere in the establishment, there was justification for using the words of limitation such as committed within premises of the establishment or in the vicinity thereof. These are words of limitation and they must cut down the operation of the clause. Therefore, these words of limitation must receive their due share in the interpretation of Clause 10 and Clause 10 cannot receive such a construction as to make the words of limitation wholly redundant."

Clause (f) of the S.S.O. 12 (1) prescribes as misconduct, drunkenness, riotous or disorderly behaviour during working hours at the undertaking or conduct endangering the life or safety of any person, intimidation, physical duress or any act subversive of discipline. The clause lays greater stress on the time period by restricting the offending acts to the working hours at the undertaking unlike the act within the premises of the establishment or in the vicinity as was the case in the Standing Orders considered by Their Lordships in M.E. & R. Industries (supra) and M/s. Glaxo Laboratories Ltd. (supra). In S.S.O. 12 (1) (f), there is greater limitation restricting the period to the working hours and the place to the establishment while the cases relied upon by the learned counsel for the petitioner proceeded on construction of a clause where acts within the premises, precincts and vicinity also fell within the ambit of misconduct. Thus, unlike the acts within the premises or neighbourhood, there is greater limitation in S.S.O. 12 (1) (f) restricting the acts to "working hours at the undertaking".

In the present case, admittedly, the incident had taken place outside the premises of the undertaking and not in connection with any matter relating to the employment of the complainant-employee and the respondent-employee. It was a sheer chance that while the complainant-employee had returned in a bus from market where he had gone to make his private purchases and while he had

alighted from the bus, there was an altercation between the complainant employee and the respondent-employee and his companions, with regard to certain affairs of the respective unions to which they owed their allegiance, leading to his being man-handled by the respondent employee and his companions. It was not a case where with a view to show any disobedience or disrespect to the authority of a superior employee or to demean his status that the act was committed. From the evidence of the complainant-employee, it is clear that he had also made comments to provoke the incident which ultimately resulted in he being belaboured. The incident, therefore, has no resemblance with the case present before Hon'ble Allahabad High Court in *Ram Asre and others (supra)*, where the workman had assaulted a junior officer in front of the factory gate while he was coming out of the factory after finishing his day's work, from which it could be inferred without any difficulty that the act had directed nexus with the discipline in the establishment as it tended to create a fear about safety of the employees working in the factory. The act attributed to the respondent-employee did not have any correlation with his employment in the establishment or the employment of the fellow workmen and officers therein and was totally unconnected with the business of the establishment and had no nexus with discipline within the establishment. It was not in the circumstances in which for any act of the complainant employee in the establishment, the respondent-employee had reacted in the manner attributed to him. There being thus no nexus and the act having not been committed during working hours in the establishment, the Industrial Court has rightly observed that it did not constitute misconduct under the S.S.O. empowering the employer to take disciplinary action. The incident was totally unconnected with the employment and as rightly contended by the learned counsel for the respondent-employee by reference to the decision of the Supreme Court in *Mohd. Yunus Vs. Mohd. Mustaquim (supra)*, since the supervisory jurisdiction under Art. 227 of the Constitution is to see whether subordinate Tribunal has acted within bounds of its jurisdiction, the conclusions drawn by the Industrial Court on due appreciation of all facts, do not call for any interference in exercise of power under Art. 227 of the Constitution of India. The petition W.P. No. 3007/99, therefore, deserves to be dismissed.

The employee has also filed a petition (W.P. No. 4984/99) to seek full back wages. Learned counsel contends that once it is found that charge was not established, the Tribunal ought to have awarded full back wages while directing reinstatement.

In the present case, the matter rolled over for several years as initially the order passed by the Labour Court had been set aside by the Industrial Court and the Labour Court while deciding the matter afresh had though once again held misconduct as having been duly established, it had directed payment of ex-gratia amount. The order of the Labour Court was set aside by the Industrial Court which directed reinstatement without back wages. Since for declining the back wages the Industrial Court has fully and duly appreciated the entire material on

record and all other circumstances including the unbecoming conduct of the employee, no interference is warranted in exercise of the power under Art. 227 of the Constitution of India.

In the result, both the petitions fail and are dismissed. Parties are, however, left to bear their own costs.

Writ Petitions dismissed.