
(1978) 07 MP CK 0015
In the Madhya Pradesh High Court

Balmukund

APPELLANT

Vs

Industrial Court and Others

RESPONDENT

Date of Decision : 15-07-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) JLJ 433 : (1979) 2 LLJ 78 : (1979) 24 MPLJ 356 : (1979) MPLJ 356

Hon'ble Judges : J.S. Verma, J;G.P. Singh, J

Bench : Division Bench

Judgement

J.S. Verma, J.

The petitioner, Balmukund, was employed as a Security Guard in the Heavy Electricals Ltd., at Bhopal. He was served with a charge-sheet, dated 6.7.1966, the relevant extract of which is as under:

You are hereby charged with the following acts : On 1.7.1966 at about 2-30 hrs. Security Guard Narbada Prasad Belt No. 201, while coming for duty, was suddenly manhandled from behind by you and your brother Babulal and one other, near primary School, Govindpura, D-Sector simply because of non-payment of interest on Rs. 50 loaned to him by you which was already repaid to you, and was heavily beaten by you with blows causing injury on right elbow and back, etc.

On 1.7.1966 you were supposed to be on duty from 00 to 08 hrs. but you remained absent from your duty without any information. From your past record as per list attached it is evident that you are in habit of remaining absent from your duty without prior intimation, permission and sanctioned leave.

Your above acts amount to riotous disorderly behaviour in Heavy Electricals Townships and habitual absence from duty without leave/without sufficient cause which constitute misconduct in terms of Standing Orders 50(12) and (5).

Clauses (5) and (12) of the Standing Order No. 50, which alone are relevant, are as under:

(5) Habitual late attendance and wilful or habitual absence from duty without leave or without sufficient cause.

(12) Gambling, drunkenness, fighting, riotous, disorderly or indecent behaviour in the Factory Premises and or H.E. Township or any act subversive of discipline.

In a domestic enquiry held by the Management, both the aforesaid alleged acts of misconduct were found proved and on that basis the petitioner was dismissed from service by an Order No. Pers/SEty/1/15/2505, passed by the Personnel Manager, Heavy Electricals (India) Limited, dated 28th March, 1967 (Annexure-B). The petitioner then moved the Labour Court u/s 31 of the M.P. Industrial Relations Act, 1960, challenging his dismissal from service. The petitioner also alleged that the domestic enquiry was invalid. It was also contended by the petitioner that the allegations contained in the charge-sheet do not constitute misconduct under Clause (12) of the Standing Order No. 50. All these contentions raised by the petitioner were rejected and accordingly his application was dismissed by the Labour Court.

The petitioner then filed a revision u/s 66 of the Act before the State Industrial Court. The Industrial Court held that the acts alleged and found proved against the petitioner constituted misconduct under Clause (12) of the Standing Order No. 50, which was the main charge and that this main charge by itself was sufficient to dismiss the petitioner even if it was assumed that the second charge falling under Clause (5) of the Standing Order No. 50 was not proved. The validity of the domestic enquiry was also upheld. It may be pointed out that the Industrial Court did not give any finding with regard to the second charge of misconduct found proved under Clause (5) of the Standing Order No. 50, for the reason already stated. The petitioner challenges the orders of the Labour Court and the Industrial Court by this petition under Article 226 of the Constitution of India.

Shri Gulab Gupta, learned Counsel for the petitioner, does not dispute the finding of fact, which have been recorded. Shri Gupta, however, contends that the facts alleged as constituting misconduct under Clause (12) of Standing Order No. 50, do not in law constitute such a misconduct because they have no rational connection with the employment of either the petitioner or the victim of the alleged assault, Narbadaprasad, so that the incident could not be treated as misconduct for punishment under the Standing Orders. The allegation made and found proved against the petitioner is that he had assaulted another Security Guard Narbadaprasad, near the primary school, Govindpura, within the Heavy Electricals Township at a time when neither the petitioner, nor Narbadaprasad were on duty and that this assault had been made because of non-payment of interest by Narbadaprasad on a loan advanced to him by the petitioner. Shri Gupta contends that the reason for the assault had nothing to do with the

employment of either of them and this incident was in no way connected with their employment on account of which it could not be punishable under the Standing Orders. Shri Gupta has placed reliance on *Agnani (W.M.) v. Badri Das* 1963 I L.L.J. 684 and *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, .

In *Agnani's* case (supra), their Lordships held that a private quarrel between an employee of the Industry and a shop-keeper, who was not an employee in the Industry, but who was allowed to run the shop for the benefit of the employee in the Industry could not be treated as a misconduct punishable under the standing orders. It was also pointed out that what is a misconduct, depends naturally upon the circumstances of each case. That decision does indicate that in order to amount to a misconduct punishable under the standing orders, the conduct of the employee should have some rational connection with his employment and that it should not be wholly unconnected with the same. The reason obviously is that such standing orders are intended to regulate the conduct of employees to the extent it is relevant for the purpose of the employment and standing orders admittedly do not operate to regulate the conduct of the employees in respect of matters with which the employer is not concerned.

In *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, the relevant provision of the standing order, laying down the misconduct, which came up for construction, was as follows (at p. 157):

Without prejudice to the general meaning of the term "misconduct". It shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory.

In that case an employee of the Industry was waylaid by another employee while he was returning home after his duty and was then assaulted by him. The question was whether such an act amounted to misconduct punishable by the employer under the above standing order, the alleged assault having taken place outside the factory. The relevant portion of the standing order in that case was undoubtedly of wider import than Clause (12) of the Standing Order No. 50, with which we are concerned, inasmuch as the conduct of the employee even outside the Factory could amount to misconduct within the meaning of that Standing Order. Their Lordships indicated the test for deciding this question, as follows (at pp. 157-58):

Mr. Menon, who has appeared for the respondent before us, has contended that in construing Standing Orders of this character, we must take care to see that disputes of a purely private or individual type are not brought within their scope. He argues that on many occasions, individual employees may have to deal with private disputes, and sometimes, as a result of these private disputes, assault may be committed. Such an assault may attract the relevant provisions of the Indian Penal Code, but it does not fall under Standing Order 22(viii). In our opinion the contention is well-founded. It would, we think, be unreasonable to include within Standing Order 22(viii) any riotous behaviour without the factory

which has the result of purely private and individual dispute and in course of which tempers of both the contestants became hot. In order that Standing Order 22(viii) may be attracted, the appellant should be able to show that the disorderly or riotous, behaviour had some rational connection with the employment of the assailant and the victim

The above test indicates that a purely private and individual dispute cannot ordinarily fall within such standing order unless it is shown that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim. Thereafter on the facts of that case, the act of the employee was treated as misconduct, because, it was not the result of a purely individual or a private quarrel between the assailant and the victim, but it was referable to the difference of opinion between the two in regard to the introduction of the incentive bonus Scheme. The test indicated was, therefore, clearly satisfied in that case.

In the present case, applying the test indicated by their Lordships, it must be held that on the finding reached no misconduct under Clause (12) of the Standing Order No. 50 was made out against the petitioner. The assault by the petitioner on Narbadaprasad on 1.7.1966 had no rational connection with the employment of either of them and it was the result of a purely private and individual dispute between them in connection with a loan advanced by the petitioner to Narbadaprasad by the petitioner to Narbadaprasad, which loan was in no way connected with their employment and the incident happened when neither of them was on duty. The contention of Shri Gupta on this point must, therefore, be accepted.

In the domestic enquiry held against the petitioner, both the charges levelled against him were found proved. The Labour Court held the enquiry to be valid and also came to the conclusion that misconduct under both the clauses was rightly held proved against the petitioner. As earlier indicated, the Industrial Court without giving its finding with regard to the misconduct falling under Clause (5) of Standing Order No. 50 has upheld the action taken against the petitioner merely on the ground of misconduct under Clause (12) of Standing Order No. 50. We have already held that no misconduct under Clause (12) of Standing Order No. 50, can be treated to have been made out. That being so, the question is whether the action taken against the petitioner is justifiable on the misconduct found proved under Clause (5) of Standing Order No. 50 alone. For this purpose the case will have to go back to the Industrial Court for a fresh hearing and decision of the revision in the light of this decision.

Accordingly, this petition partly succeeds and is allowed to the extent that the order only of the Industrial Court dated 19.12.1973 (Annexure F) is set aside and the Industrial Court is directed to re-hear the revision and to decide it afresh in accordance with law. There shall be no order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioner.