

(1997) 11 CAL CK 0010
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, Original Side, G.A. No. 3302 of 1997, APO/T No. 430 of 1997, Appeal No. of 1997 and W.P. No. 1277 of 1994

Calcutta Dock Labour Board and Others

APPELLANT

Vs

Sri Ram Ayodhyay Rai and Another

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1998) 1 CALLT 332

Hon'ble Judges : Prabha Shankar Mishra, C.J.; Samir Kumar Mookherjee, J

Bench : Division Bench

Advocate : Mr. Jayanta Mitra, Mr. Partha Sengupta, Mr. G.N. Ghosh and Ms. Debjani Sengupta, for the Appellant; Mr. Kalayan Bandopadhyay and Mr. Kishore Dutta, for the Respondent

Judgement

P. S. Mishra, C.J.—Can a registered Dock Worker in the reserve pool on being convicted by a court of law for the offence under sections 302/149 of the Indian Penal Code be suspended even though he has appealed against the conviction and sentence of life Imprisonment and released on bail by the Competent Authority or the Administrative Body of the Calcutta Dock Labour Board is the question which the learned single Judge has answered in the negative.

2. Appeal under Clause 15 of the Letters Patent has been preferred against the said judgment of the learned Single Judge.

3. Petitioner respondents, it is not in dispute are registered Dock Workers in the reserve pool. They, however, were charged of committing offence u/s 302 read with section 149 of the Indian Penal Code, and convicted after trial and sentenced to undergo rigorous Imprisonment for life.

4. While, the charge was pending Investigation and trial no action was taken against the petitioner-respondents either to subject them to any disciplinary enquiry or to suspend or remove them from service for they were facing a charge

of the criminal offence of murder.

5. Purportedly acting under Clauses 3 fa) (b) of paragraph 48 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 framed under the Dock Workers (Regulation of Employment) Act 9 of 1948, however, the petitioner respondents have been served with a Memo, bearing Charge-sheet No. LO/8AB/8/93 dated 16.4.1993 followed by a Memo, of suspension dated 16th April, 1993. The petitioner respondents are Informed that it had been reported that they had been sentenced to rigorous imprisonment for life under sections 302/149 of the Indian Penal Code by the learned 4th Additional Sessions Judge, Saran at Chapra, Bihar on 20.3.1993 and with reference to the said charge they were placed under suspension with immediate effect under Clause 48 (3) (a) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 pending further orders.

6. petitioner respondents have challenged the said suspension order and the learned single Judge has held in agreement with the contentions on their behalf that Clause 48 of the 1970 Scheme relates to certain disciplinary matters and sub-clause (3) of Clause 48 empowers the Labour Officer to suspend a worker if he is of the opinion that the worker is to be charged for an act of Indiscipline or misconduct which is so serious that the worker should not be allowed to work any longer.

7. The learned single Judge has stated in his order dated 23.5.1997 that "a cursory look at the charge-sheet dated 16.4.1993 will" reveal that the only allegation which has been levelled against the petitioners in the charge-sheet is that they have been sentenced to life Imprisonment in a case u/s 302/149 of the Indian Penal Code and, therefore, this amounts to misconduct on their part. The suspension order is undoubtedly based upon the said charge-sheet and is referable to the same. It is not the case of the respondents that petitioners have been placed under suspension for any act of misconduct, serious or grave, which is otherwise than referred to in the aforesaid charge-sheet dated 16.4.93. The admitted case of the respondents before this court is that the petitioners have been suspended because of their conviction by the Criminal Court, in the aforesaid murder case and they are sentenced to life Imprisonment."

8. Learned single Judge has further said that 1970 Scheme in his view is not applicable to a case where a worker has been convicted by a Criminal Court and that ipso facto, without any reference to any other act of misconduct entitles the employer to place the worker under suspension.

9. Dealing with another aspect, learned single Judge has said that since the petitioners have been enlarged on bail by a Division Bench of the Patna High Court, one does not know how long it will take for the Patna High Court to dispose of the appeal filed by the petitioners and other persons accused in the trial. If, ultimately, the petitioners succeed in the appeal, may be after a few years and in the meanwhile keeping them under suspension for Indefinite period,

would undoubtedly amount to not only wastage of the subsistence allowance payable to the petitioners, but would also cause undue hardship to them. If on the other hand the petitioners fall in the appeal and the High Court upholds their conviction. It shall be once again open to the respondents, as observed in the earlier part of the Judgment to charge-sheet the petitioners for committing an act of misconduct, if the respondents are so advised and then to proceed against the petitioners under Clause 5 of Para 48 of the 1970 Scheme and to award suitable punishment to them on the merits of the case.

10. The appellants have challenged the above findings on various grounds, the main contention however being that employer's right to suspend an employee and put him off duty is not necessarily circumscribed by the rules framed in this behalf. Suspension for Indiscipline in a disciplinary enquiry or pending a disciplinary enquiry, is permissible by rules/regulations and other provisions. In absence of rules/regulations providing for suspension, putting off duty any employee otherwise for reasons like one in the case of the petitioner respondent is always within the general powers of the employer. It has also been contended that it would be a misconception and mis-Interpretation of any rule providing for suspension of an employee who is charged of misconduct by giving a limited meaning to the expression "misconduct" and for such gross acts of moral turpitude which are offences against the society at large, the employee is not charged of commission of an act of misconduct attracting provisions for suspension for misconduct. Reliance has been placed before us on the judgment of a learned single Judge of this court in the case of Prabodh Kumar Bhowrruck v. University of Calcutta. reported in 1994(2) CLJ 456 to which we shall advert later.

11. Learned Counsel for the petitioner/respondent has relied upon the Judgments of the Supreme Court in the cases of (1) Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, : (2) A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., and (3) Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, and contended that when rules specifically enumerate various types of misconduct it would be wrong to extend the power of the Employer to deal with any act which otherwise may be a crime but is not Included in the list of misconduct and which is an act done elsewhere beyond the premises/ precinct of the work or the work place which is under the control of the employer as well as is unconnected with the work.

12. Since a sincere and elaborate study as to when employer can take notice of any act of misdemeanour of the employee either of indiscipline or misconduct of this nature has been done by the learned single Judge in Probodh Kumar Bhowmtck (supra) our task has been made easy, yet since we are dealing with the contentions of the parties in a Division Bench of two Judges we propose to briefly but not dismissively deal with the contentions. Before we go further with the contentions, we may state that a statutory scheme provides for disciplinary action against the employee by the Labour Officer and suspension of the employee by the Labour Officer who is of opinion that the act of Indiscipline or

misconduct is so serious that the worker should not be allowed to work any longer, pending Investigation of the matter and to report to the Deputy Chairman who after preliminary Investigation of the matter is empowered to pass orders thereon whether the worker should pending final orders remain suspended or not. The order of the Labour Officer, of course, has cited as an act of misconduct conviction of the petitioner-respondent u/s 302/149 of the IPC and he having been sentenced to rigorous Imprisonment by the 4th Additional Sessions Judge, Saran at Chapra. Misconduct is no doubt an act which is breach of discipline. Improper behaviour, Intentional wrong doing or deliberate violation of a rule of standard behaviour, transgression of some established and definite rule of action and doing of a forbidden act undoubtedly are examples of misconduct. Even if such conduct is an offence under the Indian Penal Code nonetheless it is a misconduct. In the case of Mahendra Singh Dhantwal v. Hindustan Motors Ltd. reported in (1976) II LLJ 259 (264), a three Judge Bench of the Supreme Court has observed as follows :--

"Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing order. It may still be a misconduct in the special facts of case, which it may not be possible to condone and for which employer may take appropriate action."

13. It would be a long list of cases decided by various courts including the Supreme Court if we look to each of them for the purpose of our conclusion that something which is a crime against the society if done by an employee even though outside the employment and not directly relatable to his conduct as an employee is an act of indiscipline and/or misconduct of the employee for which proceedings and pending investigation necessary suspension can be ordered. All activities which are enumerated as acts of misconduct undoubtedly are such misconducts for which disciplinary proceedings can be Initiated. Some such acts which are overlooked and enlisted can always be found to be unlawful behaviour of the employee for which disciplinary action can be taken. Cases upon which the learned counsel for the petitioner/respondent has placed reliance are decided on their respective facts and if we say so with respect it has rightly been pointed out in those cases that each and every act of a breach otherwise in respect of which employer has nothing to do cannot provide to the employer cause for disciplinary action. Case for disciplinary action shall ordinarily be only such misconduct or act of indiscipline which is committed at the work place and which is relatable to work for which the employee is engaged; yet and apart from such acts of indiscipline and misconduct as we have noticed earlier there can be such unlawful, improper or wrong behaviour of the employee which though not directly relatable to the work place or the work of the employer can be such act of indiscipline and misconduct for which the employer shall be legally and morally answerable.

14. The learned single Judge who has decided the case of Probodh Kumar Bhowmick (*supra*) has entered into the principles of precedent and ratio decidendi which appear to us only academic for the instant case. All that we say in agreement with the view in Probodh Kumar Bhowmick (*supra*) is that acts of indiscipline and misconduct cannot be and should not be limited to such acts committed within the campus of Industry or the Undertaking and only with respect to the commands or orders of the Superior Officers in the hierarchy of the establishment. At the same time we cannot endorse the view that employer can always have the choice of a conduct which, in his view, is a misdemeanour or misbehaviour and thus an act for which disciplinary action can be taken against the employee. A balanced view has to be taken and one must be cautioned that the employers must not go beyond the concern for the work for which he has engaged someone as employee. Yet presence of some such person amidst his employees who has done an act of moral turpitude and heinous crime like murder, rape etc. are acts of misconduct of the employee, for which the employer will be entitled to take disciplinary action and suspend the employee.

15. We have expressed our reservations to the wider meaning that the learned single Judge has given to expressions-Indiscipline and misconduct-for there may be a situation when to an employer a habit otherwise sanctioned by the society or not rejected by the society is immoral or improper and he may decide to proceed against the employee to punish him for the alleged act of indiscipline or misconduct, we reiterate, all acts which are described as acts of indiscipline or misconduct in standing orders or in rules/regulations can provide to the employer basis for disciplinary proceedings. Ordinarily such other acts which are not included in the standing orders/rules/regulations do not come within the preview of disciplinary Inquiry. However, acts of moral turpitude, and offences against the society, although not shown in the list of misconducts and not committed at the work place or not connected with the work can be taken as acts of misconduct for disciplinary purposes.

16. Ancillary submissions that while no action to suspend the petitioner/respondent was taken when the competent authority received information that he was charged of murder or was subjected to trial for the offence of murder etc. have been raised before us. Since the employer has taken notice of the verdict of the court and has chosen to accept the conviction of the petitioner for the murder as evidence of mis-conduct for disciplinary action and Issued order accordingly to suspend the petitioner/ respondent, we find no reason to set aside the same.

17. What would be the quantum of subsistence allowance? Will the employee on the facts of the Instant case get full emoluments? Whether the rules under which allowance has been paid to the petitioner/ respondent have rightly been followed are some other questions which have been canvassed before us. We, however, see no reason to enter into any detailed examination of these aspects of the controversy. Learned single Judge, in our view, has not appreciated that

subsistence allowance is paid to an employee who is charged of mis-conduct, so that he does not suffer hardship and/or his dependants do not starve. It is a scheme that takes care of the needs of the employee during the period of suspension on the one hand and on the other gives the employer ? opportunity to deal with the employee in accordance with the Rules.

18. For the reasons aforementioned we hold that the impugned judgment cannot be sustained. It has to be set aside and the appeal has to be allowed. Accordingly, the Impugned judgment is set aside and the appeal is allowed. The writ petition is dismissed, but on the facts and in the circumstances of the case there will be no order as to costs.

19. Before we part with this Judgment we clarify that our observations in the Judgment are for the limited purpose of deciding whether the petitioner/respondent's suspension is valid. In case an enquiry is held against the petitioner/respondent by the competent authority, the competent authority shall not be influenced by any observation in our judgment.

20. Since the writ petitioner/respondent has questioned his conviction by filing an appeal and the appeal, we are informed, is still pending, we observed that in the event of acquittal by the appellate court, the petitioner/respondent shall be entitled to seek review of the order of punishment if any or the order of suspension if it is still continuing.

All parties concerned to act on a xerox signed copy of this Judgment on the usual undertaking.

S. K. Mookerjee J.

21. I agree.

22. Appeal allowed