
(2000) 09 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4349 of 1991

Divisional Mechanical R.S.R.T.C. and Others

APPELLANT

Vs

Mohanlal Mali and Others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Citation : (2000) 4 RLW 352 : (2001) 4 WLC 480 : (2001) 1 WLN 371

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Judgement

Rajesh Balia, J.—The matter has come up on application for early hearing on behalf of respondents. The consent of the parties matter has been heard.

2. The subject matter of this writ petition is an award made by the Labour Court, Jodhpur dt. 15.1.1999 (Annexure-6) read with the earlier order dt. 17.12.1990 (Annexure-4). Mohanlal respondent No. 1 since deceased, was charged with misconduct of beating a fellow worker and abusing him while he was returning home after attending the Court hearing at Jalore on 21st Feb. 1983. After holding a departmental enquiry into the charges the said workman was dismissed from services by order dt. 24th June, 1983 and remuneration for the period of suspension was also forfeited. The dispute about the said punishment was referred to Labour Court, Jodhpur for adjudication vide notification dt. 23rd July, 1989. By the order dt. 17.12.1990 the Labour Court found the enquiry to be invalid for two reasons. Firstly that the workman was not given a copy of relevant documents in spite of demanding which has resulted in breach of principles of natural justice and also that the alleged act of misconduct do not fall within the definition of misconduct under Clause 34(e) of the Standing Order which reads as under:

Clause 34(e): Quarelling, abusing, teasing threatening, beating or assaulting a fellow worker or any body else in the service of the Corporation or passenger, while they are on Corporation's duty or in Corporation's bus or Corporation's premises.

3. In reaching to this conclusion learned Labour Court relied on decision of Supreme Court in M/s. Glaxo Laboratories Ltd. v. Presiding , Officer, Labour Court and Ors. AIR 1984 S.C. P. 505. The Labour Court also found that since the alleged misconduct did not come within the definition of misconduct, the enquiry was void ab initio and no opportunity of sustaining the order of dismissal is required to be given to the employer in these proceedings. However the matter was adjourned for determining relief to which the workman is entitled and thereafter by the award dt. 15.1.1991 the workman was directed to be reinstated w.e.f. 24th June, 1983 with full back wages.

4. Aggrieved with the aforesaid orders the Corporation has filed this petition. During the pendency of this writ petition said Mohan Lal expired on 31st December, 1994 and his Legal Representatives have been brought on record.

5. It has been contended by the learned Counsel for the petitioner that Labour Court has seriously erred in holding that any act of violence and abusing co-worker outside the campus of establishment did not come within the definition of misconduct under the Standing Order 34(e) by ignoring Sub-Clause (f) of Clause 34 of the Standing Order and therefore, the award is void ab initio. Learned Counsel contended that even if Labour Court found that enquiry to be invalid and opportunity ought to have been given to the employer to establish that dismissal was valid and justified.

6. Learned Counsel for the LR's workman supported the award with reasoning stated therein.

7. Having carefully considered I find some force in the contention of learned Counsel for the petitioner. Standing Order detailing the acts and omissions which are treated to be a misconduct does not end with Sub-Clause (e) nor is the only misconduct described. Sub-Clauses (e) and (f) are relevant for the present purposes. Sub-Clause (e) of Clause 34 reads as under:

34 (e) : Quarelling, abusing, teasing threatening, beating or assaulting a fellow worker or any body else in the service of the Corporation or passenger, while they are on Corporation's duty or in Corporation's bus or Corporation's premises.

8. Sub-Clause (f) of Clause 34 reads as under:

34 (f) : Indecent, disorderly or rude behaviour with any fellow worker or officer or subordinate or business man or customers and other persons connected with Corporation's transport business.

9. Standing Orders, for the purpose finding whether any alleged acts and omissions amounts to misconduct, are to be read as whole and not in a piecemeal manner in isolation. Undoubtedly the ambit and scope of misconduct for which disciplinary proceedings can be taken against workman or an employee depends on the definition of misconduct given in Conduct Rules.

10. The Supreme Court in the case of Glaxo Laboratories Ltd. v. Presiding Officer, Labour Court, and Ors. AIR 1984 S.C. P. 505 was construing Sub-Clauses 10, 16 and 30 of Standing Order 20 of the Standing Orders governing the said establishment.

11. The Court on considering all the three Clauses 10, 16 and 30 of Standing Order 22 found that in all the three clauses the acts or omissions falling within the definition of misconduct were envisaged to be committed within the premises of the establishment or in the vicinity thereof."

12. Considering the aforesaid clauses the Court opined:

Numerous acts of misconduct such as drunkenness, fighting indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees etc. are not per se misconduct. Each one of them have correlation to the time or place where it is committed. Such acts of misconduct would be misconduct punishable only if committed within the premises of the establishment or in the vicinity thereof

13. However the Court cautioned what constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.

14. From the Standing Order operating in the petitioners establishment and are referred above, it is apparent that while Clause (e) speaks about the alleged acts of quarelling, abusing etc. to be directed against persons while they are on Corporation's duties or in Corporation's bus or in Corporation's premises, clause (f) is not inhibited by the place where such act or omissions detailed in Clause (f) are committed, if they are directed towards fellow worker or officer or subordinate or business man or customers or any other person connected with Corporation's transport business. Clause (f) is of much wider import affecting the sphere of conduct required of an employee with his co-employees of the Corporation and other persons far beyond the premises of the Corporation. Under Clause (f) the requirement is that the other person towards whom the employee has misbehaved has a nexus with the Corporation's business wherever it might have been committed. Reason behind is obvious. Such acts or omission directly affect the goodwill and business of the establishment adversely.

15. Moreover Clause (e) is also not confined to the acts or omissions committed towards persons on Corporation's premises but it also includes within it such acts and omissions directed towards a fellow worker or any body else in the service of the Corporation while they were on duty or passenger while they are on Corporation's in Corporation's bus or in Corporation's premises. It envisages three circumstances when such act or omission towards a fellow workman or other person in service of Corporation can constitute a misconduct. That is to say the persons against whom alleged acts or omissions have been committed can constitute a misconduct if such a person is on Corporation's duty notwithstanding such acts or omissions is outside the Corporation's premises. Such acts and omissions will amount to misconduct, if the persons subjected to

the alleged behaviour by a delinquent are on the Corporation's bus as passengers or on duty of Corporation, the misbehaviour would fall within the definition of misconduct. So also if such acts and omissions are committed in Corporation's premises. Causing act or omission on premises of Corporation is only one of the contingencies.

16. It is also to be noticed that alleged acts and omissions attributed to the delinquent is not confined to which are directed towards fellow worker but is towards three class of persons viz. fellow worker, passenger and any other person in service of Corporation. Therefore, I am of the opinion that construction of Clause (e) of Standing Order 34 by the Labour Court on the definition of misconduct in Clause (e) was patently erroneous. The Labour Court also apparently erred by merely considering Clause (e) ignoring Clause (f) altogether. The ratio laid in M/s. Glaxo Laboratories Ltd. had no application to the facts of the present case.

17. In this connection it may be noticed that in Mulchandani Electrical and Radio Industries Ltd. v. The Workmen AIR 1975 S.C. P. 2125 The Supreme Court was considering the expression words "commission of any act subversive of discipline or goods behaviour within the premises or precincts of the establishment" in the relevant Standing Order which reads as under:

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.

18. Considering the aforesaid provision the Court said:

Assault by operator on chargeman of same factory would be an act subversive of discipline. The fact that the assault was committed outside the factory (in a suburban train while the chargeman assaulted was going home) would not take it out of the above standing order. The words "within the premises or precincts of the establish" refer not to the place where the act which is subversive of discipline or goods behaviour is committed but where the consequence of such an act manifests itself. In other words, an act, wherever committed, if it has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment, will amount to misconduct Standing Order 24(1).

19. Decision in M/s. Moolchandani Industries same was considered by the Supreme Court in M/s. Glaxo Ltd. and the Court did not disagree with it but found the case to be distinguishable on the ground of difference in language of Standing Order under consideration and on facts. Noticing the fact that in M/s. Moolchandani Industries the workman was assaulted while returning home after completing his duties was still in commutation from place of his duty to his residence and therefore, he would still be treated in the course of employment when said workman has been assaulted.

20. In M/s. Glaxo Ltd, it was found by the Court that alleged act of misconduct were far too distinguishable to Invoke the principle enunciated in M/s. Moolchandani's case. This distinct feature in M/s. Glaxo Laboratories Ltd. itself has been totally ignored by the Labour Court in holding the alleged act to be beyond the scope of Standing Order, without considering the facts of the case, which were yet to be established and in declining any opportunity to the employer to justify order of dismissal, when it found that enquiry conducted by the management was not fair and just because it was conducted in breach of principles of natural Justice.

21. In the aforesaid circumstances I am of the opinion that Tribunal was certainly in error in refusing opportunity to the employer to justify the order of dismissal before it.

22. However there is no denial of fact that delinquent workman was not given adequate opportunity to defend himself in so much so he was denied copy of relevant documents demanded by him for the purpose of defending himself. That certainly vitiated the enquiry and the punishment awarded on that basis could not be sustained. In that event the matter ought to have been remanded back to the Tribunal to proceed from the stage. Departmental enquiry was held invalid. However it will be a fruitless exercise now that delinquent workman had died during the pendency of the writ petition. In these circumstances looking to the totality of facts the ends of justice would be met by sustaining the order of reinstatement on the finding that enquiry held against the delinquent workman was in breach of principles of natural justice and punishment of dismissal could not be sustained on that basis. However the order relating to grant of back wages need to be modified in view of the fact that question of involvement of deceased in the alleged misconduct remained undecided. The ends of justice would be met if back wages from the date of termination to the date of award is reduced by 50%. Award is modified to that extent only.

23. Ordered accordingly. There shall be no order as to costs.