

(1992) 02 MP CK 0011
In the Madhya Pradesh High Court
Case No : L.P.A. No. 16 of 1984

Employers, Anand Cinema

APPELLANT

Vs

Mohan Tiwari and Another

RESPONDENT

Date of Decision : 01-02-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A, 2, 25F
Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Order 11
Madhya Pradesh Shops and Establishments Act, 1958 — Section 58, 58(1), 58(2), 58(3)
Madhya Pradesh Shops and Establishments Rules, 1959 — Rule 14
Penal Code, 1860 (IPC) — Section 294

Citation : (1992) ILR (MP) 79 : (1992) JLJ 461 : (1992) 1 MPJR 170 : (1992) 37 MPLJ 334

Hon'ble Judges : S.K. Jha, C.J.; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : Abhay Sapre, for the Appellant; R.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

A common order is passed in this appeal and the connected Letters Patent Appeals No. 21 and 22 of 1984, in which the employer is common although the employees are different and common question of law and fact arise. The three Letters Patent Appeals have been preferred against the order of the learned Single Judge dated 26.9.1984, passed in Misc. Petitions No. 1964, 1965 and 1463 of 1982, Employers in Relation to Anand Cinema, Jabalpur v. Mohan Tiwari and Ors. 1986 JLJ 272 : 1985 MPLJ 765; dismissing the above three Writ Petitions filed by the employer, in the cases of the three employees.

The learned Single Judge up-held the award dated 22.10.1982 of the Labour Court passed in common in the cases of the three employees whereby the action of the employer of terminating the services of the employees was held to be a

case of illegal "retrenchment" hence was ab initio void and the employees entitled to re-instatement in service with full back wages.

In the three L.P.As. common questions of law which arise for decision can be formulated as under:

Whether an employer who has terminated the services of its employee by an order of termination simpliciter can be permitted when its action is challenged in the Labour Court, to lead evidence in support of its action to prove that the termination was in fact made on the basis of alleged misconduct committed by the employee and/or whether such action of the employer is an act of illegal "retrenchment" within the meaning of Section 2(00) of the Industrial Disputes Act and is null and void due to the non-compliance of mandatory pre-condition of payment of retrenchment compensation u/s 25F of the Industrial Disputes Act; hence the employee can claim . no opportunity to prove the misconduct of the employees, in the Labour Court.

The only facts necessary for deciding the appeals are that the employer runs a cinema in the name of Anand Cinema at Jabalpur. All the three employees in the three appeals were working as Gate keepers. In L.P.A. No. 16/84 concerning the employee Mohan Tiwari, prior to his termination from service a domestic enquiry for mis-conduct was held against him but the action on it was kept in abeyance. In the case of Kailash Singh Chouhan L.P. A. No. 21/84 and Pratap Yadav L.P. A. No. 22/84, domestic enquiry was contemplated but the action was said to have been dropped, to give them opportunity to improve. The employer's case, as contained in its statement of claim before the Labour Court against Mohan Tiwari, was that right from the date of his employment, his conduct and behaviour was disorderly and rowdy. On 2.12.1978 in an intoxicated state he misbehaved with members of public and the management staff of the cinema. A police report was lodged and the concerned employee was prosecuted and fined by the Magistrate u/s 294 of the I.P.C. On 15.1.1979 a charge-sheet was issued against him and enquiry officer was also appointed. The charges related to his disorderly conduct in insulting the Manager and the partners of Anand Cinema. In spite of service of charge-sheet, the employee remained absent and an ex-parte enquiry was required to be held. The enquiry officer submitted a report against him. The employer, however, kept the action pending with a view to watch if there was any improvement in the conduct and behaviour of the employee. On 14.9.1979 the employee went on an illegal strike and tried to disrupt the smooth working of the employer. The employer, therefore, issued the order of termination keeping in view his immediate past and previous conducts which were partly enquired into. In the statement of claims itself, the employer requested for an opportunity to prove the misconduct in the Court.

The misconduct attributed against the other two employees, namely, Kailash Singh and Pratap Yadav, as mentioned in the statement of claims filed by the employer in the Labour Court, are some what similar in nature. The allegations of the employer against them is that both of them, as gate-keepers, were

extremely rowdy and indisciplined in behaviour. On 14.9.1979 when the night show of the cinema was going on, at about 10.00 P.M. both of them, along with a few other employees of other cinema houses of the city, forcibly entered the cinema premises and caused stoppage of the show. They abused and threatened the members of the public inside the cinema hall and forced them to go away. They mis-behaved with the management staff and the proprietors of the cinema hall. They compelled the management to refund the ticket money of few members of the public. This caused huge financial loss apart from irretrievable damage to the reputation of the cinema concerned. On 15.9.1979 they again went on an illegal strike and staged a DHARNA at the gate of the cinema hall and did not allow public to enter the premises of the cinema hall. Thus, on 15.9.1979 the cinema remained closed, causing huge financial loss to the management. The strike resorted to was without any prior notice and without any justifiable cause. On 16th & 17th September, 1979 the two employees stood outside the cinema building and were publicly abusing the partners and the management of the cinema hall. They also went to the house of the partner of the cinema Shri Anand Barnard and abused and threatened him with dire consequences. The two employees along with a band of their supporters thus created a reign of terror completely disrupting the cinema business and created fear in the minds of other staff of the employer and the cine going public. In the statement of claims itself, in relation to both the above employees, the employer expressly claimed an opportunity to prove each and every allegation constituting misconduct on the part of the two employees.

The order of termination dated 26.9.1979 in the case of Pratap Yadav and in all the cases is similarly worded and reads as under:

Due to Unsatisfactory work and conduct, your services are terminated with immediate effect, as no longer required.

You can collect your dues from the Accounts section of this cinema during working hours on any working day.

The Labour Court as well as the learned Single Judge held that the termination of services of the employees amounts to "retrenchment" as defined u/s 2(00) of the I.D. Act and the same was ab initio void as no retrenchment compensation as required by Section 25F of the I.D. Act was paid to the employees. The Labour Court and the learned Single Judge rejected the contention of the employer that its action was not an action of retrenchment, but was an action of terminating the services based on misconduct which should be permitted to be proved before the Labour Court, although it did not hold any domestic enquiry.

It would be better to quote the reasoning of the Labour Court which is contained in relevant portion of paragraph 15 of its award dated 22.10.82, as under:

15. ...The orders of termination do not state that first parties are punished for any specified misconduct. The unsatisfactory work and conduct does not show that the employees were held guilty of certain misconducts and were punished

by way of disciplinary action. Unsatisfactory work and conduct mean that work and conduct as not to the satisfaction of the employer. It does not mean a misconduct as defined under the rules or orders. Thus, the employer by his order declared that employees are not punished for any misconduct. The employer instead of taking disciplinary action for any misconduct adopted the course of simple termination. In such circumstances the employer himself cannot be allowed to say that the termination is by way of disciplinary action for a specified misconduct. The employer cannot be allowed to say that it was a colourable exercise of powers on his part. The employer said by termination order that the does not want to take disciplinary action. The same person the employer cannot be allowed to say that it is really a punishment and there was colourable exercise of powers on his part Thus, the termination of services were not by way of disciplinary action and the termination of services amounted to retrenchment.

The same reasoning is reiterated by the Labour Court in paragraph 22 of its award as under:

Thus the contention of second party that the termination of services of the three employees can be treated as disciplinary action cannot be accepted. An employer himself cannot say that simple termination of services was ordered in the termination order while it was actually punishment for misconduct. The employee can challenge an order, stating that it is really a punishment for misconduct. The employer who wants to take advantage of stating that it is a simple termination cannot be allowed to take advantage of stating it disciplinary action also. Employer cannot prove misconduct as reasons for termination to avoid the effects of saying unsatisfactory work as reason, which in itself does not mean misconduct.

The learned Single Judge up-held the decision of the Labour Court. It was held that the decision of the Division Bench of this Court in the case of M.P. Electricity Board, Jabalpur v. State Industrial Court, M.P. Indore and Ors. 1980 MPLJ 41, is no longer a good law in view of the decisions of the Supreme Court in the cases of L. Robert Disouza v. The Executive Engineer, Southern Railway and Anr. AIR 1982 SC 854 and Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, The learned Single Judge preferred to rely on a later decision of this Court in the case of Factory Manager, Central India Machinery MFG. Co. Ltd., Gwalior and Anr. v. Naresh Chandra Saxena and Ors. 1984 MPLJ 402. The conclusion of the learned Single Judge on the legal question which is for reconsideration before us is contained in paragraph 21 of his order, which is as under:

21. From the discussion aforesaid, the true position that emerges is that the management has no right to ask for any opportunity before the Labour Court to lead any fresh evidence if the services of the employees have been terminated without conducting any domestic enquiry in accordance with the provisions of Standing Orders and, therefore, the termination order results in retrenchment as defined u/s 2(00) of the Act if Section 25F has not been complied with by the

employer. Therefore, the plea as raised by the Petitioner in all these three petitions have no substance in the eye of law and hence it must be rejected.

The learned Counsel appearing for the employer Appellant here, assails the decision of the Labour Court and that of the learned Single Judge arguing that the reasonings contained therein proceed on misconception of the scope and legal effect of the relevant provisions contained in Section 2(00) and Section 25F, compared with those in Section 11A of the Industrial Disputes Act Heavy reliance has been placed on the decisions of the Supreme Court in the cases of *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, and *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, Reliance is also placed on the decisions of Madhya Pradesh High Court in the case of *M.P. Electricity Board, Jabalpur v. The State Industrial Court M.P. and Ors.* 1980 MPLJ 41 and that of *Lachman Das and Anr. v. Indian Express Newspaper Bombay Pvt. Ltd and Anr.* AIR 1977 Lab & IC 823.

In substance the contention on behalf of the employer is that where the employer, in an action initiated by the employee by challenging his termination of service, takes a plea that the order of termination was not innocuous but was as a measure of punishment, the employer cannot be precluded from leading evidence to prove before the Labour Court the misconduct alleged to have been committed by the employee. In other words the argument is that the employer cannot be prohibited to prove before the Labour Court that the termination of services of the employee was not by way of retrenchment but in fact as punitive action based on misconduct Attention of the Court was invited by the learned Counsel for the employer to its written statement filed before the Labour Court in which earliest available opportunity was sought for proving the alleged misconduct In support of the argument it was pointed out that the employee, in his statement of claims before the Labour Court had also alleged, against the employer victimization and unfair labour practice as the motive for termination. It was, therefore, not a case of illegal retrenchment, but was a case of punitive action of termination from service and the Labour Court committed a serious mistake in shutting out evidence sought to be led by the employer, in proof of alleged misconduct

Learned Counsel appearing for the employees, Respondent herein, in reply submitted that the very term of the orders of termination show that the services of the employees were dispensed with for "unsatisfactory work and conduct", which is not the same as alleging commission of any misconduct by the employees. The argument is that the action of the employer has to be judged on the basis of the terms of the order by which the employer terminated the services of the employee and not dehors it. It would be unjust to permit the employer to prove misconduct which was neither alleged in the order of termination nor enquired into in a domestic enquiry. According to the learned Counsel for the employee, permitting such a course to the employer to terminate services of the employee by an order simpliciter and then prove the misconduct

which was neither alleged nor enquired into in the domestic forum would give encouragement to unfair labour practice which would not be conducive to harmonious industrial relationship. In support of the above argument, it was pointed out that the service conditions of the employees are regulated by Madhya Pradesh Shops and Establishment Act, 1958 and the rules of 1959 framed thereunder (hereinafter referred to as the Act and the Rules). It is not in dispute that the cinema establishment of the employer is governed by the provisions of the above Act. The submission is that Section 58 of the Act requires issuance of one month's notice or payment of wages in lieu thereof as a pre-condition for dispensing with services of an employee for any "reasonable cause", which includes commission of a misconduct. Our attention is invited to and reliance is placed on Rule 14 of the Rules of 1959 which enumerates the categories of misconduct constituting a reasonable ground for dispensing with services of an employee under the "establishment" in accordance with Section 58(1) of the Act. It is submitted by the learned Counsel for the employees that unsatisfactory work and conduct attributed to the employees as a ground of termination or dispensing with their services, is not covered by any of the categories of misconducts enumerated in Rule 14 of the Rules. It is, therefore, contended that it is not open to the employer to claim an opportunity to prove the alleged conduct which is not a "misconduct" within the meaning of Rule 14 of the Rules. The action of the employer is said to be in contravention, both of the provisions of Section 58 of the Act read with Rule 14 of the Rules as also the mandatory provisions contained in Section 25F of the I.D. Act.

Learned Counsel appearing for the employees read and commented on the relevant parts of the following decisions cited by him at the Bar:

- (1) The State Bank of India Vs. Shri N. Sundara Money,
- (2) Mohan Lal Vs. Management of Bharat Electronics Ltd.,
- (3) I. Robert D" Souza v. Executive Engineer Southern Railway and Anr. AIR 1982 SC 854
- (4) Jagdish Mittra Sharma v. Jiyajee Rao Cotton Mills Ltd. Gwalior 1968 MPLJ 760
- (5) Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another,
- (6) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others,
- (7) Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory,
- (8) Union of India Vs. K.V. Jankiraman, etc. etc.,

It was submitted that all previous cases u/s 11A of the I.D. Act permitting an opportunity to an employer to prove misconduct even where no domestic enquiry was held by him, require a fresh consideration in the light of the enlarged

meaning given to the term "retrenchment" defined u/s 2(00) of the I.D. Act for the purposes of provisions contained in Section 25F of the said Act.

The main thrust of the arguments advanced by the learned Counsel on behalf of the employees is that from the impugned orders of termination it cannot be spelled out that the employer intended to take a disciplinary action against the employees. It is submitted that there was no charge-sheet issued and no step whatsoever taken in the direction of a punitive action by the employer. The action of the employer, therefore, does not fall in excepted category mentioned in the definition clause of the word "retrenchment" u/s 2(00) of the I.D. Act. According to the learned Counsel for the employees, the employer having chosen to pass an innocuous order of termination based on unsatisfactory conduct and work of the employees, cannot be permitted to turn round and seek, an opportunity in the Labour Court to prove any misconduct said to have been committed by the employees. The case is clearly a case of illegal retrenchment without payment of retrenchment compensation as required by Section 25F and without any notice or payment in lieu thereof as required by Section 58 of the Shops and Establishment Act, 1958.

Before deciding the legal question raised, it is necessary to critically examine various provisions of law which are applicable to the case, The employer-employee relationship is governed both by the State and Central enactments. The cinema theatre run by the employer being an "establishment" under the provisions of the Act, the provisions contained in Section 58(1) of the Act regulate the conditions of service of the employees working in it Section 58 of the Act was re-enacted by substitution, by Act No. 10 of 1982 with effect from 1.5.1982. The provisions of Section 58(1) as they originally stood, prior to its substitution, would apply to these cases because the orders of termination were passed in the year 1979. Section 58 of the Act at the relevant time, was as under:

58. Notice of dismissal. - (1) No employer shall dispense with the services of an employee who has been in his continuous employment for not less than three months, without giving such person at least thirty days" notice in writing or wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for misconduct as may be defined in the rules made by the Government in this behalf.

(2) No employee, who has been in continuous employment of an employer for not less than three months, shall leave the service of such employer without giving him at least one week"s notice in writing, and if he fails to give such notice, or gives notice of less than one week, he shall forfeit his wages for one week or for the number of days by which the notice falls short of one week, as the case may be.

(3) Any employee in respect of whom the provisions of Sub-section (1) are

contravened may apply to the nearest Magistrate of the first class or authority appointed under the Payment of Wages Act, 1936 (IV of 1936) and if such Magistrate or such authority is satisfied that such person has been" dismissed without sufficient cause, he may for the reasons to be recorded in writing, direct that the employer shall pay one month's wages as compensation to the person so dismissed and thereupon the employer shall pay the amount of compensation to such person.

(4) The amount of compensation payable under this section shall, for purposes of its recovery be deemed to be a fine imposed under this Act.

(5) No person who has been awarded compensation under this section shall be at liberty to bring any civil suit or proceeding in respect of the same claim and no civil Court shall entertain any such suit or proceedings.

It is to be noticed from the above provision that under Sub-section (1) of Section 58 of the Act the only requirement on the part of the employer, for dispensing with services of an employee by an order of termination simpliciter, required thirty days notice in writing or payment of wages in lieu thereof. In case such a notice was not given or payment in lieu thereof was not made, the remedy of the employee was to approach the Judicial Magistrate under Sub-section (3) of Section 58 of the Act for recovery of such wages in lieu of notice. Proviso to Sub-section (1) of Section 58 dispenses with giving of such notice or payment of wages in lieu thereof where the employer has dispensed with the services of the employee for a misconduct defined in the rules made by the Government. Punitive action of an employer against the employee does not require issuance of either a month's notice or payment of wages in lieu thereof. "Misconduct" for the purpose of Sub-section (1) of Section 58 of the Act includes the following acts and omissions mentioned in Rule 14 of the Rules framed under the Act. Rule 14 reads as under:

14. Misconduct. - For the purposes of the proviso to Sub-section (1) of Section 58, the following acts and omissions shall be treated as misconduct on the part of the employees.-

(a) wilful insubordinate to, or disobedience of, whether alone or in combination with others, any lawful and reasonable order of a superior;

(b) theft, fraud or dishonesty in connection with the employer's business or property;

(c) wilful damage to or loss of employer's goods or property;

(d) taking or giving bribes or any illegal gratification in connection with the employer's business;

(e) habitual absence without or absence without leave for more than ten days;

(f) habitual late attendance;

- (g) habitual breach of any law applicable to the establishment;
- (h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;
- (i) habitual negligence or neglect of work;
- (j) striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law.

The case of the employer as pleaded in his statement of claims filed before the Labour Court in the Industrial reference pending for adjudication before it, is that the services of the employees were dispensed with for one of the misconducts covered by Rule 14(a) to (j) of the Rules. It was, therefore, not necessary for the employer to serve either one month's notice or make payment of wages in lieu thereof as required by Sub-section (1) of Section 58 of the Act. The contention on behalf of the employer, therefore, is that the termination of the services of the employees is not in contravention of Sub-section (1) of Section 58 of the Act.

The newly substituted Section 58 by Amendment Act No. 10 of 1982 with effect from 1.5.1982 may be compared with the original Section 58 as it stood on the date the impugned action was taken. Under the newly substituted Section 58 (1) and the proviso thereunder, services of an employee of an "establishment" can be dispensed with without any notice or payment of wages in lieu thereof only for a reasonable cause. The proviso to newly substituted Section 58(1) of the Act permits the employer to dispense with the services of an employee without notice on a charge of misconduct, which should be supported by satisfactory evidence recorded during the enquiry held by the employer for the purpose. Section 58 (1) with proviso as substituted by Act No. 10 of 1982 with effect from 1.5.1982 is also reproduced hereunder for the purpose of comparing its provisions with the original Section 58(1) of the Act as it stood prior to its substitution:

58. Notice of dismissal. -- (1) No employer shall dispense with the services of an employee who has been employed for a period of three months or more except for a reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice:

Provided that such notice shall not be necessary if the services of such employees are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

(2) (a) The employee discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe.

(b) The appellate authority may, after giving notice in the prescribed manner to the employer and the employee dismiss the appeal or direct the re-instatement of the employee with or without wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall be final and binding on both the parties and be given effect to within such time as may be specified in the order of the appellate authority.

Having thus compared the original Section 58, as it stood on the date of the impugned action and as it stood after 1.5. 1982, we are clearly of the opinion that the original provision of Section 58 gave an option to the employer to terminate simpliciter services of an employee even on a charge of misconduct which he may not have enquired into in a domestic enquiry and it was open to him to support its action, if and when, it is challenged in a Court of law. There was no provision of appeal against the action of the employer as is now provided by substituted Section 58(2) of the Act. Under the unamended Section 58, the remedy to the employee was to resort to the ordinary remedy of raising a dispute u/s 10 of the I.D. Act. The impugned actions of termination of services of the employees, therefore, do not contravene the provisions of Section 58 of the Act as they stood on the date the actions were taken i.e. prior to 1.5.1982.

We shall now take up the question raised on behalf of the employees as to whether the impugned actions can be said to be in contravention of the provisions of Section 25F read with Section 2(00) of the I.D. Act Section 2(00) defines the word "retrenchment" as under:

2. Definition. - In this Act, unless there is anything repugnant in the subject or context:

(a)

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) "termination of the services of a workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or"(1)

(c) termination of the service of a workman on the ground of continued ill-health
(m)

It is to be noticed that the word "retrenchment" as defined in the I.D. Act has a wider legal meaning than purely literal one. The original concept of retrenchment was confined to discharge of surplus labour. The use of the expression "for any reason whatsoever" in the opening part of the definition clause in Section 2(oo) of the I.D. Act has been construed by the Supreme Court in the case of Mohan Lal (supra) to mean that every kind of termination of service, excepting by way of a punishment imposed, by way of voluntary retirement, as a result of nonrenewal of contract of employment or continued ill health covered by Sub-sections (a), (b), (bb) and (c) of Section 2(oo) would amount to "retrenchment", requiring fulfilment of the mandatory condition of payment of retrenchment compensation u/s 25F of the Act

The main controversy between the parties centres round the true meaning to be assigned to the expression "otherwise than as a punishment inflicted by way of disciplinary action" used in definition clause in Section 2(oo) of the I.D. Act. Bare reading of the definition clause makes it manifest that if the employer takes a disciplinary action against the employee and terminated his services for a misconduct, as measure of punishment, the termination would not fall within the definition of "retrenchment".

The argument of the learned Counsel for the employer is that in the present cases of the employees under consideration, although the misconduct was neither attributed nor enquired into, the termination was in fact by way of disciplinary action and the employer should have an opportunity to lead evidence in proof of the alleged mis-conduct in the Labour Court to support its action. On the other side, the argument on behalf of the employees is that since the employer has not chosen either to attribute mis-conduct or take steps towards disciplinary action against the employees, it is not open to the employer to seek any opportunity to prove the alleged misconduct in the Labour Court which not expressly stated in the orders of termination to be the foundation of its action. The submission on behalf of the employees is that the only cause of termination stated in the impugned orders is that their work and conduct was "unsatisfactory". It is not the same thing as saying that they had committed a misconduct. Learned Counsel for the employees argued that the action of the employer has to be judged from the terms of its own order of termination and no evidence aliunde - or outside it can be permitted to be adduced. In substance the contention is that if the action of the employer is colourable, in the sense, that although it intended to punish the employees, it had chosen to pass an innocuous order of termination simpliciter, the employer cannot be given any opportunity before the Labour Court to prove the alleged misconduct which was the motive behind the order of termination.

Having given of thoughtful consideration to the contentions advanced before us by the parties on the true meaning and effect of the expression "otherwise than as a punishment inflicted by way of disciplinary action" used in Section 2(oo) of the I.D. Act, we are of the opinion that the same cannot be given a restricted

meaning, as is sought to be assigned to it on behalf of the employees. As has been stated by us above, while examining the contention of the employees based on the contravention of Section 58 of the Act, we find that the provisions of that Act gave the employer an option to dispense with the services of the employees in his "establishment" for commission of misconduct even without holding any domestic enquiry. A mandatory requirement on the part of the employer, to hold a domestic enquiry for one of the enumerated misconducts came into force only in the year 1982 when Section 58 was re-enacted and substituted for the old one. The employer, at the time when it took the action of termination of services, was within its power to dispense with the services of the employees on the ground that they had committed misconduct. We are not prepared to accept that the action of the employer is to be judged only on the basis of the express terms contained in the order of termination. In our opinion, the action of the employer has to be judged, in addition to the terms contained in the termination order, on the basis of the facts and circumstances preceding and following it.

In the instant case, against the three employees, in its statement of claims submitted before the Labour Court, the employer has clearly come out with a case that each one of the three employees had committed such acts of indiscipline and mis- behaviour which fall in one of the categories of misconducts enumerated in Rule 14 of the Rule, quoted above. We do not find any prohibition under the provisions of the State or the Central Act operating against the employer from being permitted an opportunity to lead evidence on relevant facts and circumstances to prove that the employees had in fact committed specific act of misconduct and the action of termination of their services, was not "retrenchment" but was in fact termination by way of a disciplinary action. It is true that "unsatisfactory work and conduct" attributed to the employees in the orders of their termination is not the same thing as saying that they were guilty of misconduct, but in our opinion, the employer cannot be shut out from leading evidence to show what it actually meant by the use of the expression "unsatisfactory work and conduct". It is to be kept in mind that law contemplates passing of the orders of termination by employers who may be laymen, not knowing the intricacies and niceties of law. Nothing decisive, therefore, turns on the language of the termination order and the employer is not prohibited from disclosing to the Labour Court the real foundation or motive behind the order of termination and the justification for its action. The employer may choose to simply terminate the services by an innocuous order although the employee had committed a serious misconduct. It is not always necessary, unless otherwise required by any contract or statutory terms or condition of service, that the employer while terminating services of an employee must cast stigma on him in the order of termination and hold an enquiry before taking such adverse action. An innocuous order of termination founded on misconduct does lesser harm to the employee by not creating any hinderence or disqualification for him to seek employment else where. If, however, the employee in case of such termination, seeks to impugn the action of the employer on the ground that it was

unreasonable or against principles of natural justice, since no enquiry was held against him, it is open to him to question the same in the Labour Court where the Court will have opportunity to examine the validity of the action of the employer after permitting both the parties to lead necessary evidence in the matter, a course which is permissible under the provisions of Section 11A of the I.D. Act.

In construing the provisions of a legislation regulating the relations between the management and labour in industries, the aims and objects of such legislation cannot be lost sight of. It is obvious that the aims and objects of both the State and the Central enactments under consideration are to maintain industrial discipline, harmony and peace for proper industrial growth and along with it, to ensure fair, just humane treatment to the labourers employed therein, treating them as equal partners with the management in the running of the industry. Keeping the aforesaid object of the industrial and labour enactments in view, an employer should not be shut out from proving before the Labour Court that its order of termination did not amount to "retrenchment" as contemplated by Section 2(oo) of the I.D. Act, but was in fact a disciplinary action based on a misconduct which may or may not have been alleged or enquired into the domestic enquiry.

It has been settled finally by the decision of the Supreme Court in the case of Workman of Firestone Tyre & Rubber Co. of India (supra) that even after the introduction of Section 11A of the Industrial Disputes Act, specifying the powers of Labour Court and Tribunals in the matters of industrial adjudication, the employer can have an opportunity to prove the misconduct of an employee whose services have been discharged, even in a case where it had held no domestic enquiry. The Supreme Court specifically considered in the case of Workman of Firestone Tyre & Rubber Co. of India (supra) the scope and effect of proviso to Section 11A of the I.D. Act which enjoins upon the Labour Court and the Tribunal to place reliance "on material on record of the case" and not to take any fresh evidence in relation to the industrial matter before it. The above proviso to Section 11A of the I.D. Act has been construed by the Supreme Court, not to exclude or inhibit the earlier recognised right of the employer, prior to introduction to Section 11A, of being granted an opportunity to prove misconduct of an employee discharged or dismissed by it even if there was no domestic enquiry held whatsoever.

The contention raised on behalf of the employees, therefore, cannot be accepted that only such a disciplinary action is excluded from the purview of "retrenchment" defined u/s 2(oo) of the I.D. Act in which the employer had either issued a charge-sheet for the alleged misconduct or taken some overt act in the direction of punishing the employee. Admittedly, in this case neither a charge-sheet was issued nor the misconduct was mentioned in the order of termination, but that should not, in our opinion, preclude the employer from proving before the Labour Court that the conduct of the employees was such that

they should not either be reinstated in service or paid back wages and their discharge or termination be maintained. The apprehension is baseless that the employer, even if there was no misconduct and had simply retrenched the employee, might still get opportunity before the Labour Court to prove the misconduct which was never the foundation of the order nor was it in contemplation of the employer when he took the adverse action against the employee. In our view, where the employer simply terminates the services of an employee by innocuous order although there was misconduct, it does no greater harm to the employee than when it attributes misconduct casting stigma on him and removes him from service. It can be contemplated that the employer may have a motive to punish the employee for a misconduct and yet decides to discharge his services by innocuous order of termination simpliciter. We do not understand why the employer should be denied an opportunity when its action of termination simpliciter is challenged in Court of Law, to bring all relevant facts and circumstances before the Court to prove that the employee's work and conduct was such that the employer should not be compelled to continue with his employment and thus harm the interest of the industry. We are, therefore, not prepared to give a restricted meaning to the expression "otherwise than as a punishment inflicted by way of disciplinary action". The action of the employer will have to be judged by the Labour Court not only on the basis of the order of termination and provisions of Section 58 of the Act, but will have to be judged on all facts and circumstances which may come on record after full opportunity to lead evidence is granted to the parties. The Labour Court, on examination of the entire evidence led by the parties may come to a conclusion that there was no misconduct or the misconduct alleged and sought to be proved did not warrant the impugned action of termination. The employer should, however, have an opportunity to establish before the Labour Court by leading evidence that by terminating the services of the employees it had not, in fact and law, retrenched them within the meaning of Section 2(oo) of the I.D. Act, but had punished them for one of the misconducts enumerated in Rule 14 of the Rules. We are also of the view that mentioning of unsatisfactory work and conduct in the order of termination passed by the employer should not preclude it from proving before the Labour Court that in fact it was intended to mean a conduct which amounts to legal misconduct within the meaning of Rule 14 of the Rules.,

We have already pointed out above that there are facts pleaded in the statements of claim by the employer that prior to the passing of termination order one of the employees (namely Mohan Tiwari) was in fact proceeded against by issuance of a charge-sheet but action on it was kept in abeyance to permit him to improve. With regard to others, no charge sheet was issued but a disciplinary action was contemplated although it was dropped, at that time, to give them opportunity to improve. We do not find as to why the employer should not be permitted to prove that for the same past misconduct on which action was postponed or dropped and they were allowed to improve but they did not, the services of the employees were dispensed with which was a course permissible

under the then existing provisions of Section 58(1) of the Act.

Before we conclude on the above discussed legal aspect of the matter, we feel it necessary to make some comments with a view to clear the cloude which appears to have been created due to the so called apparent conflict between the various Division Bench decisions of this Court.

The learned Single Judge has made express observations in his order that the view taken in the case of M.P. Electricity Board, Jabalpur (supra) is no longer a good law in view of the later decision of the Supreme Court noted by him in his order. The learned Single Judge has instead preferred to rely on a Division Bench decision of this Court in the case of Factory Manager, Central India Machinery MFG. Co. Ltd, Gwalior and Anr. (supra). In paragraph 6 of this Division Bench decision it has been held that the earlier Division Bench decision of this Court in the case of Sunil Kumar Aztni and Ors. v. M.P.R.T. Corporation and Ors. 1980 MPLJ 471, has been rendered as no longer a good law in view of the later decisions of the Supreme Court giving a wider meaning to the word "retrenchment". We have carefully gone through the aforementioned Division Bench decisions of this Court, in the light of the observations made by the learned Single Judge in his order. In our considered view, none of the judgments of the Supreme Court cited in those decisions and before us takes any contrary view on the subject matter under consideration. We respectfully concur and fully approve the following statement of law made by the Division Bench in the case of MP. Electricity Board, Jabalpur (supra):

Retrenchment of an employee as defined u/s 2(oo) of the Industrial Disputes Act, may be for various reasons. In case of an ordinary rerenchment where there is no misconduct alleged against the employee, if provisions of Section 25F are not followed, the employee would normally be reinstated/The employer may, however, support the order of retrenchment on the ground of misconductand if the employer is able to lead evidence to prove it before the Labour Court, the retrenchment would be upheld and the employee would not be granted any relief. An employer is very often faced with dilemma whether to simply terminate the services of an employee or to hold a domestic enquiry against him and to punish him by an order of dismissal. An order of termination simpliciter is more favourable to the employee and, therefore, if an employer takes a benevolent attitude and instead of holding a domestic enquiry to punish the employee discharges him, the employer cannot be in a worse position than in what he would have been had he taken the step of holding a domestic enquiry and dismissing the employee. We do not find any reason why the employer should not be able to support an order of termination simpliciter on the ground of misconduct Reinstating in such cases and directing the employer to proceed against the employee by a domestic enquiry would only continue the industrial strife. The object of industrial adjudication is to put an end to industrial dispute as early as possible. By permitting employer to prove before the Labour Court that the termination is justified on the ground of misconduct, the industrial

dispute is brought to an end and the employee is given the benefit of an independent adjudication by the Labour Court without leaving him to the mercy of an adjudication in a domestic enquiry held by the employer. Indeed, in our opinion, the matter is squarely covered by propositions 5 and 7 laid down by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*,

In our considered view the decisions of the Division Benches in the cases of *Sunil Kumar Azmi and Ors. (supra)* and *Factory Manager, Central India Machinery MFG., Co. Ltd., Gwalior and Anr. (supra)* are distinguishable. In the aforesaid two Division Bench cases, the action of termination taken by the employer was based on Standing Order 11 of the Industrial Employment (Standing Orders) Rules, 1963, framed under the M.P. Industrial Employment (Standing Orders) Act, 1961. Under the Standing Order 11, even a permanent employee could be terminated on one month's notice or pay in lieu thereof and the only requirement on the part of the employer was to record in writing the reasons for termination and communicate the same to the employee. In the case of *Sunil Kumar Azmi and Ors. (supra)*, under Standing Order 11, the services of the employee were terminated simpliciter for unsatisfactory work resulting in loss of confidence. In such a situation it was held by the Division Bench that such termination of services did not amount to "retrenchment". This statement of law may require reconsideration in view of the larger meaning assigned by the Supreme Court to the word "retrenchment" to include "termination" for any reason whatsoever", including one for unsatisfactory work and loss of confidence, but excluding action taken by way of punishment. In the later decision of the Division Bench in the case of *Factory Manager, Central India Machinery MFG., Co. Ltd., Gwalior and Anr. (supra)* the Division Bench rightly noticed in paragraph 6 of the judgment the decisions of the Supreme Court on the subject for holding that action of termination under Standing Order 11 for inefficient or unsatisfactory work would amount to retrenchment within the meaning of Section 2(oo) of the I.D. Act. The ratio of the above two Division Bench decisions turns on the nature of the termination of the employees based on Standing Order 11 in those cases. Compared to them, the Division Bench decision in the case of *M.P. Electricity Board, Jabalpur (supra)* recognizes the right of the employer to prove misconduct even where it has taken action of simple termination under the Standing Order applicable to the industry but takes a plea before the Labour Court that the foundation of the order was misconduct and motive was to punish him.

From the ratio deduced by us from the above referred three Division Bench decisions of this Court a distinction is noticeable between the cases on the one hand where the order of simple termination is based on unsatisfactory or inefficient work and conduct or loss of confidence and on the other the cases where although the order of termination is innocuous and is stated to be for unsatisfactory work and conduct, but in fact the employer pleads that it was on the basis of misconduct for which he seeks opportunity to prove it before the

Labour Court. The Division Bench in the case of M.P.E.B., Jabalpur (supra), therefore, correctly stated the legal position mat in the latter case where the employer takes a plea that the foundation of the order of termination simpliciter was misconduct, he cannot be denied opportunity to prove the same in the Labour Court.

The last submission which now needs consideration is whether an opportunity to the employer to prove its case that it was not an illegal retrenchment but was an order of termination based on misconduct, was granted but not availed of by the employer in the Labour Court. Our attention was invited to the order-sheets of the Labour Court to point out that certain preliminary issues were framed by the Labour Court on which the employer in categorical terms expressed that he would not lead any evidence. The learned Counsel for the employees states that the perusal of Order-sheets clearly shows that opportunity to lead evidence was granted by the Labour Court, but that was not availed of by the employer and the same should not now be permitted to it The order-sheets of the Labour Court are not on record. From the record available with us we do not find that any such opportunity, as is claimed before us, to prove the misconduct, was expressly granted while trying the preliminary issues and was not availed of by the employer. The main order passed by the Labour Court jointly in the cases on its careful reading, goes to show that opportunity to prove misconduct although claimed by the employer, at the very first available opportunity, in its statements of claim, was expressly rejected by the Labour Court stating that looking to the nature of the action of termination taken by the employer, it was "retrenchment" and no opportunity can be granted to the employer to lead evidence.

In view of the discussion aforesaid, the Letters Patent Appeals filed by the employer deserve to be allowed and are hereby allowed. The impugned orders of the learned Single Judge dated 26.9.1984 in Relation to Anand Cinema, Jabalpur v. Mohan Tiwari and Ors. (supra), and those of the Labour Court dated 22.10.1982 in all the three cases are hereby setaside. The Labour Court is directed to refix the cases with a purpose to grant opportunity to the employer to lead such evidence as it wishes in proof of the alleged misconduct against the employee with a right to the employees to meet such evidence by leading evidence in rebuttal. The Labour Court after giving opportunity to the parties to lead evidence on the question of misconduct shall decide the cases afresh on the basis of such evidence, if any, led in the cases. In the circumstances of the case we leave the parties to bear their own costs of these appeal.