

(2003) 06 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2386 of 2001

Eveready Industries India Ltd. and Others

APPELLANT

Vs

Shri P.S. Parihar and Another

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Madhya Pradesh Shops and Establishments Act, 1958 — Section 58
Madhya Pradesh Shops and Establishments Rules, 1959 — Rule 14

Citation : (2003) 3 MPHT 257 : (2003) 4 MPLJ 24

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : Sandeep Aole, for the Appellant; P. Dubey, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 7-4-2001 passed by respondent No. 2 appellate authority under the M.P. Shops and Establishments Act, 1958 (hereinafter to be referred to as "the Act") by which respondent No. 1 P.S. Parihar has been reinstated in the service of the petitioner company.

It is not in dispute that respondent No. 1 P.S. Parihar was appointed by the petitioner Company on 26-2-1977 as a Stores Clerk. He was working at Jabalpur from 1-4-1991 as Territory Supervisor. He was posted as "customer service assistant" at his request because of his poor health. His services were terminated by order dated 11-12-1997. It was a simple discharge without casting any stigma. He was given one month's wages in lieu of notice as per terms of appointment and also as per Section 58(1) of the Act. He challenged the order of termination by filing an appeal u/s 58 (2) of the Act before appellate authority (the Assistant Labour Commissioner) on the ground that there was no reasonable cause for dispensing with his services. The appellate authority by the impugned

order directed his reinstatement in service with full back wages. The petitioner company is registered under the Act and its registration number is 2607/Jabalpur/C.E./69. It is an "establishment" under the Act.

The petitioners' case is that the respondent No. 1 was inefficient; his work was unsatisfactory; the quality of his work was very poor; he used to remain absent from duty and leave the head quarter without permission; he behaved in an indisciplined manner; he was not showing interest in the sales; in spite of repeated counselling he did not improve; the dealers were complaining against him; he was not completing even 10% of the job assigned to him; he was negligent and careless. These pleas were taken by petitioner-Company in the reply to the appeal of the respondent No. 1. The petitioner-Company filed 26 documents before the appellate authority and examined one witness to prove the same. According to the company the services of the respondent No. 1 were terminated for "reasonable cause". He was paid more than rupees one lac for heart surgery. He has been paid provident fund and gratuity as per rules. The respondent No. 1 was given light work on his request and even that he did not perform satisfactorily.

The case of the respondent No. 1 is that he was working honestly and efficiently and he was given letters of appreciation of his work. According to him no enquiry was held against him and the alleged misconducts were not proved against him before the appellate authority and, therefore, the order passed by the appellate authority cannot be interfered with by this Court.

The learned Counsel for both the sides have been heard. Section 58 of the Act provides as under :--

"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 reinstatement 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."

In the present case admittedly the respondent No. 1 has been given one month's wages in lieu of notice. The proviso to Sub-section (1) of Section 58 comes into play when no notice or wages in lieu of the notice are given. According to the proviso enquiry into charges of misconduct is required when no notice is given for dispensing with the services. This is clear from the words "such notice shall not be necessary" preceding the requirement of enquiry on charges of misconduct. If one month's notice is given or wages in lieu of the notice are given then the employer has to show only "reasonable cause" for dispensing with the services. The requirement of showing reasonable cause is not equivalent to proof of any specific or positive misconduct enumerated in Rule 14 of the M.P. Shops and Establishment Rules, 1959 framed under the Act. The reasonable cause for dispensing with the services may be overall unsatisfactory performance and any specific misconduct need not be proved.

The only question which fell for determination by the appellate authority was whether there was reasonable cause in dispensing with the services of the respondent No. 1. Both sides produced documents. The petitioner-Company produced one witness and the respondent No. 1 examined himself and he was cross-examined on behalf of the Company. The documentary and oral evidence has been discussed by the appellate authority in its order from page 4 to page 9 (paragraph numbers should be given in the order - the appellate authority should note it for future). Various documents were exhibited. The crucial documents produced by the company are Ex. D-4 to Ex. D-20 from the year 1989 to 1997. These documents go to show the work and conduct of the respondent No. 1 while discharging his duties. The appellate authority has not attached due importance to these documents in its quest for ascertainment whether there was reasonable cause in dispensing with the services of the petitioner. After dealing with the documentary evidence the appellate authority has discarded these documents on the ground that the respondent No. 1 did not work under the officer who was examined as a witness and therefore he has no personal or direct knowledge regarding the quality of work of the respondent No. 1 and the order of reinstatement is based on the fact that no domestic inquiry on charges of misconduct was held. This was not the proper approach. As already stated no domestic inquiry was necessary. The law does not require proof of any misconduct when notice or wages in lieu of the notice are paid. What was required was to see whether there was reasonable cause for dispensing with the services of the petitioner.

The evidence on record has been scrutinised by this Court. There is letter dated 9-5-1989 (Ex. P-7) of the Company in which it is stated that the respondent No. 1 while working at Shuklaganj closed the depot on 8-5-1989 without any

intimation to the Company. In the reply the respondent No. 1 admitted that he kept the depot closed on that date and gave the explanation that he did so because of the illness of his wife and his own illness. He assured the company that this kind of "mistake" would not be repeated in future. Again there is letter dated 28-11-1989 of the Company addressed to the respondent No. 1 which shows that he remained absent for a long time. He was at Bhopal whereas his duty was at Kanpur. On 7-1-1994 the respondent No. 1 was asked to submit explanation for non-submission of DTRs and ERs and in his reply of the same date he has written "I am extremely sorry for not submitting my reports for the month of December, 1993. Positively it was my serious mistake, I assure you that, in future, you will get my report in time". The letter dated 28-10-1996 of the respondent No. 1 shows that he remained absent for long time because of his "open heart surgery" and the company paid all the medical bills. He requested for light job. Then there is letter dated 20-6-1997 (Ex. D-20) of the company. This letter has also been produced by the respondent No. 1 as Ex. P-9. It is stated in this letter, "we regret to advise that despite repeated counselling, you have dealt with the customer service function in such a manner that it has resulted in various irregularities in handling the trade. This was pointed out to you on 1-6-1997 in our counselling session with you. In this session you expressed your inability to deal with this assignment and requested for a further light desk job. We had pointed out to you that there is no such light job available with us which can accommodate your request. Despite our counselling you have not improved your performance. Under the circumstances, we once again advise you, in your own interest, to attend to Customer Services job diligently as per our guidelines given to you and to our satisfaction. In case you fail to attend to this job to our satisfaction in next fortnight's time, we shall have no other option but to take appropriate action as deemed fit in your case".

There are "Annual Performance Appraisal" reports in respect of the respondent No. 1 marked as Ex. D-14 to Ex. D-16 in which he has been rated as "marginal" and the details show that his work is not satisfactory leading to poor sales performance. The latest report is : "considering the health problem, employee was given an opportunity to work in office and handle customer services where also, he did not take interest & performed badly, which damaged the image of the branch in the eyes of the customers".

In view of the material discussed above the inference is irresistible that there was reasonable cause for dispensing with the services of the respondent No. 1. The petitioner company showed all sympathy and spent a huge amount in providing medical treatment to him but the company could not continue to retain him as he had become a "dead wood". The respondent No. 1 was not working efficiently and his appraisal reports show that there were no signs of improvement. Therefore, the termination of the services cannot be said to be without reasonable cause. The company was justified in "weeding out the worthless" who had lost utility for the Company. The observations of the Supreme Court in B.P. Singh v. State of Bihar (2001) 2 SCC 305, dealing with the

case of compulsory retirement of an employee are fully attracted to the present case. The order of the appellate authority suffers from total perversity and it must be set aside.

The petition is allowed. The impugned order dated 7-4-2001 of the appellate authority (Annexure P-1) by which the respondent No. 1 has been reinstated in service with full back wages is quashed.