
(1993) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Misc Petition No. 357 of 1982

Gendalal

APPELLANT

Vs

Factory Manager (Chemical) and Others

RESPONDENT

Date of Decision : 06-12-1993

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 61

Citation : (1995) 1 LLJ 433

Hon'ble Judges : M.W. De, J;A.G. Qureshi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.G. Qureshi, J.—The petitioner by this petition under Article 227 of the Constitution of India challenges the order passed on January 28, 1982 by the Member Judge of the Industrial Court, M.P. Indore in Revision No. 464/MPJR/1979, setting aside the order passed by the Labour Court, Ujjain for reinstatement and backwages in a case u/s 61 of the M.P. Industrial Relations Act, read with Standing Orders No. 12 (i) P and 12(1) q.

2. The facts leading to this petition in short are that the petitioner was employed with respondent No. 1, The Gwalior Rayon and Silk Manufacturing (Weaving) Co. Ltd. (Chemical Division), Nagda as a permanent watchman. During the period of emergency the police wanted to know the whereabouts of another absconding employee Heeralal who was known to the petitioner. Therefore, the petitioner was arrested on September 10, 1976 u/s 151 Cr. P.C. and sent to jail. The petitioner sent application for leave to respondent No. 1 from Jail and also sent a letter to his father requesting him to apply for leave to respondent No. 1. Accordingly the father of the petitioner had also sent letter for grant of leave to respondent No. 1. On September 21, 1976 the petitioner was released on bail and on September 22, 1976 he reported for duty, but he was not allowed to join the duty till September 29, 1976 when a charge-sheet was given to him. The first charge was that he remained absent without leave on January 4, 1976, April 1,

1976, July 4, 1976, July 28, 1976 and August 4, 1976 and thus committed misconduct under Standing Order No. 12 (i) P. The second charge was for remaining absent without leave for more than 10 days from September 10, 1976 onwards and thus committing misconduct under Standing Order 12 (i)q. He filed a reply to the charge-sheet and after an enquiry the respondent No. 1 held both the charges proved against the petitioner and vide order dated October 18, 1976 discharged the petitioner from service.

3. The petitioner approached the respondent No. 1 u/s 31(3) of the M.P.I.R. Act, but in vain. He, therefore, filed an application before the Labour Court, Ujjain which was registered as Case No. 256 of 1977 challenging the enquiry and requesting the relief of setting aside the dismissal and payment of back wages. The Labour Court found that the enquiry was defective and vide order dated July 3, 1978 set aside the enquiry and afforded an opportunity to respondent No. 1 to prove the charge. Against this order respondent No. 1 filed Revision No. 458/MPIP/78 in the Industrial Court. The Industrial Court held that the revision was not maintainable and rejected the same with, an observation that the respondent may reagitate this matter in a revision petition directed against the final order.

4. Thereafter the respondent No. 1 led evidence in support of the chargesheet and examined witnesses. The petitioner also examined himself in defence. After recording the evidence, the Labour Court, Ujjain vide its order dated July 27, 1979 held that the charges are not proved with a further finding that the discharge of the petitioner was mala fide. The petitioner was found to be earning Rs. 140/- to Rs. 160/- per month on an average. Therefore, he was reinstated with back wages at the rate of Rs. 125/- per month from the date of dismissal till reinstatement. The final order was passed on July 27, 1979.

5. Aggrieved by the order of the Labour Court dated July 27, 1979 the respondent No. 1 filed Revision No. 464/MPIR/1979 before the Industrial Court, M.P, Indore. The Industrial Court, vide its order dated January 28, 1982 set aside the Labour Court's order. Hence this petition.

6. The grievance of the petitioner is that the Industrial Court while hearing the revision has actually acted as an appellate Court, which is not permissible under the law. Even the evidence has not been appreciated properly by the Industrial Court and the findings are against the record. The Industrial Court-also failed to consider the fact that the domestic enquiry was set aside by the Labour Court and has wrongly held that the Labour Court could not set aside the enquiry. The question of mala fide was not considered at all.

7. On the other hand the petition has been resisted on the ground that although the application for leave was sent by the petitioner, but the said application did not reach the respondent No. 1 in time. It was received on September 22, 1976. The father of the petitioner had of course sent a post-card for grant of leave to the petitioner, but the application was for grant of leave for an indefinite period. Therefore, the application was rejected. It has been stated that the decision of

the Labour Court was perverse and, therefore, the Industrial Court has jurisdiction to quash the finding of the Labour Court even on facts. The matter has not been decided as an appellate Court but as a revisional Court. The Industrial Court has rightly held that the application of the petitioner was not received in time. Although the leave application was sent from jail on September 17, 1976, it was received actually on September 22, 1976. Therefore, it was not received within the period of ten days. The allegation of mala fide has also been decided.

8. The learned counsel for the petitioner Shri Shastri has strenuously argued that the petitioner was not a free agent when he sent the application from jail and, therefore, it is not a case of wilful absence from duty without obtaining leave. Actually the conduct of the petitioner shows that he was conscientious, therefore, he in addition to sending an application from jail within the time also got an application sent through his father which was wrongly rejected. It has also been argued that the learned Tribunal wrongly held that the Labour Court has erred in quashing the domestic enquiry. Therefore, the order of the Tribunal be quashed.

9. On the other hand learned counsel for the petitioner respondent No. 1 Shri Chaphekar has strenuously argued that the order of the Industrial Court does not suffer from any illegality. The order is based on proper appreciation of the facts and the order of the Labour Court has been quashed because it was found to be perverse. The Industrial Court is competent to do so while exercising revisional powers over the Labour Court.

10. After considering the arguments of the learned counsel of both the parties we are of the opinion that this petition should be allowed. It is not disputed before us that the petitioner remained absent on July 4, 1976, July 28, 1976, August 4, 1976 and January 4, 1976. The petitioner remained absent without taking leave from the Management. This fact has been found proved by both the courts below. But this misconduct would fall within Standard Standing Order No. 12 (i) q, according to which such an absence is a minor misconduct. The Labour Court has held that this misconduct was waived because he was already warned by the authorities to apply for leave before remaining absent and the warning was sufficient to hold that the petitioner was punished for his misconduct. The learned Member, Industrial Tribunal, however, held that the words used "samjhaya gaya" would not amount to a warning and, therefore, the Labour Court has erred in holding that this misconduct was waived after the advice given to the workman for future. In our opinion the misconduct on this point is minor. At the most it would call for a punishment of censure or warning which was given to the workman although not in that language. However, such a warning may be recorded in his record and that will be a sufficient punishment for that purpose. Therefore, we find no reason to disagree with the finding of the Labour Court on this point. The learned Member Judge had tried to take a serious view in the matter which is not called for in the circumstances because it is manifest that no timely notice was given to the petitioner after his three days absence

independently after the commission of the alleged misconduct, but these charges have been added along with the charge of major misconduct.

11. As regards the major misconduct the petitioner has been charged with unauthorised absence from duty for more than 10 days consecutively. In this respect also the facts are undisputed that the petitioner was arrested by the police on September 10, 1976 and, therefore, he remained absent. Within the period of 10 days he sent an application from jail on September 17, 1976 but it could not reach the management from jail before September 22, 1976. Therefore, according to the management the absence was of 10 consecutive days without grant of any leave. It is also admitted that the father of the petitioner had also sent an application for leave on behalf of his son within ten days and it was received by the Management, but the Management rejected that application in view of the fact that no period of leave was mentioned in that. This shows that the petitioner was vigilant in making an application for grant of leave within ten days of his absence and, therefore he sent an application from jail and also through his father out of which one application was also received by the Management, but it was rejected on technical ground. The conduct of the petitioner shows that he was not negligent in making a prayer for grant of leave and he had no intention of remaining absent without obtaining leave. Actually when he was taken into custody he was not a free agent and he was prevented due to sufficient cause from making an application to the Management for grant of leave. In such circumstances the view taken by the Labour Court is reasonable. The explanation given by the petitioner is highly plausible and shall appear to be just to a reasonable man. Therefore, it is not a case of wilful misconduct for which the petitioner could have been punished. The learned Tribunal, therefore, has erred in taking a view different than the view taken by the Labour Court in the matter mainly on the technical ground of wrongly quashing the domestic enquiry. Actually the evidence pertaining to the absence was led before the Presiding Officer by the Management and it was more or less the same and the facts were also undisputed. Therefore, in our opinion, the legality of the Labour Court order could not be assailed in the revision petition and the finding reversing the order of the Labour Court could not have been passed in the facts and circumstances of the case.

12. In the result we hold that the learned Member Judge, Industrial Tribunal has erred in quashing the order of the Labour Court. Consequently the order passed by the Industrial Court dated January 28, 1982 is quashed and that of the Labour Court Ujjain dated July 27, 1979 is restored. The petitioner shall also be entitled to get costs of this petition. Counsel's Fee Rs. 200/-Security cost, if deposited by the petitioner, shall be refunded to him after verification.