

**(1988) 10 MP CK 0018**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 1998 of 1984**

Hemraj

APPELLANT

Vs

State Industrial Court and Others

RESPONDENT

**Date of Decision :** 04-10-1988

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2, 25F  
Madhya Pradesh Industrial Relations Act, 1960 — Section 62(1)

**Citation :** (1989) 58 FLR 768 : (1994) 3 LLJ 327

**Hon'ble Judges :** P.C. Pathak, J; B.C. Verma, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

B.C. Varma, J.—The petitioner was Mechanic-II in the employment of the Madhya Pradesh State Road Transport Corporation and in the year 1970 was posted at Seoni Depot. He applied for leave for two days i.e... 15.1.1974 and 16.1.1974. He overstayed the leave and joined only on 29.1.1974. During this period he did not apply for extension of leave. On the same day i.e. on 29.1.1974 his services were dispensed with in terms of Clause 8(e) of the Standard Standing Orders vide order dated 29.1.1974. Since the order was issued by the Depot Manager, he filed an appeal before the Divisional Manager which was rejected on 6.9.1974. He again preferred an appeal to the General Manager. This was also rejected on 21.1.1978. He then went on making fruitless representations before he gave notice on 2.6.1980. As no settlement was arrived at he filed an application u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 before the Labour Court. A preliminary objection was taken by the employer i.e. M.P. State Road Transport Corporation that was decided in favour of the petitioner and the application was held within time being filed by 3 months of the last approach. After the full written statement was filed by the respondent, M.P. State Road Transport Corporation, issues were framed and the application was rejected by the Labour Court vide order dated 28.1.1982 (Annexure-D). It was held that the petitioner voluntarily abandoned the services. The same view was taken by the

Appellate Court i.e. Industrial Court and it rejected the appeal vide order dated 27.2.1984 (Annexure-F). It is these two orders dated 28.1.1982 (Annexure-D) and dated 27.2.1984 (Annexure-F) which are under challenge in this petition under Article 226 of the Constitution of India in this petition.

2. Shri A.G. Dhande, appearing for the Madhya Pradesh State Road Transport Corporation first urged that the Courts below were wrong in holding that the application was within time. It was urged that the matter shall be governed by the amendment introduced by M.P. Industrial Relations (Amendment) Ordinance No. 27 of 1976 which was brought into force from July 30, 1976. This ordinance amended Section 31(3) as also Section 62(1) of the M.P. Industrial Relations Act. Second proviso has been added to Section 31(3) of the Act whereby no notice has been dispensed with. Section 62(1) as it stood amended by that ordinance provided for period of one year for approaching the Labour Court questioning any dispensation of service. The contention is that the application which was admittedly made beyond one year from the date of this amendment was clearly barred by limitation. Such an argument has been rejected by the Division Bench of this Court in *Som Singh v. M.P. State Road Transport Corporation* 1980 M.P.L.J. 211. This decision has been followed by this Court in *Dwarka Singh Thakur v. The Industrial Court, M.P. Indore* and Ors. M.P. No. 923 of 1982 decided on 1.8.1983. The view taken is that where the cause of action has accrued prior to the date of amendment as in the present case the law as stood prior to the amendment so introduced by the amendment shall apply. We could not be persuaded to take a different view. Following this decision it appears clear that the petitioner could approach the Labour Court within three months of the last approach/notice which admittedly was issued on 21.6.1980. That being so, it has been rightly held that the application was maintainable and was made within the prescribed period of limitation.

3. Shri A.S. Gaharwar, learned counsel for the petitioner urged that even if the petitioner's termination is in terms of Clause 8(e) of the Standard Standing Orders which amounted to retrenchment and since admittedly the provisions of Section 25F of the Industrial Disputes Act have not been followed in the present case, the termination is void and the petitioner would be entitled to be directed for reinstatement. Clause 8(e) is as under:

"8. Condition and procedure in applying for, and authority which may grant leave and holidays.

(e) An employee remaining absent beyond the period of leave originally granted or subsequently extended shall be liable to lose his lien on his post and shall be deemed to have left the service from the date of his unauthorised absence unless he returns within ten days of the expiry of the sanctioned leave and/or explains to the satisfaction of the manager or the officer authorised by him, his inability to resume immediately on the expiry of his leave. An employee who so loses his lien but reports for duty within 30 days of the expiry of his leave shall be kept as badli if he so desires and his name shall be entered in the badli register".

4. This Court at least in two cases held that such termination of employment in terms of such Standard Standing Orders is valid (*Madhya Pradesh Electricity Board, Jabalpur v. State Industrial Court, M.P. Indore and Ors.*, 1980 M.P.L.J. 41 and in *Baijnath Shivprasad v. State Industrial Court, Indore and Ors.* 1980 M.P.L.J. 354. However, in a later decision in *Harshdeo v. Management of Western Coalfields Ltd. and Ors.* L.P.A. 10 of 1981 decided on 7.12.1982, this view has been departed from in the light of the later decision of the Supreme Court in *L. Robert D'Souza v. The Executive Engineer, Southern Railway and Anr.* 1982 (44) F.L.R. 250. It has now been held that such termination even in terms of the Standing Orders would be retrenchment in terms of Section 25F. It has been held that if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; "(iii) retrenchment 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; (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo) of the I.D. Act. It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment.

5. Following this decision the Division Bench in *Harshdeo's* case held that there can be no doubt that even in case of termination brought out under the Standard Standing Orders Section 25F would be attractive. In the present case also it was not disputed that the petitioner was a permanent mechanic-II. Termination of his services, would, therefore, amount to retrenchment. Admittedly, since the provisions of Section 25F were not followed, the termination must be held to be void (See *Factory Manager, Central Machinery Mfg. Co. Ltd., Gwalior v. Naresh Chandra Saxena* 1984 M.P.L.J. 402).

6. The result of the aforesaid discussion is that the petition must be allowed. The order dated 28.1.1982 (Annexure-D) passed by the Labour Court and the order dated 27.2.1984 (Annexure-F) passed by the Industrial Court are hereby quashed. The petitioner is directed to be reinstated with full back wages. There shall be no order as to costs. Security amount be refunded to the petitioner.