

(1968) 07 MP CK 0002
In the Madhya Pradesh High Court

Jagdish Mitra Sharma

APPELLANT

Vs

Jiyajee Rao Cotton Mills Ltd. and Others

RESPONDENT

Date of Decision : 30-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1972) ILR (MP) 890 : (1969) JLJ 219 : (1970) 1 LLJ 129 : (1968) 13 MPLJ 760

Hon'ble Judges : P.V. Dixit, C.J.;G.P. Singh, J

Bench : Division Bench

Judgement

P.V. Dixit, C.J.

This order will govern the disposal of Miscellaneous Petition No. 68 of 1967.

The circumstances in which these two applications under Articles 226 and 227 of the Constitution have been filed are that Jagdish Mitra Sharma, the petitioner in Miscellaneous Petition No. 48 of 1967, was employed as a textile designing tracer by the Jiyajee Rao Cotton Mills, Ltd., Gwalior (hereinafter referred to as the mills), the petitioner in Miscellaneous Petition No. 68 of 1967. The employment commenced on 5 July 1963 and was made subject to certain terms and conditions agreed to by the parties in writing. One of the conditions was that Jagdish Mitra Sharma would be on probation " till six months "; the other was that during the period of probation the employee's services would be liable to termination at any time without notice. On 3 May 1965 the factory manager of the mills addressed a letter to Sharma terminating his services with effect from 23 May 1965 saying that his services were not needed and adding that his " services were not found satisfactory."

The employee after approaching the mills, filed an application u/s 31(3) of the Madhya Pradesh. Industrial Relations Act, 1960, before the labour court, Gwalior, challenging the legality of the order of the employer terminating his services. The labour court found that Sharma became a permanent employee ; and that the

order of the mills terminating his services was " arbitrary and improper " inasmuch as his services were terminated contrary to the standing orders without giving to the employee one month's notice or paying him wages for one month in lieu of notice. The presiding Judge of the labour court farther held that even if under the standing orders

unsatisfactory service" did not constitute misconduct, yet an enquiry by the employer was necessary before terminating Sharma's services. He observed:

The employer has proved the mis-conduct before this Court also. The employer had not made an enquiry and it was open for him to prove the misconduct but instead he has merely relied on the argument that applicant was a probationer and termination is valid.

Then he made the observation that-

I do not deem it necessary to allow the employer to prove that applicant's work was unsatisfactory, because it was for the employer to have willingly offered to prove the work to be unsatisfactory when there was no enquiry at all. The employer had during the whole trial not tried to prove the work to be unsatisfactory.

On this view, the labour court set aside the order of termination of Sharma's services and made a direction for his reinstatement and payment of full back-wages.

The mills then preferred a revision petition before the industrial court against the decision of the labour court. The learned Judge of the industrial court did not think it necessary to decide whether Sharma was a permanent employee or on probation at the time his service were terminated as, in his view, in either case the employer should have held an enquiry into the " misconduct" alleged against him or proved the misconduct in the labour court. He then observed:

The labour court has given a finding that there was no proof of any unsatisfactory work. Under standing Order 11 the petitioner is bound to give the reasons for terminating the services of the employee. Once it is held that there is no proof of unsatisfactory work, then the employer has to give some reasons for terminating the service of the employee and in absence of such reasons the order of termination would be bad and illegal. Therefore, there is no force in the arguments advanced on behalf of the petitioner-company. The question whether the work of the non-applicant was satisfactory or not is a question of fact which having been decided against the petitioner company cannot be challenged in a revision petition u/s 66 of the Act.

Accordingly, the employer's revision petition for restoring the order terminating Sharma's services was dismissed. But the industrial court modified the order of the labour court by setting aside the direction in regard to reinstatement in service and ordered the mills to pay to Sharma compensation according to the principles indicated in the order dismissing the revision petition.

Both the employee, Sharma and the employer, mills have now come up to this Court under Articles 226 and 227 of the Constitution. The employee seeks restoration of the direction of the labour court with regard to his reinstatement in service. The employer prays that the decisions of the industrial court and the labour court be quashed and It be declared that Sharma's services were validly terminated.

Having heard learned Counsel for the parties, we have reached the conclusion that the decisions of the industrial cenrte and the labour court must be quashed, and the matter must be remitted to the labour court, Gwalior, for disposal of the employee's application u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1980, after holding an enquiry into the question whether the termination of the employee's services by the mills was in bona fide exercise of the power of the employer to terminate services for unsatisfactory work of the employee, or whether the order of termination was mala fide and for ulterior motives. At the outset It must be stated that the employee joined the service of the mills under a contract providing inter alia that the employment could be terminated by either party by giving one calendar month's notice and that during the period of probation the employee's services were liable to be terminated without notice and his employment was on a probationary period of six months. But the standard standing orders made under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, are applicable to the employer, mills. under the standing orders, a permanent employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise. The standing orders define a " probationer " as " an employee who is provisionally employed to fill a clear vacancy, and who has not completed six months' satisfactory service in the aggregate." Standing Order 11, which deals with the termination of employment, requires that when the employment of a permanent employee is to be terminated, he shall be given one month's notice or shall be paid wages for one month in lieu of notice. It also provides that no employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his service. Clause (6) of standing Order 11 lays down that the reason for termination of service shall be recorded in writing and shall be communicated to the employee. The position, therefore, is that whereas if the employee is regarded as a permanent employee, then under the contract of employment his services could be terminated by the employer by giving one month's notice and if he is treated as a probationer, then his services could be terminated at any time without notice. Standing Order 11 prescribes different requirements for the termination of a permanent employee and a probationer. Under that standing order, the services of a permanent employee cannot be terminated without giving him one month's notice or paying him one month's wages in lieu of notice; a probationer is not entitled to any such notice or wages. But reasons for the termination of service have to be recorded and have to be communicated, whether he is a permanent employee or a probationer employee. There is thus a conflict between standing Order 11 and

the terms of the contract of employment of Sharma. The question, therefore, arises whether the terms of the standing order prevail over the terms of the contract. An examination of the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, clearly shows that the standing orders embody the terms and conditions of service in a statutory form and are binding on the parties, that is, the employer and the employee ; and that if a contract between the employer and the employee provides for matters expressly covered by the standing orders, then the standing orders override the terms of the contract in regard to those matters.

Now, coming to an examination of the material provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, the Act is one enacted

to provide for rules defining with sufficient precision in certain matters the conditions of employment of employees in undertakings in the State of Madhya Pradesh.

Section 3(b) of the Act defines " standard standing orders " as " rules framed u/s 21 relating to matters set out in the schedule." In the matters enumerated in the schedule, " termination of employment otherwise than by way of punishment, and the notice thereof to be given to the employers and employees " has been included. Section 6 gives to the State Government the power to apply, by notification, standard standing orders to such class of undertakings and from such is may be specified therein. Sections 7 and 8 deal with amendments which the employer and employees may by agreement wish to make in the standard standing orders applied to their undertaking, and certification of the amendments. By Section 13 it is provided that if any question arises as to the application or interpretation of a standing order, the question can be referred to a labour court for decision by an employer or an employee. The labour court has to decide the question after hearing the parties, and its decision is final and binding on the parties. An employer who modifies the standing orders otherwise than in accordance with the provisions of the Act is liable to punishment u/s 17(1) of the Act. Section 19 says that no oral evidence having the effect of adding to or otherwise varying or contradicting standing orders shall be admitted in any court. The foregoing summary of the relevant provisions of the Act clearly shows that the standing orders are statutory rules embodying the terms and conditions of service, and that they cannot be ignored, modified, varied or departed from by any agreement or contract between the employer and the employee in regard to any matter specifically contained in the standing orders. The standing orders being statutory rules embodying the relevant terms and conditions of service, there can be no freedom to the parties governed by the standing orders to contract out of the terms of the standing orders. Indeed if such freedom had been left to the parties, then the whole object of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, and of the standard standing orders made thereunder would be totally defeated. 8. The view that certified standing orders represent the relevant terms and conditions in a statutory form is amply

supported by the decision of the Supreme Court in *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, . In that case, the Supreme Court examined the provisions of the Industrial Employment (Standing Orders) Act, 1946, which are substantially similar to those contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, and after emphasizing the object of that Act the Supreme Court said:

... the Act has made relevant provisions for making standing orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees.

It has been further observed in that case-

The object of the Act, as we have already seen, was to require the employers to make the conditions of employment precise and definite and the Act ultimately intended to prescribe these conditions in the form of standing orders so that what used to be governed by a contract here to be/ore would now be governed by the statutory standing orders."

[Italicizing is ours]

So also in *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, , the Supreme Court held that certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties. Again, in *Workmen of Dewan Tea Estate and Others Vs. The Management*, it was held that standing orders which have been certified under the Industrial Employment (Standing Orders) Act, 1946, became part of the statutory terms and conditions of service between the employer and his employees. The same view has been taken by the Gujarat High Court in *Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu*, following the decision of the Supreme Court in *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, . In *Behar Journals Ltd. Vs. Ali Hasan and Another*, , it was observed that the certified standing orders of a concern have statutory force, and it is not open to the employer or the workman to enter into a contract overriding the statutory contract as embodied in the certified standing orders. The contrary view expressed in *J.K. Cotton Manufacturers Ltd., Kanpur Vs. J.N. Tewari and Others*, is not in accord with the decision of the Supreme court in the afore-stated cases.

The terms and conditions of the employee Sharma's services are, therefore, regulated by the standard standing orders made under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, and it is with reference to those standing order that the legality of the order of termination of Sharma's services has to be tested. Now, standing Order 2 only gives a classification of employees. According to that classification, a permanent employee is one who has completed six months" satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, and a probationer is an employee who is provisionally employed to fill a clear vacancy and who has not completed six months" satisfactory service in the aggregate. But in determining whether an

employee is a permanent employee or a probationer, it has to be found as a fact whether the employee completed six months' service and whether the employer in fact found his services satisfactory and treated him as a permanent employee or continued to treat him as a probationer because of his unsatisfactory service. Here, the labour court found that Sharma had become a permanent employee without permitting the employer to show that his work was found to be unsatisfactory, and yet observing that the employer did not prove that Sharma's work was unsatisfactory. This finding reached by the labour court, has, therefore, no basis at all. The employee Sharma was appointed on probation for six months; if, therefore, the employer did not find his work satisfactory and accept him as a permanent employee, then the employee continued to be a probationer even after the period of six months [see *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*,], The question whether Sharma became a permanent employee or continued to be a probationer was not irrelevant as the learned Judge of the industrial court seemed to think. As is clear from standing Order 11, if Sharma became a permanent employee, then his services could not be terminated without giving him one month's notice or paying him wages for one month in lieu of notice; if, on the other hand, he continued to be a probationer, then his services could be terminated without any such notice or wages.

Both the labour court and the industrial court totally misapprehended the purpose of an enquiry into the reason given by the mills for terminating Sharma's services, namely, that his work was not found satisfactory, and entered into a futile discussion on the question whether "unsatisfactory work," which was not a misconduct for disciplinary action under standing Order 12, was nonetheless "misconduct." The labour court failed to notice that whereas standing Order 11 deals with termination of employees otherwise than by way of punishment, standing Order 12 deals with disciplinary action for misconduct and prescribes a special procedure for imposing any of the punishments for major or minor misconduct. "Unsatisfactory work" may not constitute "misconduct" falling under standing Order 12; yet it is open to the employer to terminate the services of an employee on that ground just as on the ground of any other infirmity in the employee. When an employee's services are terminated because of any infirmity in him, the termination is not by way of punishment. An enquiry into the question whether Sharma's work was found by the employer satisfactory or unsatisfactory was necessary, not because "unsatisfactory work" constituted "misconduct" or the termination of Sharma's services was by way of punishment, but because of the complaint of Sharma that the termination of his service by the mills for alleged unsatisfactory work was mala fide and for ulterior motives. In Para. 5 of the application to the labour court u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1960, It was stated by Sharma that-

The alleged allegation of unsatisfactory work is improper, illegal, arbitrary and amounts to victimization on account of the active participation of the applicant in the lawful activities of the union. Despite the fact that the applicant was a

permanent employee, his appointment in the termination has been illegally shown as temporary. It is very strange that on the one hand the applicant has been rewarded with increment for hard and sincere work and on the other hand, the applicant has been sacked on the fake and cooked up allegation of unsatisfactory work. The entire action is self contradictory. The applicant is a young man and has always been eager to work hard, honestly. It is further strange that in all this long duration of service, the applicant has not been given any warning whatsoever.

This statement of the employee was overlooked by the labour court as well as by the industrial court. It was in the context of these statements of the employee Sharma that an enquiry into the question whether Sharma's work was really found to be un-satisfactory by the mills was necessary for reaching tin conclusion whether his termination of services was mala flde, or amounted to victimization or unfair labour practice or was so capricious or unreasonable as to lead to the inference that it was passed for ulterior motives and not in bona fide exercise of the powers conferred by standing Order 11. The labour court's approach to the matter was altogether erroneous; it failed to give any direction to the employee to lead evidence to support the allegations made by him is Para. 5 of his application u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 and it also prevented the employer, mills from giving any evidence to show that Sharma's work was really unsatisfactory and that It was for that reason and none else that his services were terminated. The failure of the labour court to hold a proper enquiry altogether vitiates its conclusion, upheld by the industrial court, that Sharma's services were terminated illegally and arbitrarily.

11, For these reasons, the decision dated 3 January 1967 of the industrial court and the decision dated 16 August; 1966 of the labour court, Gwalier, are both quashed. The labour court is directed to dispose of Jagdish Mitra Sharma's application u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1960, after holding an enquiry in the light of this order. In the circum-stances of the case, we leave the parties to bear their own costs of both the petitions. The outstanding amount of security deposit shall be refunded to the petitioner in each case.