

(1987) 10 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 532 of 1986

Manager, Central India Flour Mills

APPELLANT

Vs

Mohd Ishaq Sagir and Another

RESPONDENT

Date of Decision : 30-10-1987

Acts Referred:

Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 12(1)
Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 — Rule 12,
12(3)
Madhya Pradesh Industrial Relations Act, 1960 — Section 107A

Citation : (1994) 3 LLJ 205 : (1988) MPLJ 274

Hon'ble Judges : Ram Pal Singh, J;B.C. Verma, J

Bench : Division Bench

Advocate : Vijay Gupta, for the Appellant; S.D. Shrivastava, for the Respondent

Judgement

Ram pal Singh, J.

By this petition the petitioner challenges the orders Annexures P-2 and P-3, respectively passed by the Labour Court and Industrial Court, on 3.5.1983 and 29.5.1985.

Petitioner is the Manager of the factory where respondent No. 1 was employed at the material point and was working as Roll-man-cum-Mukaddam. Shri N.P. Bhatnagar is an Electrical Engineer and Manager of the factory and was overall in-charge of the works. On 18.12.1978 at or about 10.45 a.m. Shri Bhatnagar directed a worker Ramadhar to do a particular job and one worker Lotu Kesari of grinding section, was also directed by him to help Ramadhar. At 11.15 a.m. when Shri Bhatnagar was proceeding to Rolls section of the factory, it is alleged that respondent No. 1 stopped him and started showering dirty and filthy abuses of mother and sister upon him and also threw threats of life and limb. The threat was that at noon time when he is at the gate Shri Bhatnagar will be beaten badly. It is also alleged that respondent No. 1, to execute his threat called some persons of labour union, friendly to him, to be present at the gate at 2.30 p.m.

Shri Bhatnagar, immediately reported the incident to his superior officer. At 2.30 p.m. respondent No. 1 was allegedly seen at the gate with some persons. Respondent No. 1 was subsequently chargesheeted for his misconduct and a regular departmental enquiry was held under Rule 12(4) of M.P. Industrial Employment (Standing Orders) Rules, 1963. The Inquiry Officer found respondent No. 1 guilty of disorderly conduct and held that he has committed major misconduct during his employment. According to the Enquiry Officer respondent No. 1 was found to be guilty of major misconduct covered by the Standard Standing Order 12(1)(f). Respondent No.1 when found guilty, by way of punishment he was dismissed from employment in accordance with the provisions of Rule 12(3)(b)(vi).

Aggrieved by this dismissal order respondent No. 1 filed an application u/s 31 of the M.P. Industrial Relations Act of 1960, before respondent No. 2, the Labour Court of Bhopal and claimed inter alia, his reinstatement with back wages. Petitioner on notice appeared before respondent No. 2 and contested the proceedings and raised several objections. Respondent No.2 after concluding the hearing, handed over its judgments (Annexure P-2) findings as recorded by respondent No. 2 are summarised below :-

(i) Application of respondent No. 1 u/s 31 of the M.P. Industrial Relation Act was maintainable.

(ii)The enquiry conducted by the Inquiry Officer of the factory was neither illegal nor improper.

(iii) As the departmental enquiry was found to be legal and proper it is now not necessary to state again that charges of misconduct were found proved on merits against respondent No. 1.

(iv) As relief the respondent No. 1 was directed to be reinstated with half back wages.

Petitioner by way of appeal, after being aggrieved by the judgment of respondent No. 2, preferred an appeal before the Industrial Court of M.P., Indore, which was dismissed by judgment Annexure P-3. In this judgment findings of respondent No. 2 were confirmed and the appeal of the petitioner was dismissed. In Annexure P-3 it was observed that departmental enquiry cannot be set aside because most of the facts alleged were admitted by the respondent No. 1. In para 7 of the impugned judgment the respondent No. 3, accepted the finding of major misconduct on the part of respondent No. 1 to be correct and concluded that filthy abuses of mother and sister were hurled at Shri Bhatnagar by respondent No. 1 and evidence in this regard, given during enquiry, is reliable. In para 8 of Annexure P-3 the Industrial Court concluded that the latter part of the incident i.e. calling persons at the gate at 2.30 p.m. by respondent No. 1 is also reliable but the persons called were union workers and respondent No. 1 was himself a labour union leader. In para 9 of the impugned judgment, respondent No. 3 concluded that filthy abuses and threats were hurled by respondent No. 1

in the heat of passion. The misconduct on the part of respondent No. 1 was personal misconduct not affecting the employees of the factory in general. It further concluded that punishment of dismissal for this misconduct was harsh and oppressive to respondent No. 1, hence alteration in this punishment by respondent No. 2 was justifiable. Petitioner, therefore, having no remedy, now challenges Annexures P-2 and P-3, under Articles 226/227 of the Constitution.

We are not at all impressed by the contention of the learned counsel for the petitioner that the factory was not employing, more than 100 workers and hence the provisions of M.P. Industrial Relations, Act, 1960, are not attracted. Respondents Nos. 2 and 3, both have negated this contention and both have concluded that from evidence on record it is proved on facts that this factory is governed by the provisions of the M.P. Industrial Relations Act. We, therefore, reject this contention of the petitioner.

M.P. Industrial Employment (Standing Orders) Act, 1961, received the assent of the President on 9.7.1961 and was published in M.P. Gazette on 28.7.1961. This Act was passed for providing rules defining with sufficient precision in certain matters dealing with the conditions of the employees in industrial undertaking in the State of M.P. Under this Act, M.P. Govt. u/s 21(2) of the Act, framed rules called Standing Orders. These Standing Orders came into force from 22nd March. These orders provide classification of employees, their tickets, recruitment, manner of intimating the employees, period and hours of work, holidays, pay days, wage rates, shift working, attendance and late coming, leave and holidays, provisions for requirement to enter premises by certain gates and liability to search, closures, temporary stoppages and lay off and termination of employment and notice thereof to be given to employer and employee. Rule 12(1) deals with disciplinary action for major misconduct and Sub-rule (2) deals with minor misconduct. Sub-rule 3(b) deals with the punishment for major misconduct and prescribes that following punishment may be awarded to the delinquent employees. They are respectively, censure, fine suspension for 4 days or 7 days, withholding increment for 1 year, demotion or dismissal. Sub-rule (4) of Rule 12 prescribes the procedure for domestic enquiry before punishment is awarded to delinquent employee. Provisions in Section 13 deal with the manner and means in which an employee can get redress against unfair treatment or wrongful eviction by employer.

These rules govern all the industrial undertakings in the State of M.P. They have been framed with the intent that the employers and the employees of the undertakings may act in the ways and means provided in these rules. Section 12 of the M.P. Industrial Employment (Standing Orders) Rules, 1963, is, for convenience being quoted:-

"12. Disciplinary action for misconduct-

(1) The following acts or omissions on the part of an employee shall amount to a major misconduct-

- (a) Conviction by a court of law for an offence involving moral turpitude;
- (b) Theft, fraud or dishonesty in connection with the business or property of the undertaking;
- (c) Taking or giving bribe or any illegal gratification;
- (d) Wilful disobedience of any lawful or reasonable order of a superior involving safety of any person or property or other matter having an adverse effect upon the work of wages of another employee;
- (e) Gambling within the premises of the undertaking;
- (f) Drunkenness, riotous or disorderly behaviour, during working hours at the undertaking or conduct endangering the life or safety of any person, intimidation, physical duress or any act subversive of discipline".....

The proved major misconduct of respondent No. 1 is clearly covered by provisions of 12(f) of the Rules. The conduct of respondent No. 1 was riotous and disorderly behaviour during working hours at the undertaking. Respondent No. 1 was also found guilty of the conduct endangering the life and safety of Shri Bhatnagar. The misconduct of respondent No. 1 during working hours in the undertaking was also subversive of discipline. These concurrent findings are of domestic enquiry Annexures P-2 and P-3. The punishment for major misconduct is provided in Rule 12(3)(b). According to this provision the delinquent employee, if found guilty of major misconduct, can be punished either with censure, fine, suspension for 4 days or 7 days, withholding of increment for 1 year, demotion or dismissal. The Enquiry Officer in the facts and circumstances of the case chose to impose a penalty of dismissal. In Rule 12(3)(c) it is provided that while awarding punishment the management shall take into account the gravity of the misconduct, the previous record of the employee, if any, and any other extenuating or aggravating circumstances. To hurl abuses which are filthy, during working hours, upon the manager of the factory, by an employee, is certainly an aggravating circumstance and this major misconduct can easily be termed as very grave. Such misconduct on the part of respondent No. 1, who was a Mukaddam and in-charge of a section of the factory, was definitely not a personal misconduct but was a major misconduct committed in the presence of others. It was clearly a public misconduct and the enquiry officer was justified in taking a serious view of the matter. Major misconduct on the part of an employee is likely to endanger industrial peace and discipline.

Industrial discipline is as vital and important in a factory as production is because both are inter-linked. Indiscipline in an industry and that too by a section in-charge is likely to give way to labour indiscipline and may retard the growth and production of an industry which is a national loss. Discipline in a factory can be maintained only when the acts of indiscipline are viewed gravely and appropriate and proportionate punishment is meted out to the delinquent. Soft glove treatment to the delinquents, either in a factory or in an educational

institutions, is likely to result in chaos, ultimately harming and damaging beyond repair the national discipline. That will result in tearing away the soft fibres of character. We have no hesitation in concluding that the punishment awarded to respondent No. 1 by the domestic enquiry was in accordance with the provisions of the rules. Reinstatement with half back wages is not the punishment which can be awarded under Rule 12(3)(b) if the delinquent is found guilty. Respondents Nos.2 and 3 have gone beyond the provisions of the rules, when though like domestic enquiry they found respondent No. 1 guilty of major misconduct yet awarded the punishment which is not provided in Rule 12(3)(b). Respondent No. 3 has gone a step further than respondent No. 2 and erroneously held that the act of indiscipline was not a public misconduct. Filthy abuses of mother and sister hurled by an employee upon the manager of the factory, during working hours, in presence of other employees can never be termed as private misconduct. In Rule 12 no such term finds place as "private misconduct" or "public misconduct". According to Rules a misconduct can be major or minor but not private or public. A serious view should have been taken by respondents Nos. 2 and 3 in their judgments once they arrived at the conclusion that respondent No. 1 was guilty of major misconduct. There was no ground available to them to alter the punishment awarded by the enquiry officer, when Rule 12 does not provide for a punishment, which they chose to impose, after altering the sentence imposed by the Inquiry Officer. Respondents Nos.2 and 3 cannot substitute the provisions of rules with their own views. Once the Rules are framed they have to be followed in word and spirit. The specific provisions of Rules can neither be substituted nor subverted.

The contention of the learned counsel for respondent No. 1, that respondents Nos. 2 and 3 could interfere with the nature of punishment imposed upon respondent No. 1 because they had power to do so u/s 107-A of the M.P. Industrial Relations Act, 1960. This contention deserves outright rejection because Section 107-A of the Act was incorporated by amendment published in M.P. Rajpatra on 13.1.1982. The major misconduct in this case was committed on 18.12.1978 and the provisions of Section 107-A cannot be applied retrospectively.

In the result this petition succeeds and is allowed. Annexures P-2 and P-3 passed respectively by respondents Nos.2 and 3 are quashed and the punishment of dismissal imposed by the domestic enquiry upon respondent No. 1 is maintained. There shall be no order as to costs. Security amount, if any, shall be refunded