

(1974) 10 BOM CK 0013

In the Bombay High Court

Case No : Miscellaneous Petition No. 725 of 1969

Messrs. Victory Flask Co. Pvt. Ltd.

APPELLANT

Vs

Govind Bhagoji Borje

RESPONDENT

Date of Decision : 14-10-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33

Citation : (1976) 78 BOMLR 597 : (1977) MhLj 137

Hon'ble Judges : Lentin, J

Bench : Single Bench

Judgement

Lentin, J.—This is a petition under Article 226 of the Constitution for setting aside the order dated August 19, 1969 passed by the Industrial Tribunal, viz. respondent No. 2.

2. The petitioners are a private limited company, registered under the Indian Companies Act, having their factory at Govandi, Bombay. Till April 1, 1969, respondent No. 1 was in the employment of the petitioners. On December 28, 1968, the respondent No. 1 was charge-sheeted by the petitioners under Standing Orders 24(k) and 24(I), on the ground that on November 21, 1968 at about 8.30 p.m. after working hours, just outside the petitioners' factory, respondent No. 1 and one Shantaram Kamble assaulted a co-worker one Babu Jadhav, while Jadhav was on his way home along the railway lines towards Govandi Railway Station. The inquiry against respondent No. 1 thereafter proceeded which culminated in the Director of the petitioners passing an order of dismissal against respondent No. 1 on April 1, 1969. On the same day, viz. April 1, 1969, the petitioners filed an application before the Industrial Tribunal, u/s 33(2)(b) of the Industrial Disputes Act, 1947, for according approval of the action of dismissal. "Without going into the merits of the matter, by its order dated August 19, 1969, the Tribunal rejected the petitioners' application on the ground that Standing Order 24(1) was not applicable as the assault was committed by respondent No. 1 outside the premises of the establishment. It is

against this order dated August 19, 1969 that the petitioners have filed the present petition.

3. In life affidavit-in-reply to this petition, respondent No. 1 admits having assaulted the co-worker Babu Jadhav but contends that he did so at a considerable distance away from the factory premises.

4. It was conceded by the petitioners before the Tribunal, as was conceded before me, that Standing Order 24(k) would have no application. Hence the only Standing Order that need be construed is Standing Order 24(1). It reads as under:

24. The following acts and omissions on the part of a workman shall amount to misconduct:-

(I) commission of any act subversive of discipline or good behaviour on the premises of the establishment;

5. For the purpose of this petition, it is unnecessary to enter into the controversy whether the assault took place just outside the factory premises as alleged by the petitioners, or "at a considerable distance away" from the factory premises as contended by respondent No. 1 in his affidavit-in-reply. It is common ground that the incident did not take place on the premises of the establishment. In view thereof, the point which arises for determination is, whether Standing Order 24(1) would be applicable.

6. On a plain reading of Standing Order 24(1), I have no hesitation in coming to the conclusion that the words "on the premises of the establishment", must be read in conjunction with the words immediately preceding, viz. "subversive of discipline or good behaviour" and not with the opening words, "commission of any act". It is not that the act need be committed on the premises of the establishment, but that the result of such an act would be subversive of discipline or good behaviour on the premises of the establishment. The commission of the act has no nexus or connection with the premises of the establishment. It is the effect or result of that act, viz. indiscipline or bad behaviour which must make, itself manifest on the premises of the establishment.

7. The commission of the act, be it on the premises of the establishment or elsewhere, must have some rational connection with the employment of the assailant and the victim, which would have its reflection on discipline and good behaviour on the premises of the establishment. In such a case, once the question of discipline or good behaviour on the premises arises, it makes no difference whether the act itself was committed on the premises of the establishment or elsewhere. To come to any other conclusion would lead to a result both illogical and anomalous. For instance, can it be contended with justification that if an act is done by an employee on the premises of the establishment, the provisions of Standing Order 24(1) would be attracted, whereas if the very same act is done one step outside the premises, the

provisions of Standing Order 24(I) would not be attracted? Such a contention, if upheld, would be contrary to the plain reading of Standing Order 24(1) and would defeat the very purpose thereof.

8. Hence on the construction placed by me on Standing Order 24(1), the impugned order must be set aside. The rule is therefore made absolute with no order as to costs. The appropriate authority shall decide the matter on merits within four months from to-day.