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**(2014) 07 MP CK 0347**  
**In the Madhya Pradesh High Court**  
**Case No : W.A. No. 1327/2012**

M.P.S.R.T.C., Bhopal and Others

APPELLANT

Vs

Ram Sevak Tiwari and Others

RESPONDENT

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**Date of Decision :** 16-07-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

**Citation :** (2015) 1 MPJR 66

**Hon'ble Judges :** Rajendra Menon, J;Alok Verma, J

**Bench :** Division Bench

**Advocate :** Uttam Maheshwari, Advocates for the Appellant; P.R. Bhawe, Senior Advocate and Bhanu Pratap Yadav, Advocates for the Respondent

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## Judgement

Rajendra Menon, J.—Keeping in view the short controversy involved in the matter, the case is being heard and matter is decided. Calling in question tenability of an order dated 21.9.2012 passed by the Writ Court in Writ Petition No. 1294/2009 directing for reinstating the respondent employee after quashing the order of termination Annexure P/10 and for payment of 50% of the back wages for the period of absence, this writ appeal has been filed by the Corporation under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam 2005.

2. Facts in bring goes to show that respondent Ram Sewak Tiwari was working in the establishment of Madhya Pradesh Road Transport Corporation and he was removed from the services. Therefore, the matter came up for consideration to this Court in W.P. No. 4222/1997. The said writ petition was referred for consideration before the Lok Adalat and on 30.10.2004, an agreement was entered into by the parties in the Lok Adalat, whereby respondent-employee was granted fresh offer of appointment and his claim for back wages was given up. Consequently, respondent employee was appointed afresh on 8.6.2005 and it was his case before the Writ Court that after the appointment he tendered an

application for taking voluntary retirement. However, immediately thereafter he moved an application for withdrawal of his earlier application for voluntary retirement and wanted to continue in services, but this was not permitted by the Corporation. Therefore, Writ Petition No. 1294/2009 was filed before this Court. The original prayer made in the writ petition was that his application for voluntary retirement may be permitted to be withdrawn. The Corporation filed a detailed reply stating that the respondent was unauthorizedly absent from duty for a period of more than 10 days. In terms of the Standard Standing Order formulated under the M.P. Industrial Employment Rules, 1963, action was taken against him, notices were issued, charge sheet was filed and thereafter he was removed from the services. In the return, three documents were filed Annexure R/1, R/2 and R/3 namely the notices issued to the employee dated 28.11.2008 Annexure R/1, Charge sheet dated 17.12.2008 Annexure R/2 and notice dated 29.12.2008 asking the employee to appear for duty Annexure R/3 and Annexure R/4 a letter issued directing him to appear before the Enquiry Officer. It was the case of Corporation in the writ petition that as the employee did not appear, the enquiry was held ex-parte, he was removed from the services under the Industrial Employment Standing Act, therefore, the employee should take recourse to the remedy available under the Industrial law for approaching the Labour Court.

3. Challenge to the order of removal was made on the ground that no enquiry was conducted in his presence, he was never noticed, no charge sheet was served on him, no proceedings in accordance to the principle of natural justice was held before the impugned action was taken. The learned Writ Court found that ex-parte enquiry has been conducted as per the return, but documents are not available on record to establish the same and therefore, disbelieving the assertion of the respondent-employee the impugned order was passed.

4. Shri Uttam Maheshwari, learned counsel for the appellants canvassed the same grounds which were raised before learned Writ Court and tried to emphasize that action was taken against the respondent-employee on the basis of procedure laid down under the Rules. It was also stated that documents Annexure R/1 to R/4 indicate that the enquiry was conducted ex-parte and then action was taken against him, therefore, the impugned order passed by the learned Writ Court is unsustainable.

5. Shri P.R. Bhave, learned Senior counsel refuted the aforesaid and submitted that no enquiry was conducted in terms of the Standard Standing Order. The documents of enquiry have not been submitted along with the report of the Enquiry Officer and other documents pertaining to the enquiry have also not been filed. It is said that except the four documents Annexure R/1 to R/4, no such documents were filed to show that a proper enquiry was conducted. Therefore, no error was committed by the learned Writ Court in disbelieving the statement of Corporation.

6. That apart, Shri Bhave, learned senior counsel submits that there was total

violation of principles of natural justice and action taken is patently illegal. The exercise of jurisdiction under Article 226 of the Constitution of India is permissible. Learned Senior Counsel further argued that no interference in the impugned order is called for.

7. We have heard learned counsel for the parties and perused the record.

8. As far as availability of alternate remedy under the Industrial Law is concerned, even if a statutory alternate remedy is available, still the Writ Court can exercise its discretion of interference in a petition under Article 226/227 of the Constitution if there is breach of statutory rules and principles of natural justice are violated. That being so, in this present case, both these irregularities are available i.e. enquiry has not been conducted strictly in accordance to the requirement of Standard Standing Order and even the principles of natural justice is violated. Accordingly, we are not inclined to allow this appeal on the ground of existence of alternate remedy and the Writ Court in doing so, has not committed any error.

9. Admittedly, this is a case where the employee concerned was unauthorizedly absent for a period of more than 10 days. This amounts to misconduct and it is for this misconduct that action was taken. When action is taken by way of punishment for the misconduct committed by an employee, enquiry in accordance to the requirement of Standing Order 12(4) is required to be undertaken and removal or termination from service has to be done after a detailed charge sheet is issued, enquiry officer appointed, report of the enquiry is received and all other formalities complied. In this case, there is no documents or material available on record to suggest that the procedure as contemplated is followed. Even though four documents is noted to Annexure R/1 to R/4 to say that enquiry is conducted, there is no proof with regard to issuance of notice to the employee concerned and its acceptance by the employee. That apart, these documents are only charge sheet and notices issued. There is no record with regard to the proceedings of the enquiry, evidence and material collected in the enquiry, finding of the enquiry officer and proof with regard to service of notice on the employee concerned and his deliberate absence from the enquiry inspite of notice. Learned Writ Court has found that the department has failed to establish by filing proper documents, conduct of the enquiry even ex-parte in nature. It is because of this that the finding recorded is that no enquiry is conducted. This is a reasonable finding based on due appreciation of the evidence and material available on record and we see no reason to interfere into the same. Accordingly, the appeal is dismissed.