

(1979) 08 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 274 of 1970

Nathuram Namdeo

APPELLANT

Vs

State Industrial Court, Indore and others

RESPONDENT

Date of Decision : 07-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 2(2)

Road Transport Corporations Act, 1950 — Section 45

Citation : (1979) 08 MP CK 0025

Hon'ble Judges : G.P. Singh, C.J.; U.N. Bhachawat, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; N.S. Kale, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.—The petitioner was appointed as a bus conductor by the Madhya Pradesh State Road Transport Corporation on probation for a period of one month on 29th February 1976. The period of probation was extended by two months with effect from 28th March 1976. The period of probation was further extended by three months with effect from 28th May 25 1976. The petitioner's services were terminated by order dated 10th July 1976. The petitioner moved the Labour Court challenging the order of termination. The Corporation relied upon Regulation 51 of the Employees Service Regulations made u/s 45 of the Road Transport Corporations Act, 1950, to support the order of termination. The Corporation also contended that the petitioner's services were terminated during the period of probation on the ground of unsatisfactory work. The Corporation produced the reports (Exs. D-1 to D-3) regarding the work of the petitioner. By order dated 22nd June 1978, the Labour Court allowed the application of the petitioner on the ground that if a person is kept on probation for a particular period, then he should be given full opportunity to prove to be worthy for retention in the job, otherwise there would be no use and purpose for fixing the probation period while appointing a man on probation. The Court further said

that even assuming that the work of the petitioner was unsatisfactory, the same should have been brought to the knowledge of the petitioner so that he could improve his work before the expiry of the period of probation. On this reasoning, the Court held that the termination of the petitioner's employment before the expiry of the period of probation was a mala fide act and amounted to victimisation and unfair labour practice. The Court observed that it was not necessary for it to discuss whether the work of the petitioner was satisfactory or not because in either case the petitioner's services could not have been terminated prior to the expiry of the period of probation. In a revision filed by the Corporation, the Industrial Court by order dated 16th March 1979 came to the conclusion that the termination of the petitioner's employment was well within the power of the Corporation under Regulation 51 (b). The Industrial Court also observed that it was not necessary to bring to the notice of the petitioner the reports about his unsatisfactory work. The Industrial Court was satisfied that in view of the reports (Exs. D-1 to D-3) the petitioner's work was unsatisfactory and his services could be terminated before the expiry of the period of probation. It is this order of the Industrial Court which is challenged by this petition under Article 226 of the Constitution.

2 The learned counsel for the petitioner submitted that Regulation 51 could not be given effect to against the petitioner as the subject of termination of employment is governed by Standing Orders certified under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961. The learned counsel in this connection referred to Standing Orders 11 and 12. It was submitted by the learned counsel that the petitioner's services could be terminated before the expiry of the period of probation on the ground of misconduct under Standing Order 12 after holding an enquiry or under Standing Order 11 (a) after giving reasons for the termination of service as required by Standing Order 11 (b); and as none of these courses was adopted by the Corporation, the order of termination was invalid. The learned counsel for the Corporation, on the other hand, submitted that Standing Order 11 was limited to permanent employees and that there was no specific provision in the Standing Orders for termination of services of a probationer and, therefore, Regulation 51 could be applied to the petitioner.

3. Now, the petitioner was clearly not a permanent employee as he had not completed six months' satisfactory service as required by the definition of "permanent employee" given in Standing Order 2(i). The petitioner was a "probationer" as defined in Standing Order 2(iii). The petitioner's services were not terminated for any misconduct under Standing Order 12 and no domestic enquiry was held against the petitioner. It is, therefore, not necessary for us to refer to Standing Order 12. The question, however, is whether the petitioner's services could be terminated under Standing Order 11 which reads as follows:

11. Termination of employment and the notice thereof to be given by employer and employee.

(a) 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. No employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his service.

(b) The reason for the termination of service shall be recorded in writing and shall be communicated to the employee unless such communication may, in the opinion of the manager, directly or indirectly lay the company or the manager or the person signing the communication open to civil or criminal proceedings at the instance of the employee.

(c) Any permanent employee desirous of leaving the employment shall give one month's notice to his departmental officer stating the reason for which he is leaving but if he so requires he may be relieved earlier than the date on which the period of notice expires.

(d) No notice shall be necessary for the discontinuance of the employment of a permanent seasonal employee on the expiry of the season, but he shall have a lien on his post at the commencement of the next season.

4. The heading of Standing Order 11 describes the subject-matter covered by it in the words: "Termination of employment and the notice thereof to be given by employer and employee". The heading is thus not restricted to permanent employees. Further, the last sentence of clause (a)--"No employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his service"--clearly postulates and impliedly authorises the termination of employment of non-permanent employees without any notice. Similarly, clause (b) which provides that "the reason for the termination of service shall be recorded in writing and shall be communicated to the employee" is not restricted to permanent employees and applies to all categories of employees. We are, therefore, of opinion that the services of all non-permanent employees which will include probationers and other temporary employees can be terminated without notice under clause (a) of Standing Order 11, but it is necessary that the reasons for the termination of service should be recorded in writing as required by clause (b) of the same Standing Order. Regulation 51 which authorises the Corporation to terminate the services of a probationer during or at the end of the period of probation does not require that reasons should be recorded in the order of termination. To this extent there is an inconsistency between the requirement of Standing Order 11 and Regulation 51. Standing Order 11 would, therefore, prevail over Regulation 51 on the principle of the Full Bench ruling in *M.P.S.R.T.C. Vs. Ramchandra and Others*, . On this conclusion we do not find it to be necessary in this case to consider the wider argument addressed by the learned counsel for the petitioner on the authority of the *U.P. State Electricity Board v. Hari Shanker Jain* A I R 1979 S C 65 that as the Regulations have not been notified u/s 2(2) of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, they cannot at all apply irrespective of any question of inconsistency or repugnancy with the Standing Orders.

5. As standing Order 11 prevailed over Regulation 51, the petitioner's termination of employment can be supported only under the former. It is admitted that no reasons were recorded in the order of termination. The order of termination thus did not comply with the requirement of Standing Order 11 (b) and was for this reason invalid. The requirement of giving reasons is to ensure that the employer does not act in an arbitrary manner. This is an important safeguard for the protection of employees and noncompliance of it makes the order invalid. The question then is whether the petitioner was entitled to reinstatement simply because no reasons were given in the order of termination and the order was invalid on this ground. Now it is well settled that even when an employee's services are terminated on the ground of misconduct without holding an enquiry as required by Standing Order 12 or on the basis of a defective enquiry, the employee is not straightway entitled to reinstatement and the employer has to be given opportunity to prove the misconduct and justify the order of termination by producing evidence and it is only when he fails to prove the misconduct that the Labour Court can order reinstatement of the employee. There is no reason why the same principle should not apply when the failure by the employer is to give the reasons as required by Standing Order 11 (b). The Labour Court should in such cases allow the employer to disclose the reasons for termination of employment; and if on the reasons disclosed by the employer the Labour Court is satisfied that the reasons were valid and that there was no colourable exercise of the power, or victimisation or unfair labour practice, it will have to hold the order of termination as valid. In this connection, two principles have to be kept in mind : (i) Industrial adjudication can go behind the form of the order of termination to find out whether it is a case of colourable exercise of power, victimisation or unfair labour practice, see *L. Michael and Another Vs. Johnson Pumps Ltd.*, and other cases referred to therein; and (ii) Standing Orders 11 and 12 confer independent powers on the employer and neither should be so construed so as to emasculate the other or to render it ineffective and, therefore, a bona fide order of termination of employment which is not founded on misconduct and is based on unsatisfactory service record of the employee cannot be held to be punitive in nature and beyond the scope of Standing Order 11 : see *The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others*,

6. It is in the light of these principles that it is to be seen whether the petitioner was entitled to reinstatement. The Corporation supported the order of termination on the ground of unsatisfactory work of the petitioner and produced three reports (Exs. D-1 to D-3) regarding his unsatisfactory work during probation. The Labour Court refused to examine whether the petitioner's work was unsatisfactory or not because in its opinion on either view the petitioner's services could not be terminated prior to the expiry of probation period. The Labour Court also inferred victimisation, mala fides and unfair labour practice on the ground that the petitioner was not allowed to continue during the entire period of probation and adverse reports regarding his work were not brought to

his notice. The assumption made by the Labour Court in face of Standing Order 11 that the petitioner was entitled to continue till the expiry of his probation period was clearly wrong. It is true that ordinarily and without more a probationer's services cannot be terminated before the expiry of probation period *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, and *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, But this rule does not hold good if the terms of contract which are not inconsistent with the Standing Orders or the Standing Orders enable termination during the period of probation. In the instant case, the order of extension of probation itself provided that the petitioner's services were purely temporary and could be terminated at anytime. Further, Standing Order 11 (a) enables the termination of employment of every non-permanent employee without any notice. Now having regard to these provisions it was entirely wrong for the Labour Court to hold that the services of the petitioner could not be terminated before the expiry of his probation period. Similarly it was also not correct for the Labour Court to hold that periodical adverse reports should have been communicated to the petitioner and he should have been allowed to improve till the expiry of the probation period. No Standing Order, rule or regulation has been brought to our notice prescribing such a requirement. It also necessarily follows that the Labour Court was wrong in inferring victimisation, mala fides and unfair labour practice. The Industrial Court in revision accepted the adverse reports (Exs. D-1 to D-3) regarding the work of the petitioner which were not considered by the Labour Court. Though wrong in relying upon Regulation 51, the Industrial Court was right in holding that this was not a case of victimisation, mala fides or unfair labour practice but a case of termination simpliciter on the ground of unsatisfactory work of the petitioner. The position thus is that although the order of termination was invalid for want of reasons required by Standing Order, 11 (b), the termination has to be upheld on the basis of the reasons disclosed in proceedings before the Labour Court.

7. The petition fails and is dismissed but without any order as to costs.