

**(1963) 08 BOM CK 0006**

**In the Bombay High Court**

**Case No :** Appeal No. 40 of 1961 and Miscellaneous Application No. 332 of 1960

National Machinery Manufacturers Ltd.

APPELLANT

Vs

P.D. Vyas and Another

RESPONDENT

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**Date of Decision :** 06-08-1963

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 25

**Citation :** AIR 1964 Bom 184 : (1964) 66 BOMLR 169 : (1964) MhLj 331

**Hon'ble Judges :** Patel, J; Kantawala, J

**Bench :** Division Bench

**Advocate :** N.V. Phadke, instructed by Mulla and Mulla, Craigie Blunt and Caroe, for the Appellant; K.K. Singhvi, for the Respondent

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## **Judgement**

Paul, J.—This appeal is against the order of Mr. Justice Mody dismissing the Petitioner's Petition under Articles 226 and 227 of the Constitution.

2. The short facts are that respondent No. 2 was employed as a watchman with the Petitioner Company. On 5th December 1959 he was charge-sheeted for an alleged misconduct, i.e. theft, fraud or dishonesty in connection with company's business or properly. The enquiry was proceeded with but thereafter on 2nd of January 1960 the charge sheet was cancelled and on 3rd January 1960 his services were terminated under Standing Order 21 (1) on the ground of loss of confidence with effect from that date. At this time, a dispute was pending before the Industrial Tribunal Bombay, between the workmen on the one hand and the Company on the other. Respondent No. 2 feeling himself aggrieved by this order, made a complaint to the Industrial Tribunal u/s 33A of the Industrial Disputes Act, 1947, alleging that his services were terminated in breach of Section 33(2) (b). In that complaint he prayed that the Petitioner should be directed to reinstate him with all back wages and further prayed that suitable compensation should be awarded to him. The company contested the application contending that the termination of the services of the 2nd Respondent did not amount to

illegal dismissal and was not wrong, unfair and unjust, It further contended that it was a case of discharge simpliciter and, therefore, the provisions of Section 33(2)(b) of the Act were not attracted. It therefore, contended that the complaint u/s 33A was not entertainable and therefore the Tribunal had no jurisdiction to decide it.

3. The Industrial Tribunal repelled the contention of the Company that since the action of the company purported to be a discharge simpliciter, the case did not fall within Section 33(2)(b) of the Act. It held that the action of the company was in connection with the theft, fraud or dishonesty, i.e. the misconduct of the employee and, therefore, the order was not a bona fide order of discharge under the standing orders made in the Company's ordinary course of business. The Tribunal, therefore, allowed the complaint and directed the Petitioner company to reinstate respondent No. 2 to his original post with full back wages. The Petitioner company approached this Court by a Writ Petition and as the matter arose in Bombay, it was heard on the original Side by Mr. Justice Mody.

4. Before Mr. Justice Mody, the Petitioner company-contended that Section 33(2) (b) had no application to a case of discharge simpliciter and as the order was one of discharge, the Tribunal had no" jurisdiction to entertain, the complaint u/s 33A. It was contended that the Tribunal conferred jurisdiction upon itself by making, an erroneous finding on a question of fact viz., whether the termination of the 2nd respondent's services amounted-to punishment for misconduct and while doing so, instead-of requiring the 2nd respondent, if he so desired, to prove mala fides on the part of the petitioner, the Tribunal proceeded on the footing that it was the petitioner's duty to prove positively want of mala fides; that there is no clear finding of mala fides on the part of the Petitioner and even if there were any, it was based on no evidence whatsoever. His further contention need not be stated as it does not survive.

5. Mr. Justice Mody held that a simple discharge was covered by Sub-section (2) of Section 33 and as the condition of the proviso was not complied with, the Tribunal's order was justified. He did not decide the question whether the discharge was for misconduct. He there-fore dismissed the Petition.

6. The question involves the Interpretation of Section 33(2) which is by no means easy. Section 33 consists of five Sub-sections and material ones are the first three sub-sections. The intention of the Legislature would appear to be to divide the action of the employer against the workmen into two kinds (i) action connected -with the dispute, which is pending and (ii) action not connected with the pending dispute. In each division again, there are sub-divisions (a) Action which changes to the prejudices of the] worker any of the conditions of service (b) action which entails his removal from service, for misconduct. By Clause (a) of Sub-section (1) the first is entirely prohibited and by Clause (b) as to the second, action could be taken only with the express permission in writing of the authority before whom the dispute is pending. We are not concerned with Clause (a) of Subsection (1). The words used in Clause (b) of Sub-section (1) are: "for

any misconduct ..... discharge or punish whether by dismissal or otherwise". It is clear that when the words "discharge or punish -- whether by dismissal or otherwise" are used, they are used in connection with "for any misconduct," this clause requires that in case of discharge or dismissal or any other punishment for any misconduct which is connected with the dispute pending before it, then the express permission of the authority is necessary:

7. Sub-section (2) affirmatively provides what the employee can do. Here again the action of the employer is divided into two sub-divisions (a) action connected with conditions of service (b) action connected with removal from service for misconduct unconnected with service. The first is permitted without reference to the authority and as to the second, the employer has to make an application for approval of the action taken. Evidently no prior permission in this case is necessary and both the dismissal or discharge and the application for approval can be simultaneous.

8. The words used in Sub-section 33(2)(b) are -- "for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, the workman". Grammatically it would seem clear that the clause "for any misconduct" qualify the verbs, discharge, dismiss or punish in clause (b) of both Sub-sections (1) and (2). It is argued that the word "discharge" in (b) of Sub-section (2) should stand apart and the words "for any misconduct" should govern the verbs "dismiss or punish" since this was the intention of the Parliament.

9. It must be accepted that in construing all documents including statutes the ordinary and grammatical meaning must be given to the words used. It is true that it may be that such construction may lead to some absurdity or redundancy etc. In which case the ordinary meaning may be departed from but that too only to the extent necessary. See Maxwell 11th Edition P. 6. "In construing with ..... no further." In order to arrive at "the real intention of the Legislature, the Court must take into account all the constituent parts of the statute as a whole and as far as possible no provision should be rendered superfluous and redundant. It is also legitimate in arriving at the intention of the Legislation to consider the scope and purpose of the Act Including the circumstances which necessitated the enacting of the Act. See R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), Per Venkatarama Iyyer J. Even so however, "The dominant purpose in construing a statute is to ascertain the intention of the Legislature as so expounded. This intention and therefore the meaning is primarily to be sought in the words used in the Statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of the Parliament." Halsbury's laws of England, Volume 35 (3rd Edition, Pp. 3 and 7). Grammatically, as we have said above the verb "discharge." is as much qualified by the words "for any misconduct" as the verbs "dismiss" or "punish". Unless, therefore, there are justifying reasons for departing from the usual rule of construction, the section must be construed in

its ordinary sense and we must hold that an application for approval would be necessary if the order of "discharge" is made for reasons of misconduct.

10. We must also refer to the previous history of this legislation. Originally Section 33 of the Act created an absolute bar preventing an employer from altering to the prejudice of any workman who was concerned in a dispute then pending before the Tribunal, the conditions of service which were applicable immediately before the commencement of the proceeding. It also prevented the employer from discharging or punishing, whether by dismissal or otherwise, any workman concerned with the dispute. Because of this absolute bar, a great deal of inconvenience was felt by the Industry. As a result of this, the Industry made representations to the Central Government to the effect, that it caused a great deal of inconvenience because of the delay which prevented the company from taking any action against a workman even though it was absolutely necessary to do so, even in cases unconnected with the matters in dispute. With a desire to meet to some extent the grievance of the Industry, the Act was amended and Section 33 was replaced by the present Section 33. It may be noticed that the Scheme of the section now reintroduced is not to create an absolute bar and thereafter create exceptions to this bar.

11. Under Sub-section (1) Clause (a) of Section 33 alteration of the conditions of service in regard to any matter which is connected with the dispute are not allowed and by Clause (b) without the prior permission in writing of the authority before whom such dispute is pending, workman cannot for misconduct be discharged, dismissed or punished if the misconduct is connected with the dispute. This part is in a prohibitive form. Sub-section (2) is an enabling section and is worded in permissive language enabling the employer (a) to alter the conditions of service of a worker in regard to any matter not connected with the dispute and (b) it enables an employer for misconduct to discharge or punish, whether by dismissal or otherwise, the workman with the condition, that in case of discharge or dismissal, he must pay wages for one month and must make an application to the authority before which the proceeding is pending, for approval of the action taken by him. It may be possible to suggest, though it was not so suggested in the arguments, that as Clause (b) of Sub-section (2) is affirmative in form permitting the employer to discharge or dismiss etc. for misconduct, the inference must be that a negative is implied in it i.e. that he shall not do anything else i.e. terminate the service. In our view it is not possible to adopt this construction for the simple reason that merely because discharge for misconduct is permitted with certain restrictions, it could never have been intended to prohibit simple discharges totally.

12. To adopt this meaning would mean that in no case can action be taken Under provisions such as Section 25-F which could not be the Intention of the Legislature. Such a construction would be inconsistent with the object of the amendment and would not remedy the mischief to prevent which it was enacted.

13. We may in this connection refer to the following at p. 165 Maxwell on

Interpretation of Statutes. "Firstly it is laid down generally that when last enactment is worded in affirmative form only, without any negative expressed or implied, it does not repeal the earlier law." The earlier law in the present case is the law of contract as modified by the standing order which permits the employer to terminate the services of a workman by discharge. It may be that as in respect of discharges and dismissals for misconduct the right was intended to be subject to conditions the clause has been cast in its present form. Mr. Singhvi suggested that Sub-section (2) is redundant and may have been enacted as a matter of abundant caution. That however would be going too far.

14. It is argued by Mr. Singhvi and this argument found favour with the learned Judge that "discharge" is included within the word "punish, whether by dismissal or otherwise", and to adopt the ordinary grammatical sense would render the word "discharge" superfluous and useless. He, therefore, contends that the word "discharge" must have been intended to mean discharge simpliciter made by virtue of the power of the employer under a contract or standing order. It is not possible to accept this construction for several reasons.

15. In this connection, Mr. Singhvi referred us to standing Orders 23, 24 and 25. Standing order 24 enumerates all that which falls within the word "Misconduct" and 25 refers to the punishment for misconduct. Understanding Order 25, the punishments for misconduct are (a) Warning or Censure, (b) Fine, (c) Suspension not exceeding a period of four days or (d) dismissal without notice. It is argued that a discharge as defined by standing Order 23 is not one of the punishment for misconduct, and, therefore, the word "discharges" could not possibly have been used to mean "discharge" for any misconduct. However, while referring to Clause 4 (a) of Standing Order 23, Mr. Singhvi had to admit that it suggests that a discharge could as well be for misconduct or in connection with misconduct. This clause required that reasons for the discharge be recorded in writing and communicated to the workman if he so desired unless such communication in the opinion of the Manager is likely, directly or indirectly, to lay any person open to civil or criminal proceedings at the instance of the workman. Once it is accepted that there could be a discharge for misconduct, though it may not be classed as punishment for misconduct under the standing orders it is clear that "discharge" can be qualified by the words "for any misconduct" and they do not render when so applied the word "discharge" superfluous.

16. Moreover, it cannot be doubted that If there is a discharge for misconduct, though it may not be said to be a positive punishing under Standing Order 25, it carries with it certain amount of stigma. This provision has been made in order to see that no employer may with ulterior motives make up a false charge of misconduct and discharge a workman which might in future come in his way of obtaining other employment.

17. In this connection we may refer to Sub-section (3) of Section 33 where there is an absolute prohibition in regard to any action against protected employees. The words there used are "by discharging or punishment, whether by dismissal

or otherwise, such protected workman". It is contended that Sub-section (3) begins with the words "notwithstanding anything contained in Sub-section (2)" and it must therefore, be held that the right of discharge simpliciter was intended to be covered by Sub-clause (b). This argument would probably have been sound provided reference had been made to Clause (b) of Sub-section (2); but the reference is not to that clause but to the whole of the Sub-section and as the purport of Sub-section (2) is to enable an employer to discharge a workman for grounds other than misconduct without any restrictions contained in Section 33 it may be that the clause has been cast in that form. Even the learned Judge says that "this consideration by itself may perhaps not be sufficient for the purpose of construing that "discharge" simpliciter does fall under Sub-section (2) but it certainly is a further factor to support that the above interpretation placed by me on Sub-section (2) is correct". Analysing this Sub-section, it is clear that the draftsman was very clearly aware of the words that he was using and the meaning that he was intending to convey in each Sub-section Clause (b) of Sub-section (3) says "shall not take any action by discharging or punishing, whether by dismissal or otherwise" the word "discharge" being and without any qualifications, while in Clause (b) of Sub-section (2) the words "discharge or punish" are preceded by the phrase "for any misconduct not connected with the dispute". Therefore, under Clause (b) of Sub-section (3) the discharge is intended to be any discharge whatever be the ground while the discharge in Clause (b) of Sub-section (2) of Section 33 is intended to be for any misconduct which is not connected with the dispute. It is not possible, therefore, to infer by reference to Sub-section (3) that the legislature negligently framed Sub-clause (b) of both Sub-sections (1) and (2) and the Court is entitled to so transport the words in them or re-writes those provisions as contended for by Mr. Singhvi on behalf of the respondent No. 2, according to the supposed intention.

18. It was strongly pressed upon us that the proviso to Clause (b) of Sub-section (2) must be so read as to be completely independent of that Sub-section and must mean that in every case of discharge or dismissal, the workman must be paid one month's wages and an application must be made to the authority before which the proceeding is pending for approval of the said action. It is argued that a proviso need not be read as a limitation upon something that is contained in the section itself. There are cases, he says, where a proviso performs a far larger function and may sometimes be an independent provision in a statute, apart from the section itself. In this connection, he relied upon a Full Bench decision in *Maganbhai Jethabhai v. Somabhai Sursang*, 60 Bom LR 1383, where the following remarks are to be found at p. 1389. The learned Chief Justice (Chagla C. J.) said :-

"In fact the true function of a proviso is to take something out of a section and deal with a part of the section. It is not the function of the provision to cover an ambit wider than the section itself. But we have had numerous instances in the past where the Legislature has in the shape and garb of a proviso enacted a substantive provision of law, and, therefore, if the language of the proviso is

clear, the Court will not be deterred from giving true effect to the proviso merely because it is a proviso to that section, nor would the court be compelled to say that the ambit of the proviso must be restricted to the ambit of the section itself."

The learned Chief Justice was considering the provisions of Section 43(c) of the Bombay Tenancy Act, 1948. In the Act there were two clear indications which showed that the ambit of the proviso was larger than the Section. In the present case, there is nothing in the proviso itself nor in the scheme of this section which can persuade its to hold that ,the proviso was intended to be an in-dependent provision creating another disability on the employer which was not contained in clauses (a) or (b) of Sub-section. (2) of Section 33.

19. The learned Judge accepted the contention of Mr. Phadke that the word "discharge in proviso to Clause (b) of Sub-section (2) should not be given a meaning other than the one in Clause (b) of the Sub-section and relies upon it for holding that Clause (b) is intended to include within it a discharge simpliciter. With great respect, the words "no such workman" have been omitted from consideration which must apply to "the workman" referred to in Clause (b). If due effect is given to all the words in the proviso, it must mean that "the workman who is being discharged or dismissed under Clause (b) shall not be discharged or dismissed unless....."

20. Mr. Singhvi then contended that the use of the words such workman" does not refer to any workman who has been discharged or dismissed under Clause (b) but to the "workman concerned in the dispute", in that beginning of Sub-section (2) which reads "the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute", It is an ordinary rule of construction that where relative words are used they qualify or relate to the nouns preceding those words. Ho reasons are suggested why we should depart from the ordinary grammatical rule of construction. The words clearly refer to "such workman" as is referred to in Clause (b) i.e. one who has been discharged or is being punished for misconduct. To read the words in the way suggested by Mr. Singhvi would necessarily mean that Clause (b) of Sub-section (2) is a useless appendage in the section and need not have existed there, since this by itself would fie a complete safeguard for the workman. In our view before a proviso could be read as a provision amplifying the meaning of the section or as an independent provision by itself, there must be sufficient and strong indications in the language of the provision which is very much lacking in this case. This contention must, therefore, fail.

21. Mr. Singhvi also stressed that the word "discharge" in clauses (b) of both the Sub-sections (1) and (2) must mean "discharge simpliciter" and would not be a discharge for misconduct. But, then he had to meet the difficult question as to whether the employer would act under Sub-section (1) or Sub-section (2) since both would apply if "discharge" is not to be qualified by "for misconduct" in both Sub-sections. Realising the difficulty in the way of his argument, he accepted that the "discharge" must be for misconduct in Sub-section (1) connected with

the dispute and in Sub-section (2) not connected with the dispute. We are clearly, therefore, of the opinion that the word "discharge" is used not to mean "discharge simpliciter" In Clauses (b) of each of the Sub-sections but a discharge for misconduct. Mr. Justice Mody says : "Therefore though under Clause (b) "discharge" is to be for misconduct "discharge" can be otherwise than for punishment and it is in that sense that the word has been used in Clause (b)". (P. 41 last lines). In Kunjan Manu and Others Vs. Aspinwalla and Co. Ltd. and Others, Mr. Justice. Vaidia-lingam held this to mean that in order that Sub-section 2(b) should apply "discharge" must be for misconduct (see p. 215 (of Lab LJ) : (at p. 267 of AIR). This however does not appear to be so with respect as his final observations (at p. 45) that "Sub-section (2) also covers the ease of "discharge simpliciter" would seem to be in conflict. In our view, with respect Section 33(2)(b) can have no application to case of discharge unless it is for misconduct.

22. This brings us to the question whether this Court has jurisdiction to determine whether the finding on the issue of fact involved is erroneous on the basis of which relief has been granted. Mr. Phadke argued that the language of Section 33 shows that it is only in the case of breach of Section 33(1) or 33(2) that an application can be made u/s 33-A and this being a condition any finding made by the Tribunal on the question of breach of Section 33 must be treated as a finding on a jurisdictional issue and this Court is entitled to examine, its merits. Mr. Singhvi seriously disputed this proposition. However, in view of the observations of Mr. Justice S. R. Das in The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others, , where the learned Judge) says that the contravention of the section is the condition precedent to the exercise by the authority concerned of the Additional jurisdiction and powers conferred on it by the sections, we may for the purposes of this case assume without deciding that the question whether the respondent has been discharged in contravention of the provisions of Section 33(2)(b) is a jurisdiction I issue and can be gone into by this Court.

23. On the merits, however, there is not much that can be said against the finding made by the Tribunal. It is admitted that the respondent was a watchman and as such had to perform the duties of safeguarding the property of the Company. It is also admitted that on a certain day he was found not behaving as he should-have, which raised suspicion in the mind of the two gentlemen who had seen him. As a result of this, a charge was framed against him and an enquiry was proposed. An enquiry was in fact made by Mr. J. E. Small. It is also admitted in the Petition that the management thought that the evidence was not sufficient or strong enough to justify the conclusion of guilt as having been established beyond doubt, which could justify the dismissal of the second respondent. It is further admitted that it was for this reason, that on 2nd January 1960, the charge was withdrawn and on the 3rd January 1960, the-2nd respondent was discharged from service. Under these circumstances, it is impossible to say that the discharge was an ordinary discharge in the ordinary

course of business of the company, when the statements from the petition were pointed out to Mr. Phadke, he practically gave up this contention. It is clear, therefore, that the discharge in the present case is for misconduct and it being for misconduct not connected with the matter in dispute, is covered by Clause (b) of Sub-section (2) and since admittedly no application was made for the approval of the action taken by the employer there is a clear contravention of the said section.

24. In the result, the appeal is dismissed with costs. We quantify the, costs of this appeal at Rs. 750/-. The Appellants to pay costs of the 2nd respondent only. Liberty to the 2nd respondent to withdraw the deposit of Rs. 500/-.

25. Appeal dismissed.