

(1960) 07 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 30 and 31 of 1959

Shri Abdul Salam

APPELLANT

Vs

Abdul Khalik Abdul Samad and Others

RESPONDENT

Date of Decision : 01-07-1960

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 16(2), 31(1), 42, 49
Constitution of India, 1950 — Article 226

Citation : AIR 1961 MP 351 : (1960) ILR (MP) 550 : (1962) 2 LLJ 239 : (1962) 7 MPLJ 835

Hon'ble Judges : P.V. Dixit, C.J.; S.P. Bhargava, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; H.L. Khaskalam, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

This order shall also dispose of Miscellaneous Petition No. 31 of 1959.

These two petitions are by the managing partner of a Public Transport Company, Seoni, who is an employer as defined in Section 2, (11) of the C. P. and Berar Industrial Disputes Settlement Act, 1947. The respondent Abdul Khalik in Miscellaneous Petition No. 30 of 1959 was employed by the company as a conductor. Bashiruddin, respondent No. 1, in Miscellaneous Petition No. 31 of 1959 was also similarly employed. Abdul Khalik's services were terminated from 1st June, 1957 after giving him one month's notice. Bashiruddin's services were also dispensed with on 24th March, 1957 and he was paid one month's salary in lieu of notice.

Thereupon, the two conductors filed applications u/s 16 of the Act before the Assistant Labour Commissioner, Madhya Pradesh, Jabalpur, for reinstatement

claiming back wages. The Assistant Labour Commissioner found that the services of the conductors had been terminated but that the orders terminating their services were not legal inasmuch as they were passed by the company in violation of the principles of natural justice which it was bound to follow in the absence of any standing orders.

Accordingly he made orders directing the reinstatement of the conductors and payment to them of wages from the date of the termination of their services to the date of reinstatement. The petitioner then preferred revision petitions before the State Industrial Court. The learned Judge of the Industrial Court took the view that in the circumstances in which the orders terminating the services of the conductors were passed and having regard to the replies filed by the petitioner before the Assistant Labour Commissioner in reply to the applications u/s 16 of the Act, the orders terminating the services of the conductors were really orders of their dismissal; that they were passed in violation of the principles of natural justice; that they were not in accordance with law; that under Item No. 3 of Schedule II of the Act an action of dismissal could not be taken against the conductors without giving them notices u/s 31 of the Act and that as this was not done the orders of dismissal were also in contravention of Section 31. On this reasoning the orders of the Assistant Labour Commissioner reinstating the conductors were upheld by the Industrial Court. The petitioner has now invoked Article 226 of the Constitution and he prays that the orders of the Assistant Labour Commissioner re-instating the conductors and the decision of the Industrial Court upholding them be quashed by the issuance of appropriate writs or directions.

Shri Dharmadhikari, learned counsel appearing for the petitioner, argued that though the respondent-conductors were discharged from service because they had permitted overloading of their buses in contravention of the permits and though the petitioner in his replies to the applications u/s 16 loosely stated that the conductors had been dismissed from service, the orders discharging the conductors from service were nonetheless orders terminating their services and not orders of their dismissal from service; and that these orders were not hit either by Section 42 of the Act or by Section 31 read with entry No. 3 of Schedule II of the Act. Learned counsel placed reliance on *Provincial Transport Service v. Assistant Labour Commissioner, Nagpur 1957 Nag LJ 569*, and a decision of a Division Bench of this Court in *Hiralal v. The State Industrial Court, M. P. Indore, Misc. Petn. No. 374 of 1958, D/- 14-9-1959 (MP)*.

In our judgment both these petitions must be granted. It is clear from Sub-section (3) of Section 10 that the Labour Commissioner has jurisdiction to grant the relief of reinstatement and payment of back wages only if he finds that the dismissal, discharge, removal or suspension was in contravention of any of the provisions of the Act or in contravention of a standing order made or sanctioned under the Act or was for a fault or misconduct committed by the employee more than six months prior to the date of such dismissal, discharge, removal Or

suspension. In *Burhanpur Tapti Mills Ltd. Vs. The State Industrial Court and Others*, it has been pointed out that the scope of the enquiry mentioned in Section 16(3) of the Act and prescribed by Rule 18(1) of the Rules is limited to these matters.

Here, as admittedly no standing orders had been framed, there is no question of the discharge of the conductors being in contravention of any standing order. It is also not disputed that the discharge of the conductors from the service was, not for a fault or misconduct committed by, them more than six months prior to the date of their discharge. The only question, therefore, that arises for decision is whether the discharge was in contravention of any of the provisions of the Act.

The only provision that has any bearing on the question is Section 42 which enumerates the grounds which cannot be availed, of by an employer for dismissing, discharging, suspending or reducing any employee or punishing him in any other manner. The discharge of the conductors here was clearly not on or for any of the reasons mentioned in Section 42 of the Act and therefore that provision is clearly not attracted. The discharge of the conductors is also not hit by Section 31(1). That provision *inter alia* says that if an employer intends to effect a change in respect of any industrial matter mentioned in Schedule II, he shall give fourteen days' notice of such intention in the prescribed form to the representative of employees.

Leaving aside the question whether Section 31(1) is applicable when an employer intends to effect a change in respect of an industrial matter affecting an individual employee and assuming that it does apply in such a case, the termination of the services of an employee under the general law of master and servant after giving him reasonable notice or salary in lieu of notice is clearly not his dismissal in contravention of law within the meaning of entry No. 3 of Schedule II. It has been held in *Misc. Petn. No. 374 of 1958, D. 14-9-1959 (M. P.)* (*supra*) that the word "law" in item 3 of Schedule II of the Act is comprehensive in its import and includes the ordinary law governing the relationship of an employer and an employee under which the employer has a right to terminate the services of an employee after giving reasonable notice or salary in lieu of notice.

Nothing turns on the absence of standing orders. The omission on the part of the employer to frame standing orders may make him liable to punishment u/s 49, but it cannot make an order terminating the services of an employee under the general law with due notice, an order of discharge in contravention of any of the provisions of the Act or convert that order into an order of dismissal in contravention of the Act or of any law. If the order of discharge of an employee is in fact an order terminating his services under the general law after due notice, then rules of natural justice do not clearly apply.

The learned judge of the Industrial Court was in error in thinking that the orders discharging the two respondent-conductors were in fact orders of dismissal. .

True, the petitioner was impelled to discharge the two conductors from service because of the fact that they permitted overloading of their buses. But this fact or the fact that the applicant in his replies to the applications of the conductors u/s 16 loosely stated that they were dismissed from service and also elucidated the reasons for the action does not warrant the inference that though ostensibly the conductors' services were terminated, they were in fact dismissed from service.

The Act does not throw any light on the question of distinguishing an order of termination of service from an order of dismissal. In the absence of any such statutory guidance, one must decide with reference to the general law whether an order of discharge of an employee is an order terminating his services or whether it is an order of his dismissal. In this connection what has to be seen is not the motive behind the order of discharge from service but the actual action taken by the employer against the employee on the basis of the opinion formed by him as regards the desirability of continuing the services of the employee.

In 1957 Nag LJ 569 (supra) an employee was found guilty of misconduct but his services were terminated by giving one month's salary in lieu of notice. It was held that the order of termination of the service did not amount to an order of dismissal. It was observed by the learned Judges of the Bombay High Court that what is really material is not the antecedent enquiry made by the employer for satisfying himself whether he should continue in service as an employee or not, but what is the actual action taken by him in pursuance of the opinion formed by him. We respectfully agree that this is the right test and judged by it the orders discharging the two conductors from service after giving one a notice of one month and another salary in lieu of notice were undoubtedly orders terminating their services and not orders of dismissal.

The orders of the Assistant Labour Commissioner and of the State Industrial Court directing reinstatement of the respondent-conductors and payment to them of back wages cannot, therefore, be sustained. Accordingly they are quashed. We make no order as to costs of these petitions. The amounts of security deposited by the petitioner in the two cases shall be refunded to him.