**(1974) 08 MP CK 0007**

**Madhya Pradesh High Court**

**Case No:** M.P. No. 55 of 1973

| | |
|---|---|
| General Manager, Hindustan Steel Limited, Bhilai Steel Plant, Bhilai | APPELLANT |
| Vs | |
| Santosh Singh and others | RESPONDENT |

**Date of Decision:** Aug. 29, 1974

**Acts Referred:**

- Madhya Pradesh Industrial Relations Act, 1960 - Section 31

**Citation:** (1979) ILR (MP) 337 : (1975) JLJ 280 : (1974) MPLJ 852

**Hon'ble Judges:** G.P. Singh, J; B.R. Dubey, J

**Bench:** Division Bench

**Advocate:** J.P. Bajpai, Deputy A.G. and A.P. Tare, Govt., for the Appellant; Gulab Gupta, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

B.R. Dube, J.

The petitioner, General Manager, Hindustan Steel Ltd., Bhilai Steel Plant, by this petition under Articles 226 and 227 of the Constitution seeks to quash the order of the Labour Court dated 29-4-1972 (Annexure-F) and the order of the Industrial Tribunal dated 30-11-1972 (Annexure-G) whereby respondent No. 1 was ordered to be reinstated on the post held by him immediately prior to the termination of his services.

The respondent No. 1 was employed by the petitioner as a heavy vehicle driver on 7-11-1956. On 3-7-1965 the respondent No. 1 was examined by the Industrial Medical Officer, Dr. V.C. Mankodi, and was found unfit to work as a driver for the reason that he was colour blind. The respondent No. 1 was then referred to the

Medical Board and the said Board also declared respondent No. 1 unfit for driver''s post due to colour blindness. The copy of medical examination report by the Medical Board is Annexure-C. The respondent No. 1 was therefore discharged from service with effect from 4-2-1966, vide order passed on 2-2-1966 (Annexure-A) in accordance with the provisions contained in Company''s Standing Orders Nos. 24 and 36. The respondent No. 1 filed an application u/s 31 of the M.P. Industrial Relations Act before the Labour Court at Raipur, claiming reinstatement with full back wages. That Court passed the impugned order (Annexure-F) in which it was held that the respondent No. 1 was not colour blind. Hence he was ordered to be reinstated. The said order was confirmed by the Industrial Tribunal in revision No 135/MPLR/1972, vide order dated 30-11-1972 (Annexure-G). The petitioner has, therefore, come to this Court with a prayer that the aforesaid orders for reinstatement of respondent No. 1 be quashed.

The learned Deputy Advocate General drew our attention to Standing Order No. 24, which reads as under:--

All employees shall be subject to medical examination at any time during service at the discretion of the management and if found permanently Unfit by the Chief Medical Officer they will be liable to be discharged from service, provided that where any such employee so desires he shall be referred to a Medical Board of three officers set up by the management on payment of Rs. 10 by the employee which shall be refunded to him if the employee is declared fit by the board. The Board''s decision in this regard shall be final.

the services of respondent No. 1 were terminated in accordance with Standing Orders Nos. 24 and 36. Standing Order No. 24, has already been reproduced above, while according to Standing Order No. 36 the power was given to the petitioner to terminate the services of an employee by assigning reasons after giving notice or on payment of wages in lieu of notice, as contemplated in sub-clauses (1) (b) and (c) of the said Standing Order. Therefore, respondent No. 1''s services were terminated on the ground that he was unfit for the post of a driver on account of his colour blindness.

It is true that the petitioner technically complied with the formalities as required by Standing Order No. 24 for declaring him unfit to work as a driver. However, we cannot overlook certain broad facts which have been brought on record when the matter was enquired by the Labour Court which we shall presently discuss. In the application made by the respondent No. 1 before the Labour Court, he had assailed the order of his discharge from service as unjustified, uncalled for and mala fide. When the respondent was examined by the Labour Court, he narrated an incident attributing some malice to Dr. T.N. Gupta, Eye Specialist, who had examined him. According to the respondent No. 1, about two or three months prior to his examination by Dr. Gupta, he had met him to express his grievance that his wife was visiting the hospital for the past three months in connection with some eye trouble

without any diagnosis and he, therefore, asked Dr. Gupta to let him know the ailment with which his wife was suffering. Such a query made by the respondent No. 1 caused annoyance to Dr, Gupta and the latter asked him to get out. When the respondent No. 1 further ventilated his grievance before Dr. Gupta on that subject, he was further annoyed and asked the peon of his office to remove the respondent No. 1 from the room. After the said incident when the respondent No. 1 was required to remain present before Dr. Gupta in connection with his own examination, he recognized the respondent No. 1 to be the same person who had once quarrelled with him. Dr. Gupta then asked the respondent No. 1 to count the black dots on a white-background which he did successfully and in spite of that Dr. Gupta said that he was colour blind. The respondent No. 1 further deposed that he told Dr. Gupta that there was no defect in his eyes and questioned him since when he was colour blind to which the doctor replied that he was colour blind right from his birth.

The learned Deputy Advocate General contended that the respondent did not allege the above incident in his application presented before the Labour Court and that the story about his quarrel with Dr. Gupta told by the respondent No. 1 before the Labour Court at the time of his deposition was an after-thought. It may be noted that no objection on behalf of the petitioner was taken at the time when the evidence of the respondent No. 1 was being recorded with respect to the alleged quarrel between the respondent No. 1 and Dr. Gupta. The respondent No. 1 undoubtedly challenged the factum of his colour blindness in his application before the Labour Court as unjustified, uncalled for and mala fide. In support of that contention, he not only examined himself and narrated the incident of his quarrel with Dr. Gupta, but examined two witnesses, Dr. R.A. Siddique and Dr. B. Daniel who had examined the respondent No. 1 subsequent to his examination by the Industrial Medical Officer and the Medical Board. These doctors had given certificates Ex. P-26 and P-27 respectively and they had deposed before the Labour Court that the vision of both the eyes of the respondent No. 1 with the use of lenses was normal. It is true that these witnesses in the cross-examination stated that they had not examined the respondent No. 1 with the aspect to know if he was colour blind. However, these doctors told the Labour Court that colour blindness is usually hereditary and it is by birth. They also stated that it neither regresses nor progresses. It is pertinent to note that despite the definite allegations having been made by the respondent No. 1 against Dr. Gupta and evidence of two medical experts adduced, the petitioner in rebuttal neither examined Dr. Gupta nor any doctor who was the member of the Medical Board to establish that the respondent No. 1 was colour blind. Even no data was put before the Labour Court to show what tests were applied by Dr. Gupta or by the Medical Board for coming to the conclusion that the respondent No. 1 was colour blind. The petitioner only examined Dr. Mankodi, the Industrial Officer, who is not an Eye-Specialist. According to this witness, the respondent No. 1 was found to have defective vision and colour blindness and therefore he referred the

respondent No. 1 to Dr. Gupta for confirmation of his opinion. It is interesting to note that Ex. D-1, which is the medical examination record card of the respondent No. 1, was neither signed by the respondent No. 1 nor by Dr. Mankodi. It is admitted by this witness that the card should bear the signature of the respondent No. 1. According to this witness the respondent No. 1 was shown the chart from Ishiara''s Text Book and he could, not identify red colour and green colour in that book. According to this witness, even if a person points out red and green colours apart from Ishiara''s book, he would be colour blind because the chart in that book is scientific. The said reasoning of Dr. Mankodi appears to be strange. It may be said that the depiction of red and green colours in the chart of Ishiara''s book was scientific, but it is difficult to believe that a colour blind person cannot point out red and green colour in the chart of that book; although he can identify them when the same colours are shown to him elsewhere. Dr. Mankodi has deposed that the difficulty with a colour blind driver is only when he has to distinguish the colour signals, otherwise there is no difficulty in driving the vehicle. By colour signals he meant the signals given by electrical operations. However, Dr. Mankodi had to admit that a person with colour blindness cannot see the colour signals at all and that if a person can see the signals, he is not colour blind.

It is, pertinent to note that the Labour Court was satisfied by a practical demonstration that the respondent No. 1 was not colour blind. First of all, the respondent No. 1 during the course of his deposition was shown books of red, brown and rose red colours from a distance of about 8 feet and he could recognize the colours quite correctly. He was then shown a board of the Shalimar Paints which was written in black and red letters from a distance of about 100 feet and the respondent No. 1 could identify the colours correctly. Later on, in the presence of the counsel of both the sides, the Labour Court took the respondent No. 1 to Jaystambh Chowk at Raipur where colour signals with electrical operations were installed. The Labour Court noted that the petitioner could make out all the colours of the traffic signals including the red and green colours from a distance of approximately more than 300 feet. In our opinion, nothing more was needed to disprove the fact that the respondent No. 1 was colour blind. The learned Deputy Advocate-General contended that the Labour Court went out of the way in playing the role of an expert for testing the vision of the respondent No. 1. In our opinion, this will not be the correct approach to judge the action of the Labour Court. When the respondent No. 1 made certain allegations of mala fides and produced certain medical evidence in support of his contention that he was not colour blind and when the petitioner did not give proper assistance to the Labour Court by producing the best medical evidence which was available, the Labour Court, may be due to over zealousness to find out the truth, adopted the method of practical demonstration not to form any independent opinion but to appreciate the evidence of the parties, for which there should not be any objection.

It may be noted that respondent No. 1 was employed by the petitioner as a heavy vehicle driver on 7-11-1956. Dr. Mankodi himself had written in Ex. D-2 that respondent No. 1 had not caused any accident since the time he was working as a driver. Dr. Mankodi has admitted in his deposition that electrical signals had been installed in the Plant even before 1961 when Dr. Mankodi joined his duties in the Plant. It is, therefore, clear that the respondent No. 1 could not have performed his duties successfully as a heavy vehicle driver during these ten years in case he was colour blind. The respondent No. 1 had deposed that after about six months of his appointment he was thoroughly examined by the Civil Surgeon, Durg, and he was declared to be fit for his job. This fact has not been controverted by the petitioner. It is not the case of the petitioner that respondent No. 1 developed colour blindness at some time after he was appointed.

In the light of the facts discussed above, it would be impossible to hold that the respondent is colour blind. The Labour Court, therefore, in paragraph No. 15 of its order, has come to the conclusion that the remark given by Dr. T.N. Gupta that the applicant was colour blind could not be taken to be bona fide. At any rate, when the petitioner could not substantiate the factum of colour blindness of the respondent No. 1 in spite of having an opportunity to do so, the order of discharge could be called capricious or unreasonable so as to lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power arising out of the contract. In Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, it was observed by the Supreme Court as under :

If the discharge of the employee has been ordered by the management in bona fide exercise of its power, the industrial tribunal will not interfere with it, but it is open to the industrial tribunal to consider whether the order of termination is mala fide or whether it amounts to victimization of the employee or an unfair labour practice or is so capricious or unreasonable as would lead to the interference that it has been passed for ulterior motives and not in bona fide exercise of the power arising out of the contract. In such a case it is open to the industrial tribunal to interfere with the order of the management and to afford proper relief to the employee.

For the above reasons, interference by the Labour Court in the order of discharge of respondent No. 1 cannot be called to be erroneous or in excess of jurisdiction. When the Labour Court found that under the garb of Standing Order No. 24, the order of the petitioner in discharging the respondent No. 1 from his service was colourable, it had the jurisdiction to make interference in it.

The learned Deputy Advocate-General assailed the order of reinstatement passed by the Labour Court on another ground, as well. It is contended that according to Standing Order No. 39, the age of retirement of an employee is 58 years. It is urged that respondent No. 1 in the declaration Annexure-H had given his date of birth as 12-6-1910 and accordingly, he attained the age of superannuation in the year 1968. It may be noted that the petitioner did not raise this point either in the Labour Court

or in the Industrial Tribunal and, therefore, such a plea cannot be allowed to be raised in this petition. It was open for the petitioner to bring this fact to the notice of the Labour Court by way of a review application. That apart, respondent No. 1 has denied the fact that he attained the age of superannuation on 11-6-1968. It is, therefore, a question of fact which can be determined after making an enquiry into the matter. A controversy of this nature cannot be entertained by this Court in these proceedings. It is, therefore, not necessary to examine the vires of Standing Order No. 39, which has been challenged by respondent No. 1 in his return.

In the result, this petition fails and it is hereby dismissed with costs, accordingly. Rs. 100/- be taxed as counsel''s fee, if certified. The balance of the security amount shall be refunded to the petitioner.