
**India United Mills Ltd., Bombay Vs Rashtriya Mill Mazdoor Sangh,
Bombay**

Order, in Reference (I.C.) No. 200 of 1958

Court: Bombay High Court

Date of Decision: April 3, 1959

Citation: (1959) 2 LLJ 120

Hon'ble Judges: Syed Taki Bilgrami, J; M.R. Meher, J; Indrajit G. Thakore, J

Bench: Full Bench

Judgement

@JUDGMENTTAG-ORDER

1. This is an appeal against a decision of the Judge, First Labour Court, Bombay. The Rashtriya Mills Mazdoor Sangh, which is the representative

upon for the cotton textile industry in Greater Bombay, made an application to the labour court in which it stated that Arjun Ramchandra, an

employee in the winding department of the appellant mill company, was discharged on 13 November, 1957, giving him thirteen days' wages in lieu

of notice. No reason was given in the discharge order, but reference was made to an inquiry made on 12 November, 1957. The inquiry was in

connexion with the employee's absence on 6 November, 1957 when he had intimated by telephone to one Dongre to mark him on leave. The

sangh contended that the discharge order was illegal and improper. The company by its written statement replied that the employee was

discharged with thirteen days' wages in lieu of notice on 13 November, 1957 for the misconduct of absenting from work without permission, for

which misconduct a chargesheet was served on him and an inquiry was held. The manager found the employee guilty of the misconduct charged

and came to the conclusion that his services should be terminated. In the written statement, it was further stated :

Assuming without admitting that the said employee's father was sick, the said employee could have approached his superior officer and could

have obtained leave of absence. During his past service also the said employee was found to be leaving his place of work without permission and

he was warned orally.

The company submitted that the discharge order was legal and proper.

2. At the time of hearing before the labour court, it was urged on behalf of the sangh that the allegation in the chargesheet did not amount to any

misconduct as defined under standing order 21 and that absence from work after presenting the ticket was a matter covered under standing order

10, according to which the employee's wages could be deducted in accordance with the provisions of the Payment of Wages Act. On the other

hand, it was urged on behalf of the company that standing order 21(k) was wide enough to cover absence from duty by a worker after

presentation of his card to the mill. Standing order 21(k) states :

Riotous or disorderly behaviour during working hours in mill premises or any act subversive of discipline.

The learned labour judge was of the view that even if this argument was accepted there must be very compelling reasons for inflicting higher

punishment than the one provided for under standing order 10. On the merits, the labour judge was of the view that the management's decision to

discharge the employee concerned seemed to be pre-determined one; that in this case there was no evidence to disbelieve the employee's

explanation; that he had left the mill because his father was ill and that he had sent a telephone message to Dongre. The labour judge went on to

say :

It was urged that no mala fides were alleged. In every case mala fides need not be alleged or proved. Even if mala fides were not alleged, it must

be shown by the opponent mill that there was sufficient evidence to reasonably base the conclusion and if that was not shown, the case would be a

fit one for the Court's interference.

In the result, the labour court ordered reinstatement of the employee with continuity of service and awarded two months' wages as compensation.

3. In the appeal, it has been urged that the labour court was in error in ordering the reinstatement with compensation to the employee, who being a

badli worker had no right to employment on any particular day; that there was no necessity for holding an inquiry; that it was permissible for an

employer to discharge a badli worker without notice under standing order 19(b); that since the act complained of did not amount to misconduct

under standing order 31, no inquiry was necessary. Exception is taken also to the observation in the judgment that mala fides need not be alleged

or proved. In the course of the arguments Sri Narayanaswami urged that the provisions of the standing order relating to misconduct are not

applicable to badli workers. But it is seen from the standing orders that whenever distinction is made between permanent and temporary operatives

it has been expressly made, e.g., the expression, "permanent employee" finds place in standing orders 9, 19(a) 20 and 25. The expression

badli or temporary operative occurs in standing order 19(b). In standing order 22 we do not find any such adjective as permanent or temporary

before the word "operative." It would, therefore, appear that the procedure prescribed by standing order 22 for suspension or dismissal of an

operative would not be inapplicable to badli operatives, and if a badli operative commits misconduct as defined in standing order 21, the employer

can dismiss him under standing order 22. But Sri Narayanaswami has, however, laid great stress on the provisions of standing order 19(b) under

which a badli operative can be discharged from service without notice. Under standing order 19(b) the employment of a permanent operative may

be terminated by payment of thirteen days' wages in lieu of notice. It has urged that in this case the manager had terminated the services of the

employee concerned by giving him thirteen days' wages in lieu of notice though the employer could have terminated his services without any notice

and in the circumstances the labour court could not direct reinstatement of the employees with compensation. Sri Narayanaswami has relied on a

case decided by the Supreme Court, viz., The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao, . The observations

relied on are at p. 16 and are as follows :

Lastly, it has been urged on behalf of the respondent that even if we hold that the standing orders apply to the respondent, we should remand the

case to the High Court, for a decision on merits of other points raised by the respondent, because the question whether the standing orders apply

or not was treated as a preliminary issue by the High Court and no decision was given on other points. We asked learned advocate for the

respondent what other points remain for decision on his writ application, once it is held that the standing orders apply to the respondent and his

service has been terminated in accordance with standing order 16(1). Learned advocate then referred us to standing order 18, which provides for

penalties for misconduct, and submitted that the provisions thereof have not been complied with by the appellants. He particularly referred to

Clause (c) of standing order 18 and submitted that the order of suspension passed against the respondent was in violation of the safeguards

mentioned therein. The short answer to this argument is that no penalty for misconduct has been imposed on the respondent under standing order

18. The company paid his salary to the respondent from the date of suspension to 31 January, 1956, which also showed that no order was passed

by way of punishment for misconduct. The company chose to terminate the service of the respondent in accordance with standing order 16, and

did not think fit to proceed against the respondent for any alleged misconduct, and it was open to the company to do so. So far as standing order

16 is concerned, all the requirements thereof have been complied with. That being the position, no other point remains for decision in the present

case.

In reply to these arguments Sri Deshpande, while not contesting the fact that the employee concerned was a badli employee, has urged that as the

employee's services have been terminated for misconduct, and as the misconduct alleged did not fall under standing order 21, the employee was

entitled to be reinstated. Now it may be noted that standing order 22 prescribes two types of punishment, viz., suspension for a period not

exceeding four days and dismissal. Discharge by giving thirteen days' wages in lieu of notice is not a punishment prescribed by this

standing order, but as stated above, standing order 19(a) provides that the employment of any permanent operative may be terminated by fourteen

day's notice or by payment of thirteen days' wages in lieu of notice.

4. There is, therefore, a clear distinction between a discharge under standing order 19(a) and (b) and punishment under standing order 22. As was

observed by the Labour Appellate Tribunal in the case of the D.B.R. Mills, Hyderabad, Ltd. v. Their workmen 1952 II L.L.J. 300 :

We think it is clear that standing order 19 and standing order 22 have application to two different classes of cases. Under standing order 19 it is a

question of terminating the employee's services after giving him due notice or paying him in lieu of notice. Standing order 22 has application to

quite a different class of cases where misconduct is involved and it is intended to impose a punishment upon the employee. It has been suggested

before us that there is no material difference between discharge and dismissal, for in both cases it means termination of employment. There is

however a substantial difference between the two. In the case of discharge it is nothing more than a termination of service which gives the

employee the right to his full provident fund and his gratuity and any other benefits to which he may be entitled. In the case of dismissal an

employee would be deprived of quite a number of benefits. It is also incorrect to say that action under standing order 19 is confined only to ceases

of discharge proceeding from reason other than an employee's alleged misconduct, for the language of standing order 19 makes it clear that the

reason inducing the termination of service may be so serious that a communication thereof might directly or indirectly lay the company and the

manager or the person signing it open to criminal or civil proceedings at the instance of the operative. The fact remains that when a question of

discharge arises under standing order 19 no chargesheet or enquiry is indicated by the standing order, whereas under standing order 22 no order

of dismissal can be made unless the operative concerned is informed in writing of the alleged misconduct, and is given an opportunity to explain the

circumstances alleged against him and a proper enquiry has been held. We agree that a discharge under standing order 19 could be challenged if

the discharge proceeded from any mala fides on the part of the company or any victimization or unfair labour practice, but no such considerations

arise in this case.

A discharge under standing order 19 can, therefore, be challenged if the discharge proceeded from any mala fides on the part of the company or

any victimization or unfair labour practice. The Supreme Court decision relied on by Sri Narayanaswami did not purport to lay down that in a case

of discharge simpliciter the tribunal cannot interfere even if the discharge was actuated by motives of victimization or unfair labour practice. That

question did not arise in that case and there was no allegation of discharge being mala fide. In the present case, there was no allegation of mala

fides or victimization or unfair labour practice, much less any proof of any such thing and there is no doubt that the action of the manager in

terminating the services of the employee was bona fide. The employee had, after marking his presence, left without permission at about 3-45 p.m.

The learned labour judge has gone into the question whether the employee left at 3-45 p.m. as alleged by the management or at 5 p.m. as alleged

by him. The time at which the employee left is not material. It is not disputed that the employee was engaged in the second shift and he left during

the shift without taking anybody's permission. The employee's explanation before the manager was as follows :

I came down at 5 p.m. near the gate to see my brother for enquiring whether he has called the doctor in the house or not. When I met my brother,

I was told that my father is serious and the doctor has visited the house. I went away from the gate to my house. While going I did not ask

permission from any of the masters. When father felt better I phoned up to the mills to tell Mr. Abraham for my leaving the department and taking

his permission.

Now the record produced in the case shows that on no less than five previous occasions this employee was shown in the records to be ""not found

in the department."" On those occasions it appears that the management did not take action against him but treated him as on leave for that portion

of the day. The employee stated before the labour court that he was absent on two previous occasions as his father was ill. It is, therefore, evident

that this was not the first occasion on which the employee left his place of work on the ground that his father was ill. The company has stated in the

written statement that assuming without admitting that the employees' father was ill, the employee could have approached his superior officer and

obtained leave of absence. Admittedly, the employee did not take anybody's permission or inform anybody before he left the mill. The learned

labour judge has observed :

In the present case there was no evidence to disbelieve the employee's explanation.

But the company was not expected to lead evidence of the negative, viz., that his father was not ill, and it cannot be conceded that if an employee

gets information that a relation of his is ill, he has right to walk out of the mill without taking anybody's leave or permission. As on the previous

occasions also the employee had been found absent from his place of work, the manager cannot be blamed if he did not believe the explanation

after taking into consideration the employee's previous record. The manager decided to terminate his services under standing order 19 after giving

him thirteen days' wages in lieu of notice. Such an order cannot be interfered with unless there is mala fides or victimization or unfair labour

practice and there is none in this case. Sri Deshpande has urged that standing order 10 covers the case and under that standing order the wages

could be cut for the period of absence. Now standing order 10 says that wages may be deducted for the period of absence in accordance

with the provisions of the Payment of Wages Act. This standing order prescribes the periods for which such wages could be deducted in

accordance with the provisions of the Payment of Wages Act. It is not a standing order dealing with punishment and it cannot be said that if an

employee is in the habit of leaving the mill without permission after making his presence, the only thing that can be done is to deduct his wages for

the period of absence. If the employer in the interest of efficient work in the factory terminates the services of such an employee by giving him

fourteen days' notice or thirteen days' wages in lieu of notice, the action cannot be interfered by the labour court or the industrial court.

5. For the foregoing reasons, we are unable to agree with the labour judge that the order of discharge is improper. We are of the view that the

action taken by the management could not be interfered with on any of the recognized grounds on which the labour court can interfere. The appeal

is allowed and the order of the labour court directing the reinstatement of the employee and giving him two months' wages as compensation is set

aside.