

Before : G. R. Majithia, J.

PUNJAB FINANCIAL CORPORATION, SECTOR 17,
CHANDIGARH.—Petitioner.

versus

THE UNION TERRITORY, CHANDIGARH AND OTHERS,
—Respondents.

Amended Civil Writ Petition No. 2584 of 1985.

19th December, 1990.

Industrial Disputes Act, 1947—S. 10(1)(c)—Misconduct—Meaning of—Employee found guilty of abusive conduct—Reinstatement of such employee by Labour Court—Such reinstatement—If justified.

Held, that the expression "misconduct" has not been defined in the Act. The dictionary meanings of the word "misconduct" are : "improper behaviour; intentional wrong doing or deliberate violation of a rule of standard of behaviour." In industrial law, the word 'misconduct' has acquired a specific connotation. It cannot mean inefficiency or slackness. It is something far more positive and certainly deliberate. The charge of 'misconduct', therefore, is the charge of some positive act or of conduct which would be quite incompatible with the express and implied terms of relationship of the employee to the employer. What is misconduct will naturally depend upon the circumstances of each case.

(Para 11)

Held, that in the instant case, the abusive conduct of workman more particularly towards the lady who was the then Managing Director of the Punjab Financial Corporation did not warrant any lenient punishment except that of termination from service. The Labour Court was unjustified in holding that the punishment awarded was disproportionate to the charges levelled against the workmen. The conduct of the workmen only warrants the penalty of termination from service, which was rightly awarded by the Management. The order of the Labour Court to the extent to which the reinstatement of the workman has been ordered is quashed.

(Para 12 & 14)

Petition under Articles 226/227 of the Constitution of India praying that :

- (i) a writ in the nature of certiorari be issued quashing the reference Annexure P/2;
- (ii) a writ in the nature of certiorari for any writ direction or order quashing the award Annexure P/3 to the extent by which respondent No. 3 has been ordered to be reinstated with continuity of service without back wages;

- (iii) *any other writ, order or direction to which this Hon'ble Court may deem fit under the facts and circumstances of the case may kindly be issued;*
- (iv) *records of the case be summoned;*
- (v) *issue of advance notices to the respondents may kindly be dispensed with;*
- (vi) *filing of certified copies of Annexures P/1 to P/3 be exempted;*
- (vii) *costs of the petition be awarded to the petitioner.*

It is further prayed that during the pendency of the writ petition the operation of the award Annexure P/3 may kindly be stayed.

S. S. Nijjar, Sr. Advocate with G. S. Bajwa, Advocate and Anand Chhiber, Advocate, for the petitioners.

J. C. Verma, Sr. Advocate with Rajesh Gautam, Advocate and Dinesh Kumar, Advocate, for the Respondent No. 3.

Rakesh Garg, Advocate, for Respondent No. 4.

JUDGMENT

G. R. Majithia, J.

(1) This judgment will be read in continuation of the judgment of the Division Bench dated June 7, 1990 to which I was a party. After the disposal of the writ petitions by the Division Bench, review petitions were filed by the Management of the Punjab Financial Corporation and the workmen praying that some points which arise in individual cases could not be argued at the time of hearing of the writ petitions by the Division Bench and they may be allowed to urge the same. It was under these circumstances that the Division Bench referred the cases for disposal to the Single Judge for dealing with other submissions to be raised at the Bar.

(2) This order will dispose of Civil Writ Petitions No. 2584, 2585 and 2586 of 1985 filed by the Punjab Financial Corporation (hereinafter referred to as the Management) and Civil Writ Petitions Nos. 3774, 3853 of 1985 and 1278 of 1986 (filed by the workmen). The workmen have challenged the award of the Labour Court to the extent to which it has not awarded them back wages. The Management has challenged the award of the Labour Court in so far as it has ordered the reinstatement of the workmen.

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(3) The Division Bench has already held that the reference made under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, the Act) by the Chief Commissioner/Administrator, Union Territory, Chandigarh was valid.

(4) The workmen were employed by the Management and their services were terminated by the Managing Director on the basis of departmental enquiry on charges of misconduct. Workmen unsuccessfully appealed against the order of termination. They raised dispute with regard to the legality of the termination order on the ground that the punishment awarded was by way of victimisation because of their trade union activities, which was not to the liking of the Management and that the charges against them were totally false. The workmen's demand for their reinstatement with back wages was not accepted by the Management and the dispute could not be resolved through conciliation proceedings and the reference under Section 10(1)(c) of the Act was made to the Labour Court. The Labour Court, keeping in view the rival contentions of the parties, framed the following issues:—

1. Whether the Punjab Financial Corporation does not fall within the definition of industry and if so, to what effect ?
2. Whether the Chandigarh Administration was not the appropriate Government for making the present reference?
3. Whether the decision of the Appellate Authority under the Staff Regulation governing the workmen in the present case is final and the matter cannot be re-agitated before this Court ?
4. Whether the pleadings in this case are beyond the scope of the reference ? If so, to what effect ?
5. Whether the order passed by the Appellate Authority against the workman was illegal ?
6. Whether the enquiry held against the workman is vitiated on the ground that the Enquiry Officer was not validly appointed and had no jurisdiction to hold the enquiry ?
7. Whether the enquiry held against the workman is vitiated ?
8. Whether the findings of the Enquiry Officer are not justified by the material on record in the enquiry file ?
9. Whether the services of Shri N. L. Sharma were terminated illegally by the management ? If so, to what effect ?
10. Relief.

(5) The Labour Court permitted the parties to lead evidence in support of their respective pleas. Issues No. 1 and 2 were not pressed by the Management. Issues No. 3 and 4 were treated as preliminary issues and decided against the Management; issue No. 6 was decided against the workmen and it was held that there was no flaw in the appointment of Mr. Vadehera as Enquiry Officer and undisputably he had no bias against the workmen; issue No. 7 was answered against the workmen; issue No. 8 was decided in favour of the Management and it was held that findings given by the Enquiry Officer are fully warranted by the material produced before him; issues Nos. 5 and 9 were disposed of together as it was felt that these were overlapping and it was held that the order of termination was not illegal but was disproportionate to the charge proved against the workmen.

(6) Mr. J. C. Verma, learned counsel for the workmen, has not only reiterated the contentions raised by him before the Labour Court, namely, (i) the appointment of the Enquiry Officer was vitiated and (ii) the workmen were deprived of assistance of a lawyer in the course of enquiry, but in addition raised other objection against the enquiry which was not taken before the Labour Court. He submits that an application was made before the Enquiry Officer to transfer the enquiry to another officer, but the same was rejected. This submission is devoid of any merit. It was never raised before the Enquiry Officer. New point of fact cannot be allowed to be raised in writ proceedings.

(7) The objection regarding the appointment of Shri A. L. Vadehera as Enquiry Officer was negative by the Labour Court which, on evidence, found that the objection raised by the workmen about the appointment of Shri A. L. Vadehera as Enquiry Officer was patently in disregard of the provisions of clause (a) of Regulation 11 of the Punjab Financial Corporation (Staff) Regulations, 1961 (hereinafter referred to as the Staff Regulations). The Labour Court, on appreciation of the evidence, arrived at the following finding:—

“It is, therefore, obvious that there was no flaw in the appointment of Mr. Vadehera as Enquiry Officer especially to conduct the departmental enquiries against the employees of the P.F.C. Obviously, the management was trying to be fair in getting the enquiries made from Mr. Vadehera who had no connection with the Corporation earlier to his appointment for the purpose. *It is also not disputed that Mr. Vadehera had no bias against the workman or in favour of the management.* The only point that was

sought to be made was that he was colleague of Shri Sherinderjit Singh as District Attorney before the latter came on deputation with P.F.C. This fact by itself is of no consequence particularly when the workman had not been able to show that Shri Sherinderjit Singh had any hostile animus towards him or any other employees."

The finding was not assailed by the learned counsel and only technical objections were raised which are substanceless.

(8) The other objection that the workmen were denied the assistance of a lawyer is equally devoid of merit. The Labour Court on evidence found that the workmen were well qualified and on their own admission were activists of the Union and after perusing the enquiry proceedings found that the witnesses of the management were effectively cross-examined by the workman and that the workmen led their own evidence in support of their version. It also found that the presenting officer in this case was an Assistant in the office of the management and that he had obtained the degree in Law in the course of service and he had no experience of conducting departmental enquiries earlier to the present proceedings and on this material came to the conclusion that it cannot be held that the workmen were denied opportunity of defending himself because of the rejection of their request for having the services of a lawyer.

(9) The last submission raised for the first time in this Court is that an application submitted to the Enquiry Officer for transfer of the proceedings to another Enquiry Officer was rejected by him. The submission is devoid of merit. Under the Staff Regulations, such a request ought to have been made to the management and not to the Enquiry Officer. In fact, the learned counsel for the workmen has tried to raise disputed questions of fact in these proceedings, which is not permissible. The Labour Court found that the enquiry was fair and the Enquiry Officer had no bias against the workmen. The learned counsel could not point out that the conclusions arrived at by the Labour Court are not based on any evidence. It was held in *Syed Yakooob v. K. S. Radhakrishnan and others* (1), that a writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it or as a result of failure to exercise jurisdiction. An error of law which is apparent on the face of the record can be

(1) A.I.R. 1964 S.C. 477.

corrected by a writ, but not an error of fact, however grave it may appear to be. Their Lordships of the Supreme Court observed thus:—

“In regard to a finding of fact recorded by the Tribunal, a writ of *certiorari* can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of *certiorari*. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of *certiorari* on the ground that the relevant and material evidence adduced before the Tribunal was sufficient or inadequate to sustain the impugned finding. The adequacy of sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of *certiorari* can be legitimately exercised. (vide *Hari Vishnu Kamath v. Ahmad Isheque*, 1955 1 S.C.R. 1104 : (S) A.I.R. 1955 S.C. 233); *Nagendra Nath v. Commr. of Hills Division*, 1958 S.C.R. 1240; (A.I.R. 1958 S.C. 398) and *Kaushalya Devi v. Bachittar Singh*, A.I.R. 1960 S.C. 1168).”

These submissions of the learned counsel for the workmen are bereft of any merits.

(10) The learned counsel for the Management submitted that the Labour Court found the order of termination was valid and was passed after following the procedure prescribed by the Staff Regulations and, after so holding it could not order re-instatement of the workmen on the facts and circumstances of the case. The Labour Court found that gravamen of the five charges on which enquiry was held against the workmen is that they along with other employees of the Management, including Sarvshri N. L. Sharma, Romesh Kumar Joshi and J. S. Brar held demonstration at the entrance gate of Head Office of the Punjab Financial Corporation at Chandigarh on five different occasions and shouted slogans against the officers of the Corporation including Mrs. Shyma Mann, the then Managing

Director and Shri P. S. Tuli, General Manager of the Corporation and used obscene and filthy language such as '*Kute officer hai hai; Tuli Kuta hai hai; Shayma Mann Sharam Karo, Sharam Nahin To Dub Maro; Shayama Rakhe Teen dalal, Tuli, Sucha, Roshan Lal.*' The Enquiry Officer, after carefully analysing the evidence produced on the file, found that the charges against the workmen stood proved. The Labour Court found itself in complete agreement with the reasoning given by the Enquiry Officer in support of the conclusions. It was not justified on the facts and circumstances of the case to conclude that the punishment awarded by the Management was disproportionate to the charges levelled against the workmen.

(11) The expression "misconduct" has not been defined in the Act. The dictionary meanings of the word "misconduct" are : "improper behaviour; intentional wrong doing or deliberate violation of a rule of standard of behaviour." In industrial law, the word 'misconduct' has acquired a specific connotation. It cannot mean inefficiency or slackness. It is something far more positive and certainly deliberate. The charge of 'misconduct', therefore, is the charge of some positive act or of conduct which would be quite incompatible with the express and implied terms of relationship of the employee to the employer. What is misconduct will naturally depend upon the circumstances of each case. The Bombay High Court in *Shardaprasad Onkarprasad Tiwari and others v. Central Railway (Divisional Superintendent Nagpur)* (2), enumerated broadly the following specific illustrative cases of acts of misconduct, the commission of which would justify the dismissal of the delinquent employee :—

- "(i) if act or conduct is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master;
- (ii) if the act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his master;
- (iii) if the acts or conduct of a servant makes it unsafe for the employer to retain him in service;
- (iv) if the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted;

- (v) if the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
- (vi) if the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly;
- (vii) if the servant is abusive or if he disturbs the peace at the place of his employment;
- (viii) if he is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant;
- (ix) if the servant is habitually negligent in respect of the duties for which he is engaged;
- (x) if the neglect of the servant, though isolated, tends to cause serious consequences."

The effect of such misconduct on the relationship of employment has been stated by Lopes, L.J. in *Pearce v. Foster* (3), in the following words:—

"If a servant conduct himself in a way inconsistent with the faithful discharge of his duties in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

These observations were cited with approval by the apex Court in *Govinda Menon v. Union of India* (4).

(12) In the instant case, the abusive conduct of workmen more particularly towards the lady who was the then Managing Director of the Punjab Financial Corporation did not warrant any lenient punishment except that of termination from service. The Labour

(3) (1886) 17 Q.B.D. 536.

(4) (1967) II L.L.J. 248 (at 255) (S.C.).

Court was unjustified in holding that the punishment awarded was disproportionate to the charge levelled against the workmen. The conduct of the workmen only warrants the penalty of termination from service, which was rightly awarded by the Management. In this context, reference to the decision of the apex Court in *Workmen v. Bharat Fritz Werner (P) Ltd. and another* (5), will be useful. In that case, the High Court of Karnataka, on appreciation of the evidence recorded the following findings :—

- “(i) these workmen had gone inside the President's room in an aggressive mood;
- (ii) they threatened the President with dire consequence if the notice was not removed;
- (iii) they confined the President to his room and came very close to him with gesticulations and fisted hands;
- (iv) they did not go out in spite of request and shouted stating that the President should not go out; and
- (v) they stayed there till the President gave instructions to Mr. Keshy to remove notice.”

After so holding, the Karnataka High Court ordered the reinstatement of the workmen. On appeal, their Lordships of the apex Court held thus :—

“The misconduct that has been found established against these five workmen involves threatening the highest executive, viz., the President of Company, with dire consequences, wrongfully confining him in his room and compelling him to withdraw the notice. These acts of misconduct involve acts subversive of discipline on the part of these workmen. Three of these workmen were office bearers of the Union. It cannot be said that these workmen had acted at the instigation of somebody. Taking into consideration the facts and circumstances of the case, we are of the opinion that, keeping in view the interests of the industry, this is a case where it can be said that it is not desirable and expedient to direct reinstatement of these workmen. In

our view, therefore, the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment."

The apex Court, however, awarded compensation to the workmen in the light of the dictum laid down in *O. P. Bhandari v. Indian Tourism Development Corporation Ltd.* (6).

(13) On the facts and circumstances of the instant case, the order of the Labour Court ordering reinstatement of the workmen was wholly unwarranted. The workmen were entitled to compensation for loss of future employment, in the light of the judgment of the apex Court in *O. P. Bhandari's case* (supra).

(14) For the reasons aforesaid, C.W.P. Nos. 3774 and 3853 of 1985 and 1278 and (filed by the workmen) are dismissed and C.W.P. Nos. 2584, 2585 and 2586 of 1985 (filed by the Management) are allowed. The order of the Labour Court to the extent to which the reinstatement of the workmen has been ordered is quashed. Since there is no material available on the record as to what pay and allowances were last drawn by the workmen, it would not be possible to determine the compensation payable to them. For the limited purpose of determining the compensation payable to the workmen in the light of the dictum of the Apex Court in *O. P. Bhardwaj's case* (supra), the case is remitted to the Labour Court. The parties through their counsel are directed to appear before the Labour Court on January 12, 1991, which will determine the compensation payable to the workmen in lieu of reinstatement after permitting them to lead evidence and thereafter fix the time within which the compensation is to be paid to the workmen by the management. In the circumstances of the case, I make no order as to costs.

S.C.K.

Before:—Jawahar Lal Gupta, J.

KRISHAN LAL AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 5829 of 1988.

23rd April, 1991.

Constitution of India, 1950—Art. 226—Writ of Mandamus—Employees of same employer—Some posted in office and some on octroi side—Such posts interchangeable—Employees on octroi duty discriminated in matter of holidays—Such discrimination—Invalid.

(6) 1986 (4) S.C.C. 337.