M.P. STATE ELECTRICITY BOARD & ANR. A

*v.*

S. K. YADAV

(Civil Appeal No.7312 of 2008)

DECEMBER 16, 2008 B

**[S.B. SINHA AND CYRIAC JOSEPH, JJ.]**

*Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 – ss. 31(3), 61 and para 12 cl.(3), (4) para 8 cl(b) – Unauthorised absence for more than two years – Penalty of reduction of pay to its minimum and stoppage of increments for five years imposed – Set aside by courts below – Interference with – Held: Order of labour court setting aside penalty imposed not interfered with – As regard grant of back wages, unauthorised absence for a long time is serious misconduct – In case order on application by workman for grant of leave is not passed within the period specified, ultimate order would not be vitiated – It is directory in nature – Labour Court proceeded on a wrong basis that by not refusing to grant leave, it would be deemed to have been granted – In the interest of justice, period of absence to be treated as period on extraordinary leave and unauthorized leave without pay – Salary already paid to be adjusted accordingly.* C D E

**Respondent-employee remained unauthorisedly absent on and from 10.9.1991 upto 1.12.1993. Disciplinary proceeding was initiated against him. Penalty of reduction of pay to its minimum and stoppage of increments for period of five years was imposed. Respondent filed an application. Both the Labour Court and the Industrial Tribunal held the respondent was not unauthorisedly absent and set aside the penalty imposed. High Court also upheld the order. Hence the present appeal.** F G

**Partly allowing the appeal, the Court**

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A **HELD: 1.1. The Standing Order framed in terms of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 has the force of a statute. Paragraph 12 of the Standing Order provides for disciplinary action on the ground of commission of misconduct on the part** B **of an employee. Clause (4) of Paragraph 12 thereof provides that no punishment shall be imposed on an employee unless proved guilty of misconduct in an enquiry conducted in the manner specified therein. Punishments which can be imposed upon a delinquent employee have been provided in Clause (3) of Paragraph** C **12 of the Standing Order. The Labour Court opined that the punishment imposed upon the respondent had not been prescribed in the Standing Order. The Labour Court in terms of the provisions of the Act exercises jurisdiction as is specified therein. It was entitled to enter into the** D **question of fact as also the legality or otherwise of the disciplinary proceedings and the quantum of punishment imposed. The order of the Labour Court setting aside the penalty imposed upon the respondent is not interfered with. [Paras 13 and 14] [672-G-H; 673-A-C]**

E **1.2. Unauthorised absence for a long time is a serious misconduct. If respondent was aggrieved by and dissatisfied with the decision of the management in regard to closing down of the 'Dispensary', he should have taken recourse to such remedies which were** F **available to him. He could have gone on leave provided the same was due to him in law. In terms of Clause (b) of Paragraph 8 of the Standing Order the applications filed by the workman were required to be considered and an order thereon should have been passed within the period** G **specified therein. [Para 16] [673-D-E]**

**1.3. Where a public authority is required to pass an order in terms of the statute within a period stipulated therefore, non-compliance whereof would not vitiate the ultimate order, must be held to be directory in nature and** H **not imperative. [Para 17] [673-G]**

**1.4. The Labour Court proceeded on a wrong premise that by not refusing to grant leave, the same would be deemed to have been granted. The Standing Order does not contemplate such a situation. The question as to whether leave has been granted or not will again depend upon the facts and circumstances of each case and no legal inference can be drawn therefrom. [Para 18] [673-H; 674-A]**

**1.5. In the instant case, interest of justice would be subserved if the period from 11.09.1991 and 30.11.1993 during which the respondent did not perform any duty shall be treated to be period on leave available to him in law. The type of leave would be extraordinary leave and unauthorized leave without pay. The salary paid to the respondent for the months of December, 1991 to February, 1992 shall be adjusted accordingly. [Paras 19, 20 and 21] [674-B-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7312 of 2008.

From the Judgment and final Order dated 22.06.2005 of the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 975 of 2001.

Aditya Kumar Dubey, Sanjit Dutta, Naseem Akhtar and Ashiesh Kumar for the Appellant.

P.S. Patwalia, Deepak Goel and S. Janani for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

2. Whether respondent should have been granted back wages in the facts and circumstances of this case is the question involved in this appeal which arises out of a judgment and order dated 22.06.2005 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 975 of 2001.

3. The basic fact of the matter is not in dispute.

Respondent herein is a Homeopathic Doctor. He was

A appointed as a Homeopathic Assistant in the Homeopathic Dispensary which used to be run by the appellant. However, the Dispensary was closed. He was asked to join the Head office as Office Assistant Grade – II. He protested thereagainst. He went of leave with effect from 10.09.1991. It is alleged that he
B remained unauthorisedly absent on and from 10.09.1991 upto 1.12.1993. In the meanwhile, he filed several representations as regards the decision of the management to transfer him in the post of Office Assistant Grade – II in the Head Office upon closure of the Homeopathic Dispensary.

C 4. A chargesheet was issued to him on or about 12.07.1994 in respect of the following charges:

"Charge No. 1 – Officiating on the abovesaid responsible post, Sri S.K. Yadav, exercising irresponsible behaviour, remained absent w.e.f. 11.9.91 from his duty without
D permission of his Senior Officer and without giving written or oral information in unauthorized manner. Even charge of all the homeopathic medicines and commodities of Dispensary which was under you, without handing over the charge to anybody else, kept the keys with you in unauthorized manner. Dr. Yadav was informed to be
E present on his duty vide Letter No. 01-04/CMO/224, Dated 20.0.91 (sic) of Chief Medical Officer, M.P.E.B., but neither he presented himself on duty nor thought it necessary to reply the letter of Chief Medical Officer.

Thus, Sri S.K. Yadav under provisions of M.P. Civil
F Service Rules and under para no. 24(2) of provisions of M.P. Civil Services Leave Rules (Classification and Appeal) Rules, 1966 which has been admitted by the Board vide its Notification No. 01-01 Five /1620/81/98/68 dated 21.4.82, has made himself eligible, violating the
G above provisions for serious disciplinary action.

Charge No. 2 – That Sri Yadav had been directed to give his clarification for remaining absent continuously from duty vide this Office Letter No. 02-07/one/Estd. 1782 dated 16.11.1993. Sri S.K. Yadav on 01.12.93 in the
H afternoon submitted information of his being present in the

office of undersigned, but he did not produce any clarification for his undisciplined action. Thereafter, Sri S.K. Yadav was found absent from his duty from 7.12.93 without any prior information and permission.

Thus, act of Sri Yadav, i.e., remaining absent continuously from his duty without prior information or permission in unauthorized manner, is grave misconduct contrary to Rule 3 and ....of Madhya Pradesh Civil Services (Conduct) Rules, 1965, which has been enforced by the Board vide its Notification No. S/111/G-213, dated 28.2.68 on its employees and under part 12/1/P of Standard Standing Order.

Charge No. 3 – On 1.12.93 in spite of being present on duty, Sri Yadav remained disinterested towards the works of Electricity Board. Sri Yadav was informed vide this office letter No. 02-07/one/Estd./53 Dated 11.1.94 that you will work under the guidance of Section Officer, but it was found that you were not found on your allotted work in the office and it was also found that you remained absent from office, putting your signature on Attendance Register from 10.30 a.m. to 5.30 p.m. on regular basis, violating all the Office Directions."

5. A disciplinary proceeding was initiated in respect of the aforementioned charges. Respondent was, however, exonerated of Charge No. 3. Charges No. 1 and 2 having been proved, a penalty of reduction of pay to its minimum and stoppage of increments for a period of five years was passed against him.

Respondent filed an application under Section 31(3) read with Section 61 of the Madhya Pradesh Industrial Relations Act, 1960 (for short "the Act") before the Labour Court. The said application was allowed in terms of an award dated 29.05.1999, whereby the Presiding Officer, Labour Court passed the following award:

"Hence, allowing the applicant's application, disputed order dated 21.9.96 passed by the office of Opposite

A Parties, on account of being illegal and unjust, I do reject the same and Opposite Parties are being directed that disputed order dated 21.9.96 on account of being rejected, applicant is being declared entitled for receiving all his interests and profits of his earlier post before 21.9.96 from the Opposite Parties."

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6. In the said award, the learned Labour Court discussed in details about the correctness or otherwise of the allegations made against the respondent by the department as also the report of the Inquiry Officer.

C An appeal preferred thereagainst was dismissed by the Industrial Tribunal by an order dated 3.08.2000.

A writ petition was preferred thereagainst. By reason of the impugned judgment, the said writ petition has been dismissed.

D Appellants are, thus, before us.

7. Mr. Aditya Kumar Dubey, learned counsel appearing on behalf of the appellants, would contend that in the peculiar facts and circumstances of this case, the respondent was not entitled to any back wages.

E 8. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the respondent, on the other hand, contended that keeping in view the fact that the wages upto February, 1992 had been paid, it is not a case where the back wages should be denied to him.

F 9. The terms and conditions of the service are governed under the M.P. Electricity Board (General Service) Regulations, 1952 framed under the Electricity (Supply) Act, 1948. It is also not in dispute that the Standing Order framed in terms of the provisions of the Madhya Pradesh Industrial Employment

G (Standing Orders) Act, 1961 is applicable.

Respondent filed an application before the Labour Court in terms of Sub-section (3) of Section 31 of the Act, which reads as under:

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"31. Notice of change – (1) *** *** A

(2) *** ***

(3) A representative of employees or an employee desiring a change in respect of an industrial matter specified in Schedule II or any other matter arising out of such change may make an application to Labour Court in such manner B as may be prescribed."

10. The Labour Court while adjudicating on such a complaint is entitled to determine the question relevant to the dispute in terms of Section 61(1)(A)(a) and 61(2) of the Act, which reads as under: C

"61. Powers of Labour Court – (1) In addition to powers conferred under other provisions of this Act, a Labour Court shall have power to –

(A) decide – D

(a) dispute regarding which application has been made to it under sub-section (3) of Section 31 of the Act;

*** *** ***

(2) For the purposes of deciding a dispute under paragraphs (A) and (B) of sub-section (1) it shall be lawful E for the Labour Court to determine questions of fact relevant to the dispute."

11. It is in exercise of that power, the learned Labour Court invoked clause (b) of paragraph 8 of the Standing Order, which reads as under: F

"(b) An employee who desires to obtain leave of absence shall apply to the Manager or the Officer authorized by him. It shall be duty of the Manager or the officer to pass orders thereon on two days in a week fixed for the purpose; provided that, if the leave asked for is of an urgent nature, G i.e., commences on the date of the application or within three days thereof, orders for the grant or refusal of leave shall be communicated without delay."

We may also notice clause (e) of the said paragraph, which is as under: H

"(e) An employee remaining absent beyond the period of leave originally granted or subsequently extended shall be liable to loose his lien on his post and shall be deemed to have left the services from the date of his unauthorized absence unless he returns within ten days of the expiry of the sanctioned leave and or explains to the satisfaction of the Manager or the officer authorized by him, his inability to resume immediately on the expiry of his leave. An employee who so looses his lien but reports for duty within 30 days of the expiry of his leave shall be kept as a badli if he so desires and his name shall be entered in the badli register."

Inter alia on the aforementioned premise as also on the ground that ordinarily only a fine can be imposed for being unauthorisedly absent, it was held that the charges against the respondent cannot be said to have been proved.

12. It is not in dispute that the respondent joined his post on 24.07.1989. It was furthermore not in dispute that till February, 1992, his wages had been paid. The learned Labour Court as also the Industrial Court inter alia proceeded on the premise that the respondent had been filing applications for grant of leave although an order thereupon was required to be passed by the appropriate authority in terms of the statutory order, i.e., twice in a week, and the same having not been done, leave must be deemed to have been granted and in that view of the matter, the respondent cannot be said to have remained unauthorisedly absent.

13. The Standing Order framed in terms of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 has the force of a statute. Paragraph 12 of the Standing Order provides for disciplinary action on the ground of commission of misconduct on the part of an employee. Clause (4) of Paragraph 12 thereof provides that no punishment shall be imposed on an employee unless proved guilty of misconduct in an enquiry conducted in the manner specified therein. Punishments which can be imposed upon a delinquent employee have been provided in Clause (3) of Paragraph 12

of the Standing Order. The Labour Court opined that the punishment imposed upon the respondent had not been prescribed in the Standing Order. A

14. The Labour Court in terms of the provisions of the Act exercises jurisdiction as is specified therein. It was entitled to enter into the question of fact as also the legality or otherwise of the disciplinary proceedings and the quantum of punishment imposed. B

15. We, therefore, do not intend to interfere with the order of the Labour Court setting aside the penalty imposed upon the respondent. C

16. The question, however, which arises for consideration is as to whether in the peculiar facts and circumstances of the case the back wages should have been directed to be paid.

Unauthorised absence for a long time is a serious misconduct. If respondent was aggrieved by and dissatisfied with the decision of the management in regard to closing down of the 'Dispensary', he should have taken recourse to such remedies which were available to him. He could have gone on leave provided the same was due to him in law. It is not in dispute that in terms of Clause (b) of Paragraph 8 of the Standing Order the applications filed by the workman were required to be considered and an order thereon should have been passed within the period specified therein. D E

Mr. P.S. Patwalia, however, when questioned, could not point out any consequences emanating therefrom. It is, therefore, directory in nature. F

17. It is now a well-settled principle of law that where a public authority is required to pass an order in terms of the statute within a period stipulated therefore, non-compliance whereof would not vitiate the ultimate order, must be held to be directory in nature and not imperative. G

18. The Labour Court, therefore, in our opinion, proceeded on a wrong premise that by not refusing to grant leave, the same would be deemed to have been granted. The Standing Order does not contemplate such a situation. The question as to H

A whether leave has been granted or not will again depend upon the facts and circumstances of each case and no legal inference can be drawn therefrom.

19. We, therefore, are of the opinion that in a case of this nature, interest of justice would be subserved, and in particular, B having regard to the nature of penalty imposed upon the respondent, if the period from 11.09.1991 to 30.11.1993 during which the respondent did not perform any duty, should be directed to be treated as period on leave.

20. We may only notice that even, according to the C department, the period of leave should be treated in the following terms:

| "Type of leave | Duration | Total days |
|---|---|---|
| Extraordinary Leave (without Pay) | 19.9.91 to 14.3.92 (178 days on 13.11.90 converted into half pay holiday) | 178 |
| | 15.3.92 to 3.4.92 | 20 |
| | 4.4.92 to 23.4.92 | 20 |
| | 24.4.92 to 13.5.92 (accepted as per page 17 Sub Rule 24 of the Holiday Rules Book of the Board) | 20 |
| Unauthorized leave (without pay) | 14.5.92 to 30.11.93 | 568" |

21. We, therefore, allow this appeal in part directing that the period from 11.09.1991 and 30.11.1993 shall be treated G to be as if the respondent was on leave available to him in law. The salary paid to the respondent for the months of December, 1991 to February, 1992 shall be adjusted accordingly. No costs.

N.J. Appeal partly allowed.

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