

**infant Milk Food Factory Vs. Labour Court and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/460218](http://sooperkanoon.com/460218)

**Court :** Allahabad

**Decided On :** Aug-31-1994

**Reported in :** (1995)ILLJ1220All

**Judge :** S.P. Srivastava, J.

**Acts :** Uttar Pradesh Industrial Disputes Act, 1948; [Industrial Disputes Act, 1947](#)

**Appeal No. :** C.M.W.P. No. 1331/1980

**Appellant :** infant Milk Food Factory

**Respondent :** Labour Court and ors.

**Advocate for Def. :** A.D. Prabhakar and ;R.K. Sharma, Adv.

**Advocate for Pet/Ap. :** V.B. Singh, Adv.

**Disposition :** Petition partly allowed

**Judgement :**

**S.P. Srivastava, J.**

1. Feeling aggrieved by the award of the Labour Court No. 1 dated September 26, 1979 holding that the petitioner employer had acted illegally in discharging the driver, respondent No. 3, with effect from May 22, 1973 and directing his reinstatement with full back wages, the petitioner employer has approached this

court seeking redress praying for the quashing of the impugned award.

2. Heard learned counsel and perused the record. It appears that the respondent No. 3 who was employed as a driver for driving the staff bus of the petitioner, had dashed the bus with a Government roadways bus resulting in damage to the bus whereafter he was charge sheeted and asked to explain as to why disciplinary action may not be taken for rash and negligent driving, for not lodging any complaint for the accident with the police; for exceeding his authority by executing an agreement with a Government roadways driver and for incurring loss and damage to the factory. In the domestic enquiry, it was found that the respondent No. 3 acting in haste and without caring for safety of the bus and passengers travelling therein, had tried to overtake the Government roadways bus and while so doing the factory bus had dashed with the Government roadways bus and damage was caused to the factory bus to the tune of Rs. 800 to 900/-. It was also found that the respondent No. 3 had intentionally avoided filing any complaint with the police and further had exceeded his authority by entering into an agreement with the driver of the Government roadways bus. In domestic enquiry the charges levelled against the respondent No. 3 were found to be proved beyond any shadow of doubt. The management of the petitioner thereafter appears to have decided to discharge the respondent No. 3 from service of the factory after giving one month wages in lieu of notice period. This punishment was awarded after taking into consideration the previous service record of the respondent No. 3 which showed that he had been warned for dishonesty; for late running of the bus; for carrying out-siders in the factory bus and charging fare from them and leaving duty without permission; for disobedience of the order of superiors etc.

3. On an Industrial dispute having been raised the State Government made a reference to the effect as to whether the discharge of respondent No. 3 with effect from May 22, 1973 was valid and if not in that event to what relief and damages he was entitled.

4. The Labour Court in its impugned decision came to the conclusion that the acts attributed to the respondent No. 3 which had been made the basis for his discharge from services were not covered under any of the clauses of para 22 of

the relevant standing order which defined the acts or omissions constituting 'misconduct'. It was, therefore, held that it could not be said that the workman concerned had committed any 'misconduct' and even if the charges mentioned in the charge sheet dated January 1, 1973 were assumed to be correct, it could not be held that the respondent No. 3 had committed a misconduct and consequently the Labour Court was of the opinion that the enquiry proceedings as a result of which the respondent No. 3 had been dismissed were illegal and his service could not be terminated on the basis of these proceedings. It was in this view of this matter that without going into any other question the Labour Court directed for the reinstatement of the respondent No. 3 with effect from May 22, 1973 with full back wages.

5. The learned Counsel for the petitioner has urged that para 22 of the relevant standing order enumerated acts or omissions constituting misconduct and that Clause 13 of the aforesaid paragraph stipulated damage to work in process or to other property of factory to be a misconduct. The contention is that the damage to the staff bus of the petitioner did fall within the ambit of Clause 13 of the paragraph 22 of the standing order. It was further contended that paragraph 22 of the standing order which contained various clauses indicating various types of misconducts was not exhaustive and the various types of acts/omissions referred to in the various clauses of paragraph 22 of the standing order were only enumerative and not exhaustive. It was urged that in the facts and circumstances of the case the acts attributed to the delinquent employee, respondent No. 3, clearly amounted to a 'misconduct' for which he could be punished. The assertion is that the impugned award is manifestly illegal as it proceeds on the erroneous assumption that the acts/omissions attributed to the delinquent employee-respondent No. 3 did not amount to a 'misconduct' so as to authorize the petitioner employer to take any disciplinary action against the delinquent employee and award a punishment to him.

6. It may be noticed that the expression 'misconduct' has not been defined either in the [Industrial Disputes Act, 1947](#) or the U.P. Industrial Disputes Act. Ordinarily misconduct refers to 'improper behaviour' intentional wrong doing or deliberate violation of a rule of standard of behaviours. In so far as the relationship in

industrial employment is concerned, a workman has certain express or implied obligations towards his employer. Obviously any conduct on the part of an employee inconsistent with the faithful discharge of his duties towards his employer can fall within the ambit of 'misconduct' unless it be of trifling nature. A 'misconduct' on the part of an employee obviously has to be in respect of some positive act or of conduct which would be quite incompatible with any express or implied term of relationship of the employee with the employer. The employers may frame their own standing orders suited to peculiar exigencies of their industries and establishments and there may be a case where the standing orders may limit the concept of misconduct.

7. However, it cannot be lost sight of that the standing orders of an establishment may only describe certain cases of misconduct which cannot be deemed to be exhaustive of all species of misconduct which a workman may commit. There may be a case where an act may not come within the specific terms of misconduct described in the standing order although it may still be misconduct in the special circumstances and the facts of the case which it may not be possible to condone and for which the employer may take appropriate action. There may also be various types of misconducts other than those included in the standing orders which may expose a delinquent employee to penal consequence. It is not possible to lay down any general rule in this regard but the question as to whether a particular act of misconduct has been committed or not even though it may not have been described in so many words in the standing orders will be a matter for the Labour Court/Tribunal to consider. Likewise whether a particular misconduct will entitle the employer to punish the employee with dismissal or discharge will also be a matter in an appropriate case for decision by the Tribunal/Labour Court, as it is for the Tribunal/Labour Court to consider whether the punishment inflicted was commensurate with the gravity of the misconduct.

8. It may further be not lost sight of that a workman owes a duty to his employer to exercise reasonable care in the performance of his duties. A workman who deliberately neglects to carry out his work or perform his duty when required to do with reasonable care has to be held guilty of misconduct of negligence. Further where there is a duty to exercise care, reasonable care must be taken to avoid

acts or omissions which can be reasonably foreseen to be likely to cause physical injury to person or property.

9. Having considered the facts and circumstances of the case and the stipulations contained in para 22 of the relevant standing order it seems to me that the acts/omissions referred to in the various clauses of para 22 of the standing order cannot be deemed to be exhaustive. On the other hand they are only enumerative of the misconducts which may authorize the employer to take disciplinary action and award suitable punishment to the delinquent employee. Moreover the damage in question to the staff bus could not be taken to be as falling outside the ambit of Clause 13 of para 22 of the standing orders.

10. In view of my conclusions indicated hereinabove, I find it impossible to approve of the finding returned by the respondent No. 1 in the impugned award to the effect that the acts attributed to respondent No. 3 in the charge sheet submitted against him could not amount to a 'misconduct' so as to authorize the employer to take a disciplinary action and award a suitable punishment in case the charges stood proved in accordance with law.

11. In the present case since the respondent No. 1 has passed the impugned award only on the aforesaid preliminary finding about there being total absence of 'misconduct' so as to justify any disciplinary action and has not gone into any other question, I think it would be in the interest of justice to remand the case to the respondent No. 1 for being decided afresh in accordance with law in the light of the observations made hereinabove.

12. In the result this writ petition succeeds in part. The impugned award dated September 26, 1979, a true copy of which has been filed as Annexure 1 to the writ petition, is quashed with the direction to the respondent No. 1 to restore the adjudication case in question to its original number and decide the same afresh in accordance with law and in the light of observations made hereinabove.

However, the parties are directed to bear their own costs.