Supreme Court of India
L. Michael & Anr vs M/S. Johnston Pumps India Ltd on 10 February, 1975
Equivalent citations: 1975 AIR 661, 1975 SCR (3) 489
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
L. MICHAEL & ANR.

Vs.

RESPONDENT:
M/S. JOHNSTON PUMPS INDIA LTD.

DATE OF JUDGMENT10/02/1975

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
ALAGIRISWAMI, A.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 661 1975 SCR (3) 489
1975 SCC (1) 574
CITATOR INFO :
RF 1980 SC1896 (68)
F 1985 SC 251 (6)
RF 1991 SC 101 (15,170,190)

ACT:
Industrial Disputes Act (14 of 1947)--Dismissal of an employee--Power of Tribunal to go behind an order of termination--Employer must disclose the grounds of his action when challenged as colourable or mala fide--When Court should interfere with a finding of fact.

HEADNOTE:
The services of the appellant, who was an employee of the respondents, were terminated by the latter by giving him a month's notice as per the standing orders without assigning any reasons for the termination. The consequential industrial dispute was referred to the Labour Court. The management alleged that the dismissed employee misused his position by passing on important and secret information about the affairs of the company to certain outsiders, that even after he was transferred to another section he made attempts to elicit information from the section with a view to pass it on to outsiders, and that, therefore, the

management lost confidence in the employee and terminated his services by a bona fide order. The Labour Court confirmed the order of termination. In appeal to this Court, it was contended that, even where a management had the Power to terminate the services of its employees without reasons but with notice pay the colourable exercise of that power invalidated the order and the Court court probe, beheath the surface to check upon the bona fides behind the exercise-of the power,

Allowing the appeal to this Court.

HELD: 1(a) Ile Labour Court has misled itself on the law and its order should be set aside. The word will be reinstated with back wages. [498 G]

(b) The manner of dressing up an order does not matter. The Court will lift the veil to view the reality or substance of the order. [495 F]

(2) (a) 'The Tribunal has the power and. indeed, the duty to X-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an inquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new Armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this neo formula Loss of confidence in the law will be the consequence of the Loss of Confidence doctrine. [497 C-D]

(b) An employer who believe or suspects that _his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. it should be bona fide and reasonable. It must rest on some tangible basis and the Power has to be exercised by the employer objectively, in good faith, which means honestly and with due care and prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice. the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially. [498 B-C]

In the instant case this has not been done. There is only the ipse dixit of the employer that he was suspecting since 1968 that the appellant was divulging secrets relating to his business. The employer has not disclosed the grounds on which this suspicion arose in 1968. Further after 1968, the appellant was given

490

two extra increments in addition to his normal increments in

appreciation of his hard work. This circumstance completely demolishes even the whimsical and tenuous stand taken by the employer. It was manifest that the impugned action was not bona fide. [498 D]
The Chartered Bank v. The Chartered Bank Employees' Union [1960] 3 S.C.R. 441; Murgan Mills Ltd. v. Industrial Tribunal, Madras [1965] 2 S.C.R. 148 and Workmen of Sudder Office, Cinnamare v. Management, [MO] II L.L.J. 620. followed.
Air India Corporation Bombay v, V. A. Rebellow & Anr. [1972] 3 S.C.R. 606 distinguished.
Delhi Transport Undertaking v. Goel [1970] II LIJ, 20, referred to.
(3) It is true that this Court, in appeal, as a rule of practice, is loath to interfere with a finding of fact recorded by the trial court. But if such a finding is based on no evidence or is the result of a misreading of the material evidence or is so unreasonable or grossly unjust that no reasonable Person would judicially arrive at that conclusion. it is the duty of this Court to interfere and set matters right. [498 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1605 of 1972. Appeal by Special leave from the Award dated November 24, 1971 of the Labour Court, Delhi in L.C.I.C. No. 31 of 1971. M. K. Ramamurthi and J. Ramamurthi, for the appellant. V. M. Tarkunde, O. C. Mathur, D. N. Mishra, and Sudhir K. Khanna, for the respondent.

The Judgment of the Court was delivered by KRISHNA IYER, J.-Industrial law in India has many twilight patches, illustrated by the present appeal which projects the problem of an employee whose services have been terminated similiciter by the Management, a pump manufacturing enterprise, issuing a notice ending the ,employment and offering one month's pay as authorized by the relevant Standing orders. The thorny legal issue is whether the ipse dixit of the employer that he has lost confidence in the employee is sufficient justification jettison the latter without levelling and proving the objec- tionable conduct which has undermined his confidence so that the tribunal may be satisfied about the bona fides of the 'firing' as contrasted with the colourable exercise of power hiding a not-so-innocuous purpose.

The backdrop The facts and circumstances become decisive of the fate of the, ,case even where the law is simplistic or fair in its face. Here, what are the events and environments of employment leading to the worker being given the boot ? Is the order an innocent and, therefore, legal quit notice sanctioned by the Standing Orders which does not stigmatize the worker but merely bids him good-bye ? Oris it a sinister intent to punish as a guileless order based on 'loss of confidence', an alibi which, on a certain reading of this Court's rulings, is also a protective armour against judicial probe and setting aside ?

Michael, a permanent employee of proved efficiency and six years standing, was appreciatively given two 'merit' increments. But a letter of September 2, 1970 told him off service, giving him one month's 'notice-pay' discharging him without damning, as distinguished from dismissing him for misconduct.

The rival versions illumine the factual confrontation, the resolution of which is no easy legal essay. The worker, Michael, through his Union, protested against the 'sack' order as victimisation of a Trade Union activist but the Management was heedless, conciliation was fruitless and the dispute between the Union and the Management was eventually referred by the Delhi Administration to the Labour Court for adjudication. The reference ran thus "Whether the termination of services of Shri L. Michael is illegal and/or unjustified and, if so, to what relief is he entitled and what directions are necessary in this respect ?" Both sides stated their cases in their pleadings and the true nature of the conflict emerges from them. The story set out by the employee in his statement before the Labour Court was that although he was efficient, appreciated and awarded merit increments, the Management was antagonized by his active part in the formation of an Employees' Union, especially because oral warnings by the Regional Manager against his Unionist proclivity was ignored. Michael became the treasurer of the Union. This Union chapter claimed its price, for the Management quietly terminated his services by a simple letter which reads:

> "We are sorry to advise that your services are no longer required by the Company. As such, this letter may be treated as a notice for the termination of your services with immediate effect. As for the terms of your employment letter, on termination of services you will be paid one month's salary extra. You may please call on the undersigned and have your accounts settled."

This act, claims the worker, was 'in flagrant violation of elementary principles of natural justice without assigning any reason and without giving him an opportunity to defend himself. This, in his statement he challenged the termination as 'wrongful, mala fide, illegal, and an act of victimisation'. The counter case of the management get up in its statement, as is apparent from the discharge order, is that no dismissal is involved, no enquiry necessary and no illegality invalidates.

The management claimed that the alleged annoyance with the, workman for union activity was a concoction in self-defence, as the Management had not even knowledge of the formation of the Union. This fatter limb of the plea is a little too naive. The warning by the Regional Manager was denied and the reference to trade union activities by the worker was more 'to create a ground for the workman's claim and has been leveled as a matter of habit and routine. The basic plea of the management was that the action being a simple termination without a sting, the process and consequence of a disciplinary action were not attracted. The Management, however, took the Court into confidence to explain why the employee was discharged. He was employed as a Receipt and Dispatch Clerk in the office upto 10-3-1970. As an insider with a to office correspondence the employee misused his position by passing on 'very important and secret information about the affairs of the company to certain outsiders. He was consequentially shifted to the post of clerk handling posting of bins and collection of payments but the workman, although denied direct access to correspondence in the Receipt and Dispatch section, made attempt 'to elicit information from the

section with a view to pass it on to outsiders'. The upshot of these activities of which the management was alerted was a loss of confidence in the employee. This unreliability was visited with non- injurious termination of service by a bona fide order. Therefore, the action was claimed to be legal and immune to judicial interference.

Two socially vital factors must inform the understanding and application of Industrial jurisprudence. The first is the constitutional mandate of Part IV obligating the State to make 'provision for securing just and humane conditions of work'. Security of employment is the first requisite of a worker's life. The second equally axiomatic consideration is that a worker who willfully or anti-socially holds up the wheels of production or undermines the success of the business is a high risk and deserves, in industrial interest, to be removed-without tears. Legislation and judicial interpretation have woven the legal fabric. We have to see whether on the facts of the present case what the relevant law is, whether it has been applied by the Labour Court rightly and whether the appellant has merit on his side, judged by the social conscience and judicial construction of the law in this branch of discharge simpliciter versus disguised' dismissal. A few salient facts need emphasis before the principles of law are applied. The workman in his statement stressed the case of malaus antinus due to his union activities, although he did vaguely refer to the termination of service as wrongful and malafide. From this it cannot be argued, as the Management sought to make out, that his denial of leaking out office secrets was an after-thought pleaded only in the rejoinder and therefore liable to be discredited. How could the worker have a hunch about the management's undisclosed ground for dismissal ? When the latter stated the reason which prompted this action for the first time before the Labour Court, the workman in his reply refuted this case. It is noteworthy that there is no speck of record or any hint of written material in support of the story that the management had credible information of the appellant betraying sensitive secrets of business. The letters sent by the Union and the worker requesting for reinstatement were being ignored. The management could well have disclosed their suspicion in reply and told the Union and the workman that they resorted to an innocuous discharge to avoid punitive trauma. The management could have divulged in writing to the Conciliation Officer their legitimate fears about the worker's integrity and their considerate action of simple termination. This too they failed to do. In their written statement in Court the Management asserted for the first time that the employee was an intractable smuggler of inside information. The statement winds up with the legalistic plea : 'the management had, in the meanwhile, lost confi- dence in the workman'. This culminating collapse of trust is alleged to be the primary cause for the discharge from employment.

At the time of the evidence, M.W.1, a former Regional Manager, swore that the workman joined as a pump operator in 1963, was promoted as clerk in 1967, that the suspicion of disloyal communication arose 'for the first time in 1968' and yet 'thereafter he was given two increments extra in addition to normal increments. He was a hard working man and has a very good memory but the suspicion was there'. These are the facts and the evidence in the case and it has been fairly conceded before the Labour Court by the Management's representative that were the action regarded as punitive it was bad, there having been no enquiry whatever with liberty to the employee to meet the charge. But the single slender strand on which the discharge was suspended was 'loss of confidence of the management in the employee. The Labour Court argued:

> "According to the management, as there was no proof with it for this suspicion it could not proceed against him departmentally and, in the circumstances, it was considered desirable to terminate his services by passing an order of discharge without any stigma attached to it."

While on all hands it was agreed that the employee was efficient, the court took the view that the motivation for the termination was the suspicion Which lurked in the mind of the Regional Manager that information regarding tenders was being passed on by the workman'. We, have to find out whether the holding in the award that, on the materials above placed, the action could be called colourable or saved as bona fide, could be castigated as achieving an illegitimate end or supported as a premature but straight- forward and harmless farewell. In short, was loss of confidence a legal label affixed by the management to eject the workman, there being no other legal method of accompli- shing their wish to remove him for misconduct ? Two questions, therefore, fall for decision. Can a person, reasonably instructed in the law and scrutinising with critical faculties the facts on record, conic to the conclusion that the snapping of the tic of master and servant in the present case was innocuous andbona-fide or oblique circumvention of the processual protection the law provides before a workman is dismissed for mis-conduct ? We can discern harmony and consistency in case lawfrom Chartered Bank(1) and Murugan(2) through Sudder Office(3) and (1) [1960] 3 S. C. R. 441. (2) [1965] 2 S. C. R. 149. (3) [1970] II L. L. J. 620.

-423SCI/75 Air India Corporation(1). The social justice ice perspective and particular facts are important, though. The plethora if precedents need not, be covered in extenso as the law laid-down is the same except that judicial response to each case situation leads to emphasis on different facets of the principle. Even so some milestone decisions, if we may say so, may be considered.

In Murugan Mills Case (supra) Wanchoo J (as he then was), speaking for the Court made the following observations :

> "The right of the employer to terminate the services of his workman under a standing order like cl.17(a) in the present case, which amounts to a claim 'to hire and fire' an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication, came up for consideration before the Labour Appellate Tribunal in Buckingham & Carnatic Co. Ltd v. Workers of the Company (1952 L.A.C. 490). The matter then came up before this Court also in Chartered Bank v. Chartered Bank Employees Union (1960 3 SCR 441 and the Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.

(1962 Supp. 2 SCR 822) wherein the view taken by the Labour Appellate Tribunal was approved and it was held that even in a case like the present the requirement of bona fides was essential and if the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether the

termination was a colourable exercise of unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice, it would have the jurisdiction to intervene and set aside such termination."

In that case the form of the order had no foul trace, but before the Tribunal dereliction of duty and go-slow tactics were disclosed as the inarticulate reasons. This Court ruled :

> "This clearly amounted to punishment for misconduct and therefore to pass an order under cl.17(a) of the Standing Orders in such circumstances was clearly a colourable exercise of the power to terminate the services of a workman under the provisions of the Standing Orders."

Shri M. K. Ramamurthy, counsel for the appellants, contended for the proposition that even where a management had the power to terminate the services of its employee without reasons but with notice pay only, the colourable exercise of that power invalidated it, and the (1)[1972] 3 S. C. R. 606.

Court could probe, beneath the surface to check upon the bonafides behind the exercise of the power. If the reasons including the termination were victimisation, unfair labour practice or misconduct, it was foul play to avoid a fair enquiry and fall back upon the power to terminate simpliciter There are myriad situations where an employer may in good faith, have to reduce his staff, even though he may have only a good word for his employees. Simple termination is a weapon usable on such occasions and not when the master is willing to strike but afraid to wound. We have been referred to the Bihar State Road Transport Corporation case(1). The power of the Court to go behind the language of the order is reaffirmed there. In Suddek Office (supra) the Court apparently laid stress on the Management's right to terminate the services simpliciter under the terms of contract, where there was no lack of bona fides, unfair labour practice or victimisation. It is significant that this Court used language and laid down law very much like in the earlier cases and did refer to the precedents on the point. For instance, Vaidialingam J., 'there observed :

> " It is needless to point out that it has been held by this Court in The Chartered Bank, Bombay v. The Chartered Bank Employees' Union (1960 11 LLJ 222) that if the termination of service is a colourable exercise of the power vested in the management or as a result of victimisation or unfair labour practice, the Industrial Tribunal would have jurisdiction to intervene and set aside such termination. In order to find out whether the order of termination is one of termination simpliciter under the provisions of contract or of standing orders, the Tribunal has ample jurisdiction to go into all the circumstances which led to the termination simpliciter."

The manner of dressing up an order does not matter. The Court will lift the veil to view the reality or substance of the order. The Court, in that case, examined the circumstances in detail to see whether a dismissal for misconduct was being masked as a simple send off with a month's pay, and held ultimately :

> "We are satisfied that the management has passed the order of termination simpliciter and the order does not amount to one of dismissal as and by way of punishment."

of course, loss of confidence in the workman was alleged by the management and the Court found that it was not a camouflage. It may be noticed that in that case the workman was being entrusted with stores worth several lakhs of rupees, some goods were lost from the stores and the Union was informed by the management that it had lost confidence in the workman. In the written statement before the Labour Court the management alleged that the workman was the head godown-clerk who was the custodian of the company's property, the post being one of trust and confidence. It is noteworthy that in the High Court the workman did not even file a counter-affidavit and the counsel for the Union and the workman agreed that the order of termination was not a camouflage to cover up what really was an order (1) [1970] S.C.R. 708.

of dismissal. He merely urged that the termination of the services was really by way of dismissal. In this conspectus of circumstances, this Court found that the Head Clerk in charge of the engineering godown and responsible for the maintenance of considerable stores, held a sensitive position. This Court observed :

> "The entire basis of the Labour Court's award for holding that the order is one of dismissal is its view that the management has invoked cl. 9 to camouflage its action. When that approach has been given up on behalf of the workman before the High Court the reasoning of the Labour Court falls to the ground and the High Court has acted within the jurisdiction under Art. 226 when it set aside the order of the Labour Court especially when there has been no finding of victimisation, unfair labour practices or mala fides recorded, against the management. To conclude we are satisfied that the High Court was justified in setting aside the order of the Labour Court."

We have gone into this decision at length to disabuse the impression that a new defence mechanism to protect termination of service simpliciter, viz., loss of confidence, had been propounded in this ruling. We do not agree, that any such innovation has been made. The Air, India Corporation Case (supra) may seem to support the 'no confidence' doctrine but a closer study contradicts any such view. of course, Shri Tarkunde, counsel for the management, placed great reliance on this ruling. Needless to say, this Court recognised the power of the Tribunal to go behind the form of the order, look at the substance and set aside what may masquerade as termination simpliciter, if in reality it cloaked a dismissal for misconduct 'as a colourable exercise of power by the management. The Court repeated that an Industrial employer cannot 'hire and fire' his workmen on the basis of an unfettered right under the contract of employment. On the facts of the Air-India Case (supra) the Court concluded that it-was 'not possible to hold this order to be based on any conceivable misconduct'. Special reference was made to the grave suspicion regarding the complainant's private conduct with air-hostesses. Where no misconduct spurs the action and a delicate unsuitability for the job vis a vis the young women in employment in the same firm is strongly suspected, resort to termination simpliciter cannot be criticized as a malafide machination. In that background, the

action was held to be bonafide and the overall unsuitability led-to a loss of confidence in the employee. Not that the loss of. confidence was exalted as a ground but the special circumstances of the case exonerated bad faith in discharge simpliciter.

Before concluding the discussion, we may refer to the case of Delhi Transport Undertaking v. Goel(1) adverted to by the Labour Court. Indeed that decision turned on Regulations framed under the Delhi Road Transport Authority Act, 1950 and not on pure Industrial Law or construction of the Standing Orders. Moreover, the Court, in that (1) [1970] II LLJ 20.

case, appears to have discussed rulings under Art. 311 also. However, on the facts of that case, the Court was satisfied that order of termination was not a disguise or cloak for dismissing the employee and the ground given that he was a cantankerous person undesirable to be retained-was good. We do not read the Delhi Transport case (supra) to depart from Murugan Mills Case (supra). Indeed, the latter did not, and maybe could not, over-rule the former. The above study of the. chain of rulings brings out the futility of the contention that subsequent to Murugan Mill's Case (supra) colourable exercise of power has lost validity and loss of confidence has gained ground. The law is. simply this : The Tribunal has the power land, indeed, the duty to X-ray the order and discover its true nature, if ,,he object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new Armour for the management; otherwise security of tenure, ensured by the new industrial Jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neo-formula. Loss of confidence in the Law will be the conse- quence of the Loss of Confidence doctrine. In the light of what we have indicated, it is clear that loss of confidence is often a subjective feeling or individual reaction to an objective set facts and motivations. The Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be a high risk to keep the employee, once suspicion has started and a disciplinary en- quiry cannot be forced on the master. There, a termination simpliciter may be bow fide, not colourable, and loss of confidence may be evidentiary of good faith of the employer. In the present case, the catalogue of circumstances set out in the earlier part of the judgment strikes a contrary note. The worker was not told when he wrote; the Union was not disclosed when they demanded; the Labour Court was treated to verbal statements like; very reliable sources' and other credulous phrases without a modicum of evidence to prove bonafides. Some testimony of unseemly attempts by the workman to get at secrets outside his orbit, some indication of the source of suspicion, some proof of the sensitive or strategic role of the employee, should and would have been forthcoming had the case been bona fide. How contradictory, that even when a strong suspicion of leaking out sensitive secrets was being entertained about the employee he was being given special merit increments over and above the normal increments' A case of res ipsa loauitur. Circums- tances militate against the 'I say so' of M.W.1 that the management had suffered an ineffable loss of confidence. To hit below the belt by trading legal pharses is not Industrial Law. We are constrained to express ourselves unmistakably lest industrial unrest induced by wrongful terminations based on convenient loss of confidence

should be generated.

Before we conclude we would like to add that an employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly with due care and' prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially. In the instant case this has not been done. There is only the ipse dixit of the employer that he was suspecting since 1968 that the appellant was divulging secrets relating to his business. The employer has not dis- closed the grounds oil which this suspicion arose in 1968. Further after 1968, the appellant was given two extra increments, in addition to his normal increments, as stated already, in appreciation of his hard work. This circumstance completely demolishes even the whimsical and tenuous stand taken by the employer. It was manifest therefore that the impugned action was not bona fide. It was urged by Mr. Tarkunde, learned counsel for the employer that the question whether or not the employer had lost confidence in the employee, was essentially one of fact aad this Court should not disturb the finding of fact recorded by the trial court on this point. It is true that this Court, in appeal, as a rule of practice, is loath to interfere with a finding of fact recorded by the trial Court. But if such a finding is based on no evidence, or is the result of a misreading of the material evidence, or is so unreasonable or grossly unjust that no reasonable person would judicially arrive at that conclusion, it is the duty of this Court to interfere and set matters fight. The case before us is one such instance-, where we are called upon to do so.

The Labour Court has misled itself on the law land we set aside its order. The workmans will be reinstated with back wages. However the management will be free, if it has sufficient material and if so advised, to proceed against the workman for misconducts or on other ,grounds valid in law.

The appeal is, accordingly, allowed with costs.

P.B.R. Appeal allowed.