

HIGH COURT OF MADHYA PRADESH : JABALPUR

BEFORE HON'BLE SHRI JUSTICE SANJAY YADAV

Writ Petition No.18464/2015

Manoj Gangurde

versus

Plant Manager, Proctor and Gamble Home Products Ltd.

Shri Manoj Sharma, learned counsel for the petitioner.

Shri Uttam Maheshwari, learned counsel for respondent.

ORDER
(19.12.2016)

Two fold issue arises for consideration in this petition which is directed against an Award dated 23.7.2015 passed by Labour Court on an application preferred by petitioner-workman under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "1947 Act"). Firstly, whether an act of workman in getting his personal vehicle attached to the Company rendering Taxi service and charge for the services through the employer would tantamount to dishonesty under sub-clause (1)(b) of Clause 12 of the Standard Standing Orders framed under the Madhya Pradesh Industrial Employment (Standard Orders) Act, 1961 and the Rules made thereunder viz. M.P. Industrial Employment (Standing Orders) Rules, 1963.

2. The second issue is whether in case where there is conflict of interest, the employer were justified in invoking clause 17 of the letter of appointment, which contemplates that :

17. If anytime you shall by your conduct render yourself incompetent to perform your duties or if you should be disobedient, intemperate, irregular in attendance, commit any breach of the terms of your employment or any of the stipulations here in contained or it is found that there is a possibility of conflict of interest or any other circumstances mentioned in clause exist, the company shall without prejudice of any of its rights under the terms herein, be entitled to terminate your services forthwith without any notice or payment in lieu of notice and to deduct from your salary or other emoluments if any then due to you, the amount of any loss the company may have sustained.

3. The relevant facts giving rise to the dispute is that the petitioner was initially appointed as Technician in the year 1993 with respondent-establishment on the terms and conditions stipulated in the letter of appointment dated 11.6.1993. Some of the relevant terms and conditions besides Clause 17, in the context of present case were :

11. During your employment with the company after confirmation, the company will be entitled to

terminate your services without assigning any reason by giving you one month's notice in writing or by payment of one month's salary in lieu of such notice. In the event of your desiring to leave the services of the company, you shall give to the company one month's notice in writing, or salary in lieu there of. However the company may at its sole discretion relieve you of your duties any time during the notice period and in that event you will be paid your salary upto the last working day only.

...

14. You will devote your whole time and attention to your employment with the company and shall discharge your duties to the best of your ability. It is a term of your employment that you undertake to be governed by the provisions of "Conflict of Interest" statement prescribed by the company, a copy whereof is attached hereto, which is to be signed and returned to us, signifying your acceptance to be bound by the provisions thereof. You further undertake that during the term of your employment not to engage yourself directly or indirectly, with or without remuneration, in any other employment, service or calling of any nature, without written permission from the company.

4. As evident from Ex.D/1, Conflict of Interest (CoI) was reported on 26.7.2010 against the petitioner of allegedly conniving to rent a car owned by him to Proctor and Gamble India Ltd. through a car hiring vendor. The report led to internal investigation by the P&G Global Security, which came

out with following findings and recommendations (Ex.D/1) :

“Findings: According to Richika and Sharad (managers of Manoj) commuting to and from the plant to the CN site was acknowledged as a hassle, as Manoj would waste a lot of time to get a company pool car or an external taxi. Manoj made a strong case to them on the hiring of a dedicated car for himself which they approved in April 2010. Manoj was authorized to raise a PR under the purchasing process without the written approval of his managers. They would only approve the monthly invoices. The car hirer vendor, New Sarathi Travels was an approved vendor in the purchase catalogue. At no point in time did Manoj inform either Richika or Sharad that the car hired for him through the vendor was his personally owned car.

Shailendra who was in charge of transport was in constant touch with the vendors and the drivers of vehicles. He learned from them that Manoj's dedicated car hire through the vendor was Manoj's personal car. He informed Bala and also obtained copies of the car's documents viz registration and insurance policy which were in Manoj's name. Tiwari, the Proprietor of the car hiring company New Sarathi Travels, said that Manoj had contacted him about his requirement and recommended that his personal car which he had sold to a friend be used. Manoj had given Tiwari a copy of an unregistered sale deed wherein Manoj had sold the car to one Prem Agarwal in Dec 09. Manoj had told Tiwari that when he received payments from P&G for the hire of this car Tiwari should deduct 10% as his commission and pay Manoj the balance by cheque. Tiwari paid Manoj as follows.

ICICI Bank cheque no.037259 dated 25/6/2010 for Rs. 27,616/- (approx 600 USD) and ICICI Bank cheque no.083956 dated 23/7/2010 for Rs. 23,956/- (approx 550 USD.) Tiwari added that the car was never in his custody, he did not monitor its movements and the driver was neither his nor

did he pay the driver wages. These were managed by Manoj. Manoj claimed that his car had met with an accident on Dec 13, 2009 and he sold the car to his friend Prem Aggrwal for Rs 2.71 lakhs on Dec 24, 2009. Manoj said that the sale arrangement was that Prem would pay Manoj Rs. 71,000/- cash and Rs.10,000 p.m. by cheque for 24 months. Manoj said that since he had not received full payment he did not transfer the car to Prem's name but instead signed a sale deed. He said that Tiwari (car vendor) had suggested that Manoj's car should be used. Manoj said that in his mind he had sold the car and had not seen any conflict in hiring this car. Therefore he did not feel the need to inform Richika or Shard. He acknowledged that he had received 2 payments by cheque from Tiwari. Manoj claimed that after receiving these payments from Tiwari, he paid his friend Prem Aggawal the money in cash. He claimed that the car kept with his friend and the driver was also hired+paid by his friend admitted now that in his sight that it was wrong to have received the payment from the vendor and regretted it.

Assessment :- Manoj clearly violated the company's Conflict of Interest policy by conniving to get a car that still stood in his name hired by P&G for his use. The evidence of Manoj receiving payments by cheque from the vendor is incriminating. Manoj spent 17 years in the company and was aware of the company's policies.

Recommendation :

1. Manoj should be counseled out of the company with immediate effect.
2. The services of the transporter too should be terminated with immediate effect.

5. Evident it is from the report that the clarification of the petitioner was also sought. The respondent-establishment construing the act of the petitioner to be that of clash of interest and of dishonesty, terminated the service vide 30 days notice dated 5.8.2010 (Ex.D/2C), which is in the following terms :

It was brought to our attention that you have hired on behalf of the Company a motor vehicle with registration MP-04-CD-2701 for your official use, which motor vehicle is legally owned by you. You have connived with the Car Renting Company and got your own car on hire for the Company without disclosing the possible conflict of interest as required by the Conflict of Interest policy of the Company. Not only this is a breach of the Company policy and Company's Worldwide Business conduct Manual, your conduct is fraudulent in nature for which company reserve the right to take necessary legal action as may be advised.

You have been an employee of the company for close to 17 years and have undergone the Conflict of Interest Training as well as the training on the Worldwide Business Conduct Manual. We have therefore no reason to believe that your actions were out of the ignorance of the Company policy.

In view of the grave and serious nature of the breach of Company policy amounting to fraud conducted by you, your services are terminated with immediate effect under clause 17 of the letter of appointment. You are requested to collect your personal belongings from the Company within 30 days by giving prior intimation of your visit to the Plant premises.

Kindly contact our Accounts department for final settlement of your dues and accounts in due course.

6. Thus, the employer having lost trust in the petitioner, his services were dispensed with.

7. Petitioner raised a dispute before the Assistant Commissioner, Bhopal on 23.9.2010 under Section 10 of 1947 Act. As the matter was not referred for adjudication within 45 days, petitioner filed an application under Section 2A of 1947 Act before the Labour Court which was treated as industrial dispute.

8. Before the Labour Court, the parties filed their respective statements which led the Labour Court frame following issues :

1. क्या प्रथम पक्ष की सेवा समाप्ति दि० 03.08.2010 अवैध व अनुचित है?
2. क्या प्रथम पक्ष पिछले वेतन सहित सेवा में बहाल किए जाने का पात्र है?
3. क्या प्रार्थी दुराचरण का दोषी है?
4. क्या प्रार्थी का प्रार्थनापत्र जवाब दावा में ली गई प्रारंभिक आपत्ति के प्रकाश में निरस्ती योग्य है?
5. क्या प्रार्थी औद्योगिक विवाद अधिनियम के प्रावधान की धारा 2एस के अंतर्गत कर्मकार की परिभाषा में परिभाषित नहीं है ?
6. सहायता एवं व्यय ?

9. Parties led their evidence.

10. Whereas, the petitioner reiterated the defence taken in domestic investigation, contending further that since no loss has occasioned to the establishment, the same is not the case of conflict of interest leading to petitioner termination from service. It was also the contention that the petitioner was not afforded an opportunity of hearing. It was also stated that the case was not covered by clause 12(1)(b) of the SSO.

11. The respondent-establishment relying upon the terms and conditions on which the petitioner was engaged and more particularly, Clauses 11, 14 and 17 of the letter of appointment, stated that being established that, the petitioner had connived to rent a car owned by him, rendered him ineligible to be in service with the respondent-establishment having lost the trust.

12. The Labour Court on the basis of the material evidence on record, upheld the petitioner termination while holding that the petitioner is a workman and the stipulation contained under the SSO are applicable.

13. As to the conflict of interest, the Labour Court after analyzing the entire facts, gave the following findings :

“16— अब इस बिन्दु पर विचार करे कि आवेदक का उक्त कृत्य म0प्र0 औद्योगिक नियोजन [स्थाई आदेश। नियम 1963

के नियम 12 के अंतर्गत आते हैं अथवा नहीं। बालाजी अयंगर अना0सा02 ने अपनी साक्ष्य में बताया है कि अनावेदक कंपनी के यहां यदि कोई व्यक्ति कंपनी के कार्य हेतु स्वयं के वाहन का उपयोग करे तो उसे ईंधन का खर्च देने की व्यवस्था है अथवा वह टेक्सी भी बुलवा सकता है जिसका व्यय कंपनी वहन करेगी यद्यपि इस साक्षी ने प्रति परीक्षण में यह स्वीकार किया है कि उक्त कृत्य से कंपनी को कोई वित्तीय नुकसान नहीं हुआ किंतु Conflict of Interest का मामला बनता है। स्थाई आदेश के नियम 12 को देखने से प्रकट होता है कि इसमें Conflict of Interest का उल्लेख नहीं है परंतु नियम 12।ख। में उपक्रम के कारोबार या संपत्ति के संबंध में कपट या बेईमानी का उल्लेख किया गया है। कपट का आशय तथ्यों का बेईमानी पूर्वक छुपाया जाना होता है एवं बेईमानी का आशय एक व्यक्ति को सदोष लाभ पहुंचाना या दूसरे को सदोष हानि पहुंचाना होता है। उक्त दृष्टि से विचार करने पर प्रकट होता है कि आवेदक ने वाहन क्र0 एम0पी0 04-सी0डी0-2701 का स्वयं स्वामी होने के तथ्य को बेईमानी पूर्वक छुपाकर कपट किया एवं उक्त वाहन को टेवल्स एजेंसी के माध्यम से कंपनी के लिए किराए पर लेकर उसका भुगतान कर बेईमानी पूर्ण कृत्य भी किया है। क्योंकि उक्त कृत्य से आवेदक ने सदोष लाभ प्राप्त किया या कंपनी को सदोष हानि पहुंचाई गई। ऐसी स्थिति में अभिलेख पर उपलब्ध साक्ष्य से अनावेदक यह तथ्य प्रमाणित करने में सफल रहा है कि आवेदक ने तथ्यों को छुपाते हुए स्वयं का वाहन क्र0 एम0पी0 04-सी0डी0-2701 को टेवल्स एजेंसी के माध्यम से किराये पर लिया एवं उसके भुगतान के संबंध में राशि प्राप्त की। आवेदक का उक्त कृत्य कदाचार की श्रेणी में आता है जो मध्य प्रदेश औद्योगिक नियोजन। स्थाई आदेश। नियम 1963 के नियम 12 के उप नियम "ख" के अंतर्गत आता है। आवेदक की ओर से न्याय दृष्टांत मेसर्स गलेक्सो लेब्रोटरी इंडिया लिमिटेड विरुद्ध प्रिसाईडिंग आफिसर लेबर कोर्ट ए0आई0आर0 1984 सु0को0 505 एवं मेनेजमेंट आफ मदुरा सीमेन्ट प्रा0लि0 विरुद्ध प्रिसाईडिंग

आफिसर प्रिंसिपल लेबर कोर्ट मद्रई 2007 एल0एल0आर0 103 मद्रस हाई कोर्ट प्रस्तुत किए है। उपरोक्त दोनों न्याय दृष्टांतों में यह विधि प्रतिपादित की गई है कि यदि बताए गए कदाचार को स्थाई आदेशों में न तो परिभाषित किया गया है न ही उसमें उल्लेख है तो ऐसे दुराचरण के संबंध में कर्मचारी पर कोई कार्यवाही नहीं की जा सकती। परंतु वर्तमान मामले में तथ्य पूर्णतः भिन्न है क्योंकि आवेदक का कृत्य म0प्र0 औद्योगिक नियोजन स्थाई आदेश। नियम 1963 के नियम 12 ख। के अंतर्गत आते है इस कारण उक्त न्याय दृष्टांत में प्रतिपादित विधि एवं इस मामले के तथ्यों में भिन्नता होने के कारण उक्त विधि का लाभ आवेदक को प्राप्त नहीं होता है। अतः वादप्रश्न क्र03 के संबंध में निष्कर्ष अभिलिखित किया जाता है कि आवेदक दुराचरण का दोषी है।

14. The conflict of interest is expressed in the following terms in the Law Lexicon :

"Refers to a situation when someone, such as a lawyer or public official, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill his duties fairly."

15. Terms and conditions of appointment contained in the appointment letter (Ex.D/1) and not denied by the petitioner clearly stipulated that :

11. During your employment with the company after confirmation, the company will be entitled to terminate your services without assigning any reason by giving you one month's notice in writing or by payment of one month's salary in lieu of such notice. In the event of your desiring to leave

the services of the company, you shall give to the company one month's notice in writing, or salary in lieu thereof. However the company may at its sole discretion relieve you of your duties any time during the notice period and in that event you will be paid your salary upto the last working day only.

12. You will be subject to the company's rules and regulations for the time being in force and as varied from time to time.

13. During your employment with the company, the company may, at any time, at its sole discretion, transfer you to any other department or station in any location in India.

14. You will devote your whole time and attention to your employment with the company and shall discharge your duties to the best of your ability. It is a term of your employment that you undertake to be governed by the provisions of "Conflict of Interest" statement prescribed by the company, a copy whereof is attached hereto, which is to be signed and returned to us, signifying your acceptance to be bound by the provisions thereof. You further undertake that during the term of your employment not to engage yourself directly or indirectly, with or without remuneration, in any other employment, service or calling of any nature, without written permission from the company.

15. You shall not, except insofar as it is necessary and proper in the ordinary course of your employment disclose to any person any information as to the practice, business dealing or affairs of the company or any of its customers or any other matter which may come to your

knowledge by reason of or during the course of your employment as aforesaid.

16. During the tenure of your employment with the company you may be called upon to present yourself for a medical examination and any decision taken by the Management based on the findings of the report of the company's medical officer, shall be binding on you.

17. If anytime you shall by your conduct render yourself incompetent to perform your duties or if you should be disobedient, intemperate, irregular in attendance, commit any breach of the terms of your employment or any of the stipulations here in contained or it is found that there is a possibility of conflict of interest or any other circumstances mentioned in clause exist, the company shall without prejudice of any of its rights under the terms herein, be entitled to terminate your services forthwith without any notice or payment in lieu of notice and to deduct from your salary or other emoluments if any then due to you, the amount of any loss the company may have sustained.

18. It is agreed that it shall be open to the company from time to time to add, modify, or abrogate any remuneration, benefit, facility or perquisite that may be extended to you, on a review of the company's functioning, finances and prospects and you shall be bound by the company's decision in this behalf.

19. Upon leaving the employment of the company you shall not take with you any drawing, blueprint or other reproduction or other data, tables, calculations, letters or copy of writing of

any nature whatsoever pertaining to the business of the company or any of its subsidiaries.

20. It is a term of your employment with the company that you will retire from the service of the company on attaining sixty years of age without any notice from the company in this behalf.

21. Without prejudice to any of the above, your working conditions will be governed by the standings orders of our factory as and when they come in force.

16. The question is whether the display of conflict of interest would be misconduct under the SSO as would empower the respondent-management to take action which as alleged is punitive.

17. Standard Standing Orders applicable to all the undertakings in the State are framed under the provisions of M.P. Industrial Employment (Standing Orders) Rules, 1963.

18. Clause 12 of the SSO makes provisions regarding disciplinary action for misconduct. Clause 12(1)(b) whereof provides that :

12. Disciplinary action for misconduct. - (1)
the following acts or omissions on the part of an employee shall amount to a major misconduct :
(a) ...
(b) theft, fraud or dishonesty in connection with the business or property of the undertaking; ..”

19. The question is whether a conflict of interest can be said to be an act of dishonesty in connection with the business.

Dwelling upon this very aspect, a Division Bench of our High

Court in **Devkinandan Tiwari vs State Industrial Court**

1990 MPLJ 653 has observed :

"6. ... The question, therefore, arises what is dishonesty, when and under what circumstances an inference of dishonesty may legitimately be drawn. It may be noted that whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another, it amounts to dishonesty. In other words the term "dishonesty" is relatable to an advantage to which a party perpetrating a deceit is not legally entitled to. There can be no dispute that it is difficult to establish dishonesty by any direct evidence. The question whether a person had any dishonest intention or not while doing or omitting to do an act has to be judged and inferred from the facts and circumstances of each case. The intention is a internal and invisible act of mind which could be judged or ascertained only from external and visible acts. In our opinion, therefore, the mere fact that the conductor recovered or did not recover the fare from passengers would not by itself be enough and a deciding factor to draw an inference this way or that way but an inference of dishonesty has to be drawn on consideration of totality of all the attending facts and circumstances appearing in a given case. For example, if the bus had travelled only a very short

distance from where the passengers boarded and the checkers arrived and the conductor was in process of issuing the tickets and in fact had issued tickets to some of them, then in that event inference of dishonesty may not be drawn and it may be regarded as an act of negligence or carelessness amounting to minor misconduct. But in a case as one in hand where the conductor was found carrying a large number of passengers without tickets, the bus had travelled a long distance and yet the tickets were not issued though the conductor had ample time to do so and the explanation given by the conductor/petitioner was found to be totally baseless and false, the inference of dishonesty would be reasonable and fully justified, as dishonesty may also be inferred from false accounting of fact or an incident, as well, as from absence of bona fides. The observation and experience enable the Court to judge intention from men's conduct and behaviour and there does not arise much difficulty in inferring from his conduct as to what was his real intention upon any given occasion."

20. In the case at hand, as is evident from the material available on record and more particularly, the investigation report, especially the statement of proprietor of the car hiring company and the statement of others indicating the dishonesty of the petitioner in conniving to rent a car owned by him, are sufficient to draw inference that, the petitioner

was dishonest in connection with the business and property of the respondent-undertaking resulting in loss of trust in the petitioner. The conclusions arrived at by the Labour Court in paragraph 17 when tested on the anvil of above analysis, cannot be faulted with.

21. As to the contention that the petitioner was not given the opportunity of hearing. Evidently, the petitioner himself is an architect of his own fate. Having worked for 17 years and knowing well of the terms and conditions in Clause 11, 14 and 17 of the letter of appointment, the petitioner ought not to have displayed in the manner he did. Being aware of the consequence of the conduct displayed and having been the part of investigation, he cannot turn around and say that he had no opportunity of hearing. The contentions in the given facts, fail and are discarded.

22. Consequently, as no relief can be granted to the petitioner, petition fails and is **dismissed**. No costs.

(SANJAY YADAV)
JUDGE
19.12.2016