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Misconduct in the Course of Employment

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ABSTRACT

The term "misconduct," commonly associated with workplace issues, extends beyond professional settings and encompasses various aspects of life. Interestingly, while Service Rules typically outline expected behaviour with consequences for violations, they do not explicitly define or describe misconduct. The term itself is broad, indicating actions inconsistent with expected behaviour. As no Service Rule provides a specific definition, recourse to dictionaries is necessary. According to Murray's Dictionary, "misconduct" primarily signifies bad management, mismanagement, or culpable neglect of official duties. Words and Phrases define it as improper, unlawful, or wrongful behaviour. P. Ramanatha Aiyar's Law Lexicon emphasizes that "misconduct" involves a wrongful intention rather than a mere error of judgment, portraying it as a more assertive concept. This abstract highlights the multifaceted nature of misconduct and the absence of a precise definition in Service Rules, relying on various sources for understanding its implications.

Keywords: *Misconduct, behaviour, violations, management, workplace issues.*

I. INTRODUCTION

Although "misconduct" is commonly associated with workplace issues, the truth is that the term applies and refers to many aspects of life. It is also true that no Service Rule specifies inappropriate behaviour. Surprisingly, all Service Rules specify behaviour, the violation of which results in small and significant consequences for the offending employee; nonetheless, misconduct is neither defined or described. Misbehaviour is a broad notion. It denotes some action that is contrary to the person's expected behaviour. Because the term has not been specified in any Service Rule, we must rely on the meaning provided by dictionaries to understand it. According to Murray's Dictionary, the primary meaning of the word "misconduct" is bad management, mismanagement and malfeasance or culpable neglect of an official in regard to his office. In Words and Phrases, meaning given to the word misconduct is "improper or wrong behaviour or unlawful behaviour or conduct or malfeasance".³ According to P. Ramanatha Aiyar's Law Lexicon, "misconduct" implies a wrongful intention and not a

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³ Kasbi Prasad Saksena v. State of U.P., (1967) 2 LLJ 589 (All)

mere error of judgment. It is far more positive.⁴

II. WHAT CONSTITUTES MISCONDUCT

The Supreme Court ruled in a case involving claims of various omissions and commissions by the Chairman and members of the Haryana Public Service Commission that "proved misbehaviour" is distinct from the phrases "misbehaviour" and "misconduct." The terms "misconduct" and "misbehaviour" have diverse meanings in different jurisdictions and function in unique and different spheres. The primary distinction is one of degree, purpose, and the expected level that must be maintained in respect to the office that the criminal occupies.

The burden of proof and the level of wrongdoing will be according to the office held. Misconduct may refer to more serious acts, deeds, and omissions, whilst misbehaviour may refer to the standards required of the holder of the constitutional position. In other words, in certain cases, misbehaviour and misbehaviour can be used interchangeably, whilst in others, they must be recognised as distinct.

"Misbehaviour" may include behaviour that was not anticipated of the constitutional office bearer, but it does not include "grave misconduct" or "proved misbehaviour." This distinction must be borne in mind when the constitutional obligation refers to "misbehaviour," which is a broad word. This phrase must be interpreted broadly in order to include the Chairman's/Commission member's behaviour that was not anticipated of him/her under established norms. The term "misbehaviour" typically refers to conduct that may undermine the public's faith and confidence in such constitutional authority.⁵

III. WHAT CONSTITUTES MISCONDUCT IN THE COURSE OF EMPLOYMENT

According to section 14 of The industrial employment (standing Orders) central rules, 19461, A workman may be suspended for a period not exceeding four days at a time or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

The following acts and omissions shall be treated as misconduct:-

- a) Wilful in-subordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
- b) Theft, fraud, or dishonesty in connection with the employer's business or property;
- c) Wilful damage to or loss of employer's goods or property;

⁴ Presidency Talkies v. N.S. Natarajan, (1968) 34 FJR 180: AIR 1969 Mad 121

⁵ Mazdoor Sangh v. Usha Breco Ltd.,(2008) 5 SCC 554: (2008) 2 SCC (L&S) 298: (2008) 2 LLJ 945

- d) Taking or giving bribes or any illegal gratification;
- e) Habitual absence without leave or absence without leave for more than 10 days;
- f) Habitual late attendance;
- g) Habitual breach of any law applicable to the establishment
- h) Riotous or disorderly behaviour during working hours at the establishments or any act subversive of discipline;
- i) Habitual negligence or neglect of work;
- j) Frequent repetition of any act or omission for which a fine may be imposed to maximum of 2per cent of the wages in a month;
- k) Striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.
- l) Sexual harassment which includes such un-welcome sexual determined behaviour (whether directly or by implication) as-
 - 1. Physical contact and advances; or
 - 2. Demand or request for sexual favours; or
 - 3. Sexually coloured remarks; or
 - 4. Showing pornography; or any other physical, verbal or non-verbal conduct of sexual nature.

IV. WILFUL INSUBORDINATION OR DISOBEDIENCE

Wilful insubordination or disobedience refers to the deliberate act of disregarding or refusing to follow a lawful and reasonable order given by a superior. This behaviour can occur individually or in collaboration with others. It implies a conscious decision to defy authority and can have consequences in various settings, such as the military, workplaces, educational institutions, or legal systems. Insubordination undermines the chain of command, disrupts organizational functioning, and can lead to disciplinary actions or legal consequences depending on the context.

(A) Theft, fraud or dishonesty

Theft, fraud, or dishonesty in connection with the employer's business or property refers to the intentional act of unlawfully taking or misappropriating the employer's assets, engaging in deceitful practices, or acting dishonestly for personal gain. This can involve stealing physical

items, embezzling funds, falsifying documents, manipulating financial records, or engaging in any fraudulent activities that result in financial loss or harm to the employer.

(B) Wilful damage or loss of the employer's goods

Wilful damage to or loss of the employer's goods or property refers to the deliberate act of causing harm or destruction to the assets owned by the employer. This can include damaging or destroying physical objects, equipment, machinery, vehicles, or any other property belonging to the employer. It can also involve intentionally causing loss or reducing the value of the employer's goods or property through negligence or intentional actions. This represents serious breaches of trust and can result in legal consequences, such as termination of employment, civil liability, and potential criminal charges depending on the jurisdiction and severity of the actions. Employers have the right to protect their business interests and property, and employees are expected to act in a responsible and ethical manner when handling company assets.

(C) Taking or giving bribes

Taking or giving bribes or any illegal gratification refers to the act of offering, receiving, soliciting, or providing bribes or illicit benefits in exchange for favouritism, special treatment, or the circumvention of rules and regulations. Engaging in bribery is illegal in most jurisdictions and is considered a serious offense due to its detrimental effects on fairness, transparency, and the integrity of institutions. Consequences for involvement in bribery can include criminal charges, fines, imprisonment, loss of reputation, and severe legal penalties.

(D) Habitual Absence Without Leave

Absence without authorization is a form of wrongdoing in the workplace that calls for disciplinary action. Even if the employee isn't away from the employer's property, his refusal to report to the location of his assigned task without authorization would still be considered a misconduct. As a result, an employee's absence from work that amounts to misconduct that prevents him from performing his job obligations faithfully would be a good reason to fire him⁶. The absence was caused by circumstances outside of his control is a defence an employee has against the accusation of being absent without authorization. It would be the employee's responsibility to provide evidence to support the validity of this absence.⁷ The severity of the punishment in situations of misconduct or unauthorised absence from work will vary depending on the specifics of each situation. The question, whether on the admitted facts there has been contravention of the relevant Standing Order providing punishment for habitual absenteeism, is

⁶ Thomas v. Vivian (1872) 37 JP 288

⁷ Lazarus Gabriel v. The Union of India AIR 1957 Hyd 13 (DB)

a pure question of law but it is open to the tribunal to hold that, even if there was absence for certain days, habitual absence as required by law has been or has not been established and such a finding will be unassailable in a writ petition.⁸ The issue is whether on the admitted facts there has been a violation of the relevant Standing Order providing punishment for habitual absenteeism. The fact that the employee also happens to be a worker union official does not exempt him from discipline-related penalties. When such wrongdoing is established, termination is the appropriate sanction.

(E) Habitual Late Attendance

An implied term of service is always punctuality in attendance. The management has the right to expect regular and punctual attendance from the workers, and it also has the right to take disciplinary action up to and including dismissal if required to make sure that these demands are met.

Because habitual tardiness is considered misconduct and is typically covered by the standing rules of industrial institutions, it is a type of absence without leave that occurs between the time an employee is expected to come and the time he actually does.

Even if occasional or isolated instances of tardiness might not call for harsh punishment, if it becomes a pattern, it can have serious repercussions, especially if the employee has already been cautioned to be on time. It would depend on the specific facts and circumstances of each instance as to whether penalty was appropriate.

(F) Habitual breach of any law

Habitual breach of any law applicable to the establishment refers to consistently and repeatedly violating laws that are applicable to the specific establishment or workplace. This can include local, state, or national laws, regulations, or statutes that govern the conduct and operations of the establishment. Examples may include environmental laws, health and safety regulations, labor laws, or any other legal requirements that apply to the particular industry or workplace. Habitual breach of these laws demonstrates a pattern of non-compliance and can result in legal consequences, fines, penalties, or even the closure of the establishment.

(G) Riotous or disorderly behaviour

Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline refers to engaging in disruptive, unruly, or disorderly conduct while on the job. This can include participating in or inciting riots, causing disturbances, engaging in violent

⁸ Tata Iron Steel Co. v. Lattu Turi (1967) 2 LLJ 207 (Pat) (DB), per Narasimham CJ.

behaviour, or taking actions that undermine discipline, order, and the smooth functioning of the workplace. Such behaviour can have serious consequences, including termination of employment, disciplinary action, and potential legal repercussions. Maintaining discipline and a professional environment during working hours is crucial for productivity, safety, and maintaining a harmonious workplace atmosphere.

(H) Negligence of work

A worker has a responsibility to exercise reasonable care when performing his job duties for his employer. In other words, when doing his obligations, an employee must use reasonable care and skill. A worker is negligent if they willfully fail to do their work or fulfil their obligations when they are expected to do so with reasonable care. An error may be a sign of neglect, and the severity of the error may be shown by the degree of responsibility. More damage can frequently result from carelessness than from intentional evil or malice.

(I) Strikes

An established rule of industrial arbitration is that employees may go on strike to further their demands without rupturing their relationship with their employer. It is also a widely established notion that, despite the management's use of legal means to settle the dispute, the factory's operations cannot be halted and paralysed by an unlawful strike⁹. In such cases, the employer has the right to discipline the strike-related misconducting employee and continue factory operations, for which it may hire additional employees, all while being able to defend its actions in any industrial adjudication of the ensuing dispute.

In the Model Standing Orders, one of the acts of misconduct is "striking work or inciting others to strike work in violation of the provisions of any law or rule having the force of law." Another restriction on the right to strike is that "industrial adjudication has developed the justification." Therefore, in addition to "illegal strikes," the industrial employer's Standing Orders list "unjustified strikes" as an act of misconduct that will result in dismissal. However, the punishment for participating in an illegal or unjustified strike will depend on how the Standing Orders are interpreted, as well as the specific facts and circumstances of each case.

Only under the following circumstances would an employer have the right to fire a worker who participates in an unjustified strike:

- The strike itself is not legitimate; or
- The strike is initiated for reasons other than improving working conditions.

⁹ Oriental Textile Finishing Mills v. Labour Court (1971) 2 LLJ 505, 510 (SC)

However, the employer must find the delinquent employee guilty of the misconduct of participating in such an illegal strike and must determine the extent of the employee's involvement before taking the disciplinary action of dismissal or discharge for doing so.

(J) Sexual Harassment

Sexual harassment at the workplace refers to unwelcome and offensive sexual advances, requests for sexual favours, or any other verbal, physical, or visual conduct of a sexual nature that creates a hostile, intimidating, or offensive work environment. It can occur between individuals of the same or different genders and can involve supervisors, colleagues, clients, or any other person present in the workplace.

Sexual harassment can take various forms, including but not limited to:

1. Verbal harassment: Unwanted sexual comments, jokes, innuendos, or suggestive remarks.
2. Non-verbal harassment: Lewd gestures, inappropriate looks or stares, or displaying sexually explicit materials.
3. Physical harassment: Unwanted touching, groping, or physical advances.
4. Sexual coercion: Demanding sexual favours in exchange for employment benefits, promotions, or favourable treatment.
5. Quid pro quo harassment: Imposing conditions or threats related to an individual's employment based on their acceptance or rejection of sexual advances.

Sexual harassment creates a hostile work environment that can have severe psychological, emotional, and professional consequences for the victim. It is a violation of fundamental rights, undermines workplace morale, and hinders productivity.

Employers have a legal and ethical responsibility to prevent and address instances of sexual harassment. This includes implementing policies and procedures to prevent harassment, providing clear channels for reporting complaints, conducting thorough investigations, and taking appropriate disciplinary action against offenders. Training programs and awareness campaigns can also help educate employees about what constitutes sexual harassment and how to prevent it.

V. SUGGESTIONS

Curbing misconduct in the course of employment is essential for maintaining a healthy work environment and promoting ethical behavior. Here are some suggestions to address and prevent misconduct:

1. Establish a clear code of conduct: Develop a comprehensive code of conduct that outlines expected behavior, ethical standards, and consequences for misconduct. Ensure all employees are aware of the code and have easy access to it.

2. Promote ethical leadership: Foster a culture of integrity and ethical behavior by emphasizing the importance of leadership at all levels. Encourage managers and supervisors to lead by example, demonstrating honesty, transparency, and fairness.

3. Provide ethics training: Conduct regular training sessions to educate employees about acceptable workplace behavior, ethical decision-making, and potential consequences of misconduct. Use real-life case studies to illustrate ethical dilemmas and encourage discussion.

4. Encourage open communication: Establish channels for employees to report misconduct confidentially, without fear of retaliation. Implement a whistleblower policy that protects the identity of individuals reporting wrongdoing and ensures a fair investigation process.

5. Strengthen hiring processes: Conduct thorough background checks and reference verifications during the hiring process to identify potential red flags. Select candidates who demonstrate a strong commitment to ethical behaviour and align with the organization's values.

6. Regular performance evaluations: Include ethical behaviour as a key criterion in performance evaluations. Recognize and reward employees who consistently uphold high ethical standards while addressing misconduct promptly and fairly.

7. Implement a disciplinary process: Develop a clear and consistent disciplinary process that includes progressive consequences for misconduct, ranging from warnings to termination. Ensure that all employees understand the process and the consequences of their actions.

8. Encourage reporting of misconduct: Create an environment where employees feel comfortable reporting misconduct. Communicate the importance of reporting and assure employees that their concerns will be taken seriously and addressed appropriately.

9. Foster a supportive work environment: Encourage teamwork, respect, and cooperation among employees. Promote a culture that values diversity and inclusion, where everyone feels safe and respected, reducing the likelihood of misconduct.

10. Regularly review and update policies: Continuously assess and update policies and procedures to address emerging issues and challenges. Stay informed about industry best practices and legal requirements to ensure that your organization's policies remain relevant and effective.

11. Lead by example: The behaviour and actions of top-level executives significantly influence the organization's culture. Leaders should consistently exhibit ethical behaviour and hold themselves accountable to the same standards they expect from employees.

12. Encourage ethics committees or boards: Establish ethics committees or boards composed of employees from various departments to oversee ethical matters and provide guidance on promoting ethical behaviour throughout the organization.

VI. CONCLUSION

A well-rounded strategy that upholds accountability and offers possibilities for development and rehabilitation is necessary for dealing with misconduct. To assist employees in changing their behaviour and preventing future instances of misconduct, employers should take corrective action into consideration. Overall, employers and employees must work together to prevent and address wrongdoing that occurs while they are employed. Organisations may establish a successful and moral work environment where misconduct is minimised and everyone's well-being is prioritised by encouraging a culture of integrity, communication, and respect.
