

## HR Law Hotline

February 07, 2007

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In a recent ruling, the Bombay High Court quashed an order of reinstatement of an employee passed by the industrial court and upheld the employee's dismissal for misconduct, observing that an act of assault on a fellow worker could not be regarded as a minor breach of discipline. The court agreed with the employer that such breach amounted to misconduct and stated that it "cannot be countenanced", even if committed outside the place of work.

The employee, who worked as a medical attendant for BEST (a public transport corporation in Mumbai) had assaulted a security guard. Following a departmental enquiry, the employee was found guilty of misconduct, and dismissed from service.

The employee raised an industrial dispute against the order of dismissal, which was struck down by the industrial court. Later, the industrial court ordered his re-instatement. BEST challenged this order of reinstatement, which was quashed by the Bombay High Court while upholding the order of dismissal. Significantly, the Bombay High Court found it necessary to emphasise that courts should desist from interference in a disciplinary action against an employee unless an appropriate case is made out.

This ruling of the Bombay High Court has once again established that there has been a change in the stance of the Court when deciding industrial matters. Earlier, the Indian courts, following a socialist philosophy, tended to be over-protective of the employees. Several recent decisions however indicate that the courts have realized that laxity towards employee discipline goes against the interest of industrial growth in a market-driven economy. The Supreme Court in *Mahindra and Mahindra Ltd. Vs. N.B. Naravade* AIR 2005 SC1993 had observed that an employee using abusive language against his superior is liable for dismissal. In another recent ruling, the Supreme Court has held that if an illegally sacked employee is reinstated on the orders of a court, the payment of back wages would not automatically follow as a natural consequence.

Employers can now breathe a sigh of relief, knowing that they have the support of the courts in upholding strict disciplinary norms in the work place.

- **Pranjal Puranik & Rina Kamath**

Source:

- *The Times of India*, Mumbai edition, February 3, 2007
- *The Economic Times*, Mumbai edition, February 5, 2007

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