Misconduct in Employment

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2nd. Edition

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MISCONDUCT IN EMPLOYMENT

(in Public and Private Sector)

by

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PREFACE TO SECOND EDITION

The first edition was published in the year 1969 and during the span of 8 years there has been considerable addition to the case law. In the present edition the case law upto January, 1977 has been incorporated. Further case law which could not be incorporated has been given at the end so as to bring the case law upto the end of May, 1977.

In writing the second edition opportunity has been taken to re-arrange or sub-divide some chapters for greater facility of reference. A chapter namely "EMPLOYMENT IN GOVERNMENT SERVICE AND CONDUCT RULES" has been added to provide a commentary on the Government Conduct Rules. The matter was previously scattered in other chapters but it has now been consolidated. It is hoped that now the book will be found to be equally useful for Government as well as Industrial employment.

A misconduct on the part of an employee is basically violation of obligation imposed on the employee by the conditions of service. Such conditions of service may be regulated by law, service rules or contract of service. Where an employee is charged with misconduct it is sometimes necessary to find out the exact scope of service conditions to decide whether a particular obligation was or was not imposed on an employee. The Author has, therefore, tried to discuss the various employment regulations which are imposed on an employee either by common law, statutory provisions, service rules or contract. It is hoped that this will lead to better understanding of the subject.

The book will be found very useful for employees and trade union rights because if on account of misconception of legal position they embark on an authorised action then the consequences for them are very serious. They are not only liable to lose the employment but in certain cases the retirement benefits amounting to considerable amount are liable to be reduced or forfeited and provision for their old age is likely to be jeopardised.

Although the book was out of print for the last 2-3 years and there were persistent demands for the next edition but it was not possible to bring out the second edition of the book on account of preoccupations as well as the fact that re-organisation of the book required considerable efforts and time. The Author has been encouraged by the response of the public to the earlier edition and hopes that this edition will be found still more useful by the readers.

The Author takes the opportunity to thank Shri Gopal Singh, B.A., LL.B. for checking the case law; Shri R. C. Garg, Senior Stenographer and Shri Ashok Diwakar for assistance in completion of the revised edition. The Author is also thankful to other well wishers and readers who have been making valuable suggestion from time to time.

B. R. Ghaiye

DELHI: *July 10, 1977*

PREFACE TO THE FIRST EDITION

The growth of labour law has highlighted the importance of misconducts in employment. Previously the services of an employee could be terminated at will and it was, therefore, not very important to decide whether or not he was guilty of a misconduct. Since the right of employer to terminate the services was restricted, it became very necessary to find out whether an employee is or is not guilty of misconduct. From the point of view of employee also the decision of misconduct has assumed greater importance. When there were little or no retiring benefits and practically no stakes in service, the termination of the services meant little to him. Now-a-days the economic impact of dismissal on the employee is considerable. He may lose thousands of rupees on account of loss of gratuity and other retiring benefits, loss of his due leaves, reduction of employer's contribution to provident fund in case of dismissal alongwith the difficulty of getting a new employment. Thus, the employee has acquired considerable stakes in defending himself against the charge of misconduct. The employer has also a stake in the sense that if the charge of misconduct fails and he is required to pay the back wages, then the amounts are generally considerable. Hence, a proper determination of the commission of misconduct has assumed considerable importance and this importance is still increasing day-by-day. The importance of determination of misconduct in public sector has also increased on account of constitutional protections. During the last 20 years a mass of case law, not only by the High Courts and Supreme Court, but also by the Labour Appellate Tribunals, Industrial Tribunals and Labour Courts *etc.*, has been published, either in the Law Reports or in various State *Gazettes*. No attempt has, however, been made to collect, analyse and co-relate them for the purpose of evolving the correct concept of misconduct. The correct understanding of the principles is very necessary not only in case of officers of a large organisation but also for every employee and union leader. The Author found difficulties in understanding the subject for the purpose of applying the principles in day-to-day problems of the Personnel Department looked after by him and this necessitated a thorough study of the subject which ultimately culminated in the present book. The Author feels that similar difficulties must be experienced by other officers as well as employees and the Author will be well rewarded if this book helps them in solving their problems.

In writing the book the Author has kept in mind the necessity of expressing various legal propositions in very simple and practical language so that they can easily be understood by the lay-men. At the same time, the requirements of the busy legal practitioners have also been kept in mind and all available cases have been quoted. The book will also be found useful

by the persons who want to make advanced study of the subject. Though the book is mainly based upon the case law as evolved by the courts and industrial adjudication, yet the Author has tried to co-ordinate the different decisions into legal propositions and explain their justification as well as their historical evolution.

The various misconducts were formulated in private employment by the Model Standing Orders mentioned in the Industrial Employment (Standing Orders) Rules, 1946. The Industrial Employment (Standing Orders) Rules, 1946, required all establishments having more than 100 employees to frame Standing Orders on the lines of the Model Standing Orders. The Standing Orders have been framed in all the large industrial establishments on the lines of the Model Standing Orders. The various courts and tribunals had the occasion to interpret, clarify and apply the misconducts as contained in the Standing Orders. Wherever the industrial adjudication had an occasion to frame the misconduct, it has also taken its colour from the Model Standing Orders.

In practically all the Standing Orders, including the Model Standing Orders, wilful insubordination and disobedience of legal and reasonable orders is misconduct. Another misconduct is 'an act subversive of discipline' and 'riotous or disorderly behaviour on the premises'. Thus the Model Standing Orders have classified the misconducts as 'Disobedience', 'Insubordination', 'Subversive of Discipline', 'Riotous and disorderly behaviour on the premises'. The classification is overlaping. The disobedience and insubordination may also be subversive of discipline. The riotous behaviour on the premises is a misconduct, but the riotous behaviour outside the premises may also be misconduct if it is comprised in 'subversive of discipline'. The classification, therefore, does not denote distinct misconducts but it denotes different standpoints for judging whether a particular act falls into misconduct or not. The author has adopted the same classification because if the author would have adopted any other classification then it would have been difficult to apply the same to the facts of a particular case in the existing circumstances. This has led to some duplicacy in as much as a particular misconduct has to be discussed at more than one place from more than one standpoint, but this was unavoidable. If any reader wants to know how a particular act is misconduct from different standpoints, then he may take the assistance of Index for this purpose.

The concept of misconduct in its comprehensive sense includes the concept of rights and obligations of employees. The misconduct can be termed as 'breach of an express or implied obligation on the part of an employee'. It is, therefore, very necessary to understand what are the rights and obligations of employees on a particular point. The author has kept this in mind and has tried to elucidate the rights and obligations of employees in respect of different matters, such as 'strike', 'picketing', 'defamation' *etc.*, which will give a clearer insight into the circumstances in which the act can be said to constitute a misconduct.

The Author is conscious of some defects in printing which are inevitable in such a large project. The author would be thankful if the readers will point out any mistake or give any suggestion for improvement of the book. If any reader wants any clarification on any of the points mentioned in this book, he is most welcome to contact the Author.

The Author has avoided the quotation of unnecessary case law of non-Indian origin. In India every branch of law is influenced by the constitutional principles, especially the fundamental rights. The concept of misconduct is also influenced by such statutory law as the Law of Contract, Law of Penal Code and Labour Laws such as Factories Act, Industrial Disputes Act *etc.* The cases decided outside India generally decided in different set-up and in a number of cases they may not be suitable for India. In the opinion of the Author it is better to rely mainly on Indian cases. In India some of the concepts relating to misconducts such as 'theft', 'criminal breach of trust', 'misappropriation', 'forgery', 'falsification of accounts', 'defamation', 'abuse' *etc.*, have been taken from the Criminal Law of India and the Industrial Tribunals have generally adopted the same concept in deciding whether a particular act falls in the aforesaid misconducts or not. The Author, therefore, has tried to clarify at appropriate places what such concept mean in Criminal Law and how the concept of Criminal Law has been applied in industrial adjudication and, if so, with what restrictions and exceptions.

At the end of each chapter the author has given not only the case law of framing the charge relating to the misconduct discussed in that chapter but also the specimen charge-sheets. The author is conscious of the fact that whenever a misconduct is attributed to an employee, either in private or public employment, that is necessarily followed by a charge-sheet and departmental enquiry. Though the departmental inquiry is not the subject-matter of the present book, still while discussing the individual misconducts case law regarding the framing of the charge and the management or defence evidence in relation to that misconduct is also given at the appropriate place so that the book may be more useful to the persons concerned. The Author hopes that this will be found useful to the persons for whom it is meant.

The Author is thankful to his colleague and friend Mr. K. K. Khullar, Industrial Law Adviser and previously Deputy Secretary to the Punjab and Delhi Chamber of Commerce for valued discussion and advice. The Author is also thankful to his daughter Nirmal Ghaiye, M.A., Mr. Hanuwant Singh, Labour Officer, Birla Cotton Mills, Mr. R. N. Rai, Labour Law consultant and Mr. Ramesh Chandra Garg, Birla Cotton Mills for the assistance rendered by them in preparation of the book. The author also thanks all his friends and colleagues who have inspired and encouraged him to undertake and finish the present project.

Dated 23-6-1969 B. R. GHAIYE

TABLE OF CASES