

Misconduct @ workplace – a snapshot

Blog Series – 10 **January 25 2020** **Statutory other than PoSH – Vol.5**

A collection of information defining Misconduct in any workplace.

A General Reference everyone cite for definition of Misconduct is from *Queen's Bench Decision in Pearce v. Foster*:

“If a servant conducts himself in a way inconsistent with faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in carrying of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master and the master will be justified, not only if he discovered at the time, but also if he discovers it afterwards, in dismissing that servant”.

The Grounds for misconduct can be inconsequential such as neglect of work or more serious like insubordination or riotous behavior during the working hours.

In any workplace a misconduct is generally divided in two. One is minor & another is serious which may lead to dismissal.

Schedule 1, Clause 14(3) of Industrial Employment (Standing Orders) Central rules 1946, framed under Industrial Employment (Standing Orders) Act 1946 provides for certain acts and omissions as misconduct. These acts or omissions include willful insubordination, disobedience, theft, fraud, dishonesty, habitual negligence and sexual harassment,

The Hon'ble Supreme Court in *M S Dhantwal v. Hindustan Motors* held that the grounds mentioned in the Standing Orders are not exhaustive but merely illustrative. Employers are free to frame their own standing orders considering the peculiarities and requirements of their own establishment. The Hon'ble Court was prepared to give a wide meaning to the term 'misconduct' saying that an act can be considered to be an instance of misconduct even if it is not mentioned in the model standing orders or certified standing orders of the company provided that the act strikes on the purposeful functioning of the establishment and cannot be condoned.

Besides the list of misconduct as mentioned in the Model standing order of the Industrial Employment (Standing Order) Act, 1946, a list of reasons was also mentioned by the Hon'ble Bombay High Court in Sharda Prasad Onkarprasad Tiwari v. Central Rly. The list is only exhaustive. An employer may dismiss an employee based on the following after thoroughly examining the facts and circumstances of each case through a domestic enquiry.

- △ Where an act or conduct of the servant is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master;
- △ Where the act or conduct of the servant is inconsistent or incompatible with the due or peaceful discharge of his duty to his master;
- △ Where the act or conduct of a servant makes it unsafe for the employer to retain him in service;
- △ Where the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted;
- △ Where the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
- △ Where the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly;
- △ Where the servant is abusive, or he disturbs the peace at the place of his employment;
- △ Where the servant is insulting and insubordination to such a degree as to be incompatible with the continuance of the relation of master and servant;
- △ Where the servant is habitually neglect in respect of the duties for which he is engaged; and
- △ Where the neglect of the servant though isolated, tends to cause serious consequences

Where there is a prima-facie misconduct was reported, what procedure is to be followed and action to be taken will be discussed in the next blog.

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