

(1998) 11 MAD CK 0146
In the Madras High Court

A. Stephen (deceased) and Another	APPELLANT
Vs	
The Management of Bharat Heavy Electricals Limited and Another	RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Citation : (1999) 1 MLJ 197

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—The prayer in the writ petition is as follows:

To issue orders, directions or writs in particular a writ in the nature of a writ of certiorarified mandamus calling for the records of the second respondent in I.D. No. 355 of 1985, dated 27.6.1989 and quash the same and direct the first respondent to reinstate the petitioner with backwages, continuity of service and all other consequent benefits and award costs.

2. Initially the writ petition was filed by one. A. Stephan. since he died pending disposal, second petitioner herein is substituted as the legal representative of the deceased first petitioner as per the order of this Court dated 17.9.98 in W.M.P. No. 4191 of 1994.

3. The case of the first petitioner is briefly stated hereunder:

He joined the service of the first respondent management, namely, Bharat Heavy Electricals Limited on 19.9.1977. On 14.5.1984, he set out for the morning parade in the early hours from Trichy town. The Parade was scheduled to take place from 6 a.m. to 7 a.m. Unfortunately, he could not get transport to be able to report for the parade at 6 A.M., on the date. His residence is 20 k.m. away from his place of work. Though he was able to reach when the parade was already in progress, he did not want to report late and disturb the proceedings. He waited for the parade to be over and then reported to the Platoon Commander Mr. Vadivelan. After obtaining permission of the Platoon Commander,

he reported for duty at 7.15 a.m. Notwithstanding the fact that this was the first instance, he was late for the parade and his absence was for reasons beyond his control, a memo was issued to him for the very same day asking for explanation for his absence from the parade on 14.5.1984. He submitted his explanation on the very same day. He also submitted a further explanation on 25.5.1984. Thereafter, he was issued a charge sheet for his absence from the parade on 14.5.1984 and also indulging in making a malicious allegation against the authorities. An enquiry was conducted. In spite of his request, he was not provided with sufficient assistance as claimed. The enquiry committee gave an adverse report solely for the reason that in the explanation dated 25.4.1984, the petitioner had pleaded victimisation as a defence. Based on such a report, the senior Security Officer by his order dated 11.12.1984, removed the petitioner from service. The appeal filed against the said order to the General Manager was dismissed on 17.1.1985 cursorily., Thereupon, the petitioner raised a dispute u/s 2-A of the Industrial Disputes Act and the conciliation having failed, under G.O.Ms. No. 2233, dated 29.10.1985 the Government have referred the matter for adjudication to the second respondent which was heard as I.D. No. 355 of 1985. The Labour Court by Award dated 27.6.1989, upheld the action of the management, namely, removal from service and dismissed the application, against which the petitioner has filed the above writ petition.

4. The first respondent-management filed a counter affidavit disputing various averments made by the petitioner. It is stated that it is a condition of employment that persons employed as Security Guards should attend the parade regularly. No Security Guard shall abstain from the parade as the parade is conducted solely for efficient discharge of the functions as Security Guard. By convention also parade forms part of the security service and the same is in vogue from the inception of the establishment. Though the petitioner in his explanation dated 25.5.1984 had admitted that it is a part of his duty to attend the parade, however contended that he shall attend the parade at his discretion only and that it would further depend upon his health. He had further alleged that he has been victimised for being an office bearer of a Union, and had also questioned the right of the management to conduct the parade. As his explanation was not satisfactory, he was issued charge-sheet under reference dated 2.6.1984 and he was asked to submit his explanation. As the explanation submitted by him was found not satisfactory, a departmental enquiry was ordered to be conducted by a committee consisting of Senior Administrative Officer and Personnel Officer. In the enquiry, the petitioner was given adequate opportunity to put-forth his defence. The Enquiry Committee after considering the evidence adduced at the enquiry, found that the charges against the petitioner stood proved. The disciplinary authority accepted the findings of the Enquiry Committee and taking into account the conduct of the petitioner and also taking into consideration the fact that the matter related to discipline in the industrial establishment which has a special bearing in the security department, ordered the removal of the petitioner from service with effect from 11.12.1984.

The appeal filed as against the punishment of removal was also rejected by the appellate authority. As the subsequent conciliation proceeding ended in failure, the Government referred the matter to the Labour Court and the Labour Court found that there was no violation of principles of natural justice and passed an award dismissing the Industrial Dispute. It is further stated that inasmuch as the petitioner was given adequate opportunity to put forth his defence before the Enquiry Officer and appropriate punishment was imposed on the basis of the proved charges and the same has been confirmed by the Labour Court, absolutely there is no merit in the writ petition; accordingly they prayed for dismissal of the same.

5. In the light of the above pleadings, I have heard Mr. V.T981100.htm Prakash, learned Counsel for the petitioner and Mr. B.T. Seshadri, learned Counsel for the first respondent management.

6. Mr. V. Prakash, learned Counsel for the petitioner after taking me through the charge sheet, enquiry proceedings, order of the disciplinary authority as well as the order of the Labour Court, has raised the following contentions:

(i) The disciplinary authority failed -to issue notice for taking a different view than that of the Enquiry Officer with regard to one charge; accordingly the same cannot be sustained;

(ii) The Labour Court failed to examine whether the charge of misconduct was sufficient to impose an extreme punishment of removal from service;

(iii) Inasmuch as the first petitioner being a workman within the meaning of the Factories Act and the first respondent is also a factory and of the fact that charge does not come within the working hours, he had taken only allowable defence in the explanation to the Memo. In other words, the defence available under law alone was mentioned in the explanation which cannot be taken as a misconduct or it amounts to disobedience to the orders of the superior;

(iv) The Labour Court failed to apply its mind and assess the evidence on record, more particularly failed to invoke the power conferred u/s 11-A of the Industrial Disputes Act.

7. On the other hand, Mr. .B.T. Seshadri, learned Counsel for the first respondent-Management has contended that inasmuch as the petitioner was given adequate opportunity to represent his case and appropriate punishment was imposed on the basis of the proved charges, the same having been confirmed by the Labour Court, the judicial review by this Court exercising jurisdiction under Article 226 of the Constitution of India is very limited. He further submitted that the explanation offered by the petitioner for the memo certainly would amount to indiscipline and also made unwarranted malicious allegations. He further submitted that even on merits as well as the procedural aspects, there is no warrant for interference by this Court in this proceedings.

8. I have carefully considered the rival submissions.

9. The charges against the petitioner set out in the charge sheet dated 2.6.1984 are as follows:

1. You have absented yourself from the parade on 14.5.1984 in disregard of the reasonable orders of your superiors. You have remained wilfully absent.
2. You have indulged in making a malicious allegation against the authorities which is considered as an act subversive of discipline.

With regard to first charge, the explanation of the petitioner is that he could not get transport to be able to report for the parade at 6 a.m., on the said date, that his residence is nearly 20 k.m., away from the place of work, that he was able to reach only when the parade was already in progress and that as he did not want to report late and disturb the proceedings, he waited for the parade to be over and then reported to the Platoon Commander Mr. Vadivelan, who has stated in a written communication on 14.5.1984 to the Chief Security Officer, reporting the same. The said document has been marked in the enquiry proceedings. It is also clear from the explanation that on 14.5.1984 when he was waiting for a bus in the early hours of the morning, one Kannan, his colleagues and also a Security Guard, was waiting with him for the bus. He has also stated that as the route bus did not stop, he went to make a telephone call to be able to inform the officer about his helpless situation in not being able to report for the parade, during which time, the said Kannan had the fortune of being picked up by a friend who delivered newspapers in a taxi and hence he could be present for the parade. According to him, he had informed the Senior Security Officer over telephone about the non-availability of transport and about his being held up from attending the parade. However, apart from the above said explanation, he also submitted further explanation to the Memo by his letter dated 25.5.1984 wherein he had stated that he is not guilty of any dereliction of duty and the parade is not a part of duty. While mentioning the above aspects, he also brought to their notice certain provisions of the Factories Act which governs his service conditions. That was the reason for framing of the second charge.

10. During the enquiry, even though proper assistance was not given to the petitioner as claimed, the fact remains that he was given adequate opportunity to put forth his defence. He was allowed to cross-examine the witnesses examined on the side of the Management.

11. With regard to the first contention, after going through the proceedings of the Enquiry Committee and the order of the Disciplinary Authority, I do not find any substance in the said contention. As stated earlier, two charges had been framed against the petitioner and after enquiry, the Enquiry Committee found both the charges were proved and on the basis of the said report, the disciplinary authority imposed the punishment of removal from service. Hence, I reject the first contention raised by the learned Counsel for the petitioner.

12. Now I shall consider the other grievance of the petitioner. It is not the case of the first respondent-Management that petitioner had suffered any punishment

prior to the said incident. Even in the enquiry proceedings as well as the ultimate order of the disciplinary authority, it is clear that if the petitioner had submitted the mere reason for his absence in attending the parade on the said date, there may not be any punishment at all. As a matter of fact, even according to the Management, they did not take any action against other personnel who absented themselves for the parade. The main reason for taking such a drastic action is the explanation of the petitioner dated 25.5.1984. since the said explanation was the main cause, the same is hereby extracted:

It is clear from the reading of the said explanation that even on the date of the incident he had submitted his explanation for his inability to attend the parade. However, in the above mentioned explanation, no doubt, he had mentioned that as per the provisions of the Factories Act, he is an employee and he reiterated that he never failed to discharge his duties and he has no intention to do so. As rightly contended by Mr. Prakash, learned Counsel for the petitioner that whenever a charge is laid, it is always open to him to raise all defences which are available. Since the main question rests on the above referred explanation, as requested by both sides, I have carefully-perused the entire explanation. After reading so, taking note of the fact that at the relevant time, petitioner was one of the office bearer of the Association, I am unable to share the conclusion expressed by the Management, namely, the petitioner had indulged in making malicious allegations against the authorities. As a matter of fact, he had reiterated his responsibilities being one of the security officers of the first respondent company and inasmuch as no action was taken by the management against others who absented the parade similar to the petitioner, if we look into the said explanation in this context, there may not be any need to find fault with the petitioner and no need to conclude that he had made malicious allegations against the authorities.

13. It would be relevant to refer some of the factual aspects which support the contention of the petitioner. It is relevant to point out that except his absence on 14.5.1984, he was regular in other weekly parade days. In the report submitted to Chief Security Officer, M.E.3 it is mentioned thus:

Submitted to C.S.O

M.E.3

Sir,

Ref: B.H.E.: C.S.O: 2119943 dated

15.5.1984.

X X X X X

X X X X X

He was present for last parade day (P.T. exercise were performed) on 23.4.1984. He was regular in the weekly parade days.

x x x x x

(sd.) x x x

T.M. Sathiya Narayanan,

S.S.O.,

18.5.1984.

(sd.) x x x

N. Vadivelan,

PG/G 18.5.1984.

This statement clearly shows that he was regular in the other parade days. One of the Management Witness, namely, Sundaram has deposed before the Enquiry Committee as follows:

Regarding non-availability of bus and informing the same over phone from the nearby tea stall, it is stated by one Kannan as follows:

A perusal of the above factual position clearly shows that the petitioner was regular in attending parade all along except on 14.5.1984. Further, even the witnesses examined on the side of the Management deposed about the conduct and character of the petitioner and no such adverse comment or remark has been made by any one of them including his superiors. I am referring all these things in order to show that except the said isolated one incident, there was no complaint against the petitioner and it is but proper to read the explanation of the petitioner dated 25.5.1984 in that context.

14. As already stated, the explanation of the petitioner dated 25.5.1984 was the cause for framing the second charge. In this regard, it is useful to refer the decision of this Court reported in Natarajan (M.) Vs. Madras State Electricity Board, . In this decision, it is stated that taking action on the basis of the explanation for a charge cannot be accepted. Kailasam, J. (as His Lordship then was) has observed thus:

Regarding the contention that the enquiry authority was in error in framing a charge on the basis that the explanation given by the petitioner is false, the contention of the petitioner will have to be upheld. It is necessary to deal with the other charges. But the fact that the explanations given by the petitioner on various charges were not only rejected but were also stated to be false and the petitioner asked to explain why he should not be punished for giving a false statement, would give reasonable apprehension in the mind of the petitioner that his case has been prejudged. In the circumstances, the proceedings cannot be sustained....

15. With regard to the reference made to some of the provisions in the Factories Act, 1948, undoubtedly the first respondent-Management is a factory within the meaning of the said Act and petitioner is a workman as defined in Section 2(1) of the said Act. Section 51 of the said Act deals with weekly hours, while Section 54 speaks about extra wages for overtime. Inasmuch as there is no specific reference with regard to "parade" within the purview of the expression "working hours", the petitioner being one of the office Bearers of their Association, without any intention, as rightly contended by Mr. V. Prakash, has taken the defence available under the law and mentioned the same in the explanation. It is also clear from the evidence that except the petitioner, none was given any punishment for absence either on the relevant date, namely 14.5.1984 or any other earlier date. This aspect has not been considered by any one of the authorities including the Labour Court. If the management was of the opinion that the explanation offered by the petitioner is not acceptable, it ought to have rejected the same as unacceptable and appropriate punishment could be inflicted. It is curious that by making such a statement in the explanation, the first respondent-Management considered it as a malicious allegation against the authority and inflicted the punishment of removal from service. The said action cannot be sustained.

16. A perusal of the award of the Labour Court which is impugned in this writ petition clearly shows that it has failed to appreciate the above aspects and it merely put the seal on the order of removal passed by the management. As a matter of fact, after introduction of Section 11-A in the Industrial Disputes Act, the Labour Court/Tribunal is empowered to consider not only the merits of the charges levelled against the workman, but also set aside or modify the punishment taking into consideration the charges levelled against him, his previous records etc. I have already demonstrated that it is clear even from the evidence on the side of the management, that the petitioner was regular in attending the weekly parade except the parade on 14.5.1984. It is also clear from the evidence that even though several persons were absent in the earlier occasions, no action was taken against them but action was taken against the petitioner alone in view of his explanation dated 25.5.1984. All the above important aspects have not been considered by the Labour Court. In other words, the failure on the part of the Labour Court in considering the acceptable evidence and rendering a finding with reference to Section 11-A of the Act, would render its finding unworthy and hence the same cannot be sustained.

17. No doubt, Mr. B.T. Seshadri once again after taking me through the explanation of the petitioner dated 25.5.1984, has contended that the said reply undoubtedly amounts to indiscipline and the allegations therein are unwarranted. In the earlier paragraphs, I have demonstrated that as an office Bearer of the Association, the petitioner had merely referred to the relevant statutory provisions and also the defence available under the law in his explanation. As a matter of fact, he had explained his utmost respect to the management, particularly with respect to his responsibilities. With reference to the explanation

of the petitioner, according to him, even in the absence of any specific rule, it is open to the management to take action since the allegations made therein would amount to misconduct, for which he relied on a decision of the Supreme Court reported in *Secretary to Government and Others Vs. A.C.J. Britto*, . He very much relied on the following passage:

...It was not justified in taking that view on the ground that such an act of delinquency has not been specified in the Rules as an act of misconduct. Not obeying a legitimate order of his superior by a member of the Police Force has to be regarded as an act of indiscipline and would certainly provide a good and sufficient reason for initiating a disciplinary proceeding.

There is no dispute with regard to the above legal position. However, the petitioner at any point of time, did not disobey the order of the superiors. To put it clear, with reference to the charges, after explaining the reasons for his absence, he highlighted the legal position, which according to him, supports his claim. In the light of the said factual position, I am of the view that the said decision is not helpful to the first respondent's case.

18. With regard to power of this Court under Article 226 of the Constitution of India to interfere with the order of the Labour Court, Mr. B.T. Seshadri cited the following decisions:

(1) *The Management of Tafe Vs. Venkataraman and Others*, ; (2) *St. Raphael Tile Works v. O.M.O Co., Thozhilali Union* 1979 L.I.C. 1352; (3) *State of U.P. and others Vs. Nand Kishore Shukla and another*, ; (A) *Engine Valves Ltd. v. First Additional Labour Court* (1991) 2 L.L.N. 724; (5) *N. Mohandoss v. S.Indl.Polymers (Pvt.) Ltd. and Ors.* (1991) II L.L.J. 1002; (6) *Dharmapuri District Co-op. Sugar Mills v. Labour Court and Anr.* 1997 L.L.R. 509.

As requested by Mr. B.T. Seshadri, I have carefully perused all the above decisions. It is true that while considering the order of the Labour Court, the court should not entertain a misplaced sympathy towards a workman and should not prejudice the issue from the angle of rehabilitation. Even as per the observation of the Division Bench in *Dharmapuri District Co-op. Sugar Mills v. Labour Court and Anr.* 1997 L.L.R. 509, the question of rehabilitation and reformation could arise in a case of minor delinquency or misconduct. After analysing the explanation of the petitioner dated 25.5.1984, I have already observed that it is unsafe to hold that malicious allegations had been made against the management. Likewise, when the witnesses examined on the side of the Management themselves speak about the previous conduct, character and performance of the petitioner and there is no such adverse remark even from the records, undoubtedly the Labour Court has to take note of the same and consider while passing the order. Its failure to do so would amount to miscarriage of justice and the perversity cannot be allowed to remain. In such circumstances, undoubtedly this Court can exercise its power to set right the defect in the order of the Labour Court. It is also clear from the Division Bench decision of this Court

reported in *The Management of Tafe Vs. Venkataraman and Others*, , that once the Labour Court in exercise of its powers u/s 11 -A of the Industrial Disputes Act evaluates the gravity of misconduct for the purpose of punishment to be imposed on a workman and exercises its discretion, this Court exercising jurisdiction under Article 226 of the Constitution of India in the absence of any important legal principle should not undertake to re-examine the question of adequacy or inadequacy of the materials for interference by the Labour Court. I have already demonstrated that the Labour Court in the case on hand failed to exercise its power u/s 11-A of the Act and evaluate the charges made against the petitioner. In such a circumstance, this Court is justified in interfering with the said finding.

19. It is also clear that the first respondent-Management is not justified in taking action merely on the basis of the statement made in the explanation when the same does not find place in the enumerated misconduct as observed by their Lordships in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, .

20. I have also demonstrated in the earlier paragraphs the failure of the Labour Court to consider relevant materials. It is settled law that when the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the tribunal, such perverse finding cannot be allowed to stand. Even though such materials are placed or available before the Labour Court, it has not taken care to assess or consider the same. In this regard, it is relevant to mention the observation of Their Lordships in a decision reported in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, , which is as follows:

Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of these cases the findings are treated as perverse.

21. Finally this Court, in the proceedings under Article 226 of the Constitution does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, I have already demonstrated the error committed by the Labour Court in not taking note of the injustice done by the Enquiry committee and Disciplinary authority. In such circumstance, this Court is competent to interfere with the order passed by the management. It is clear even from the management side, namely, that they had not imposed the punishment for the absence of the petitioner in attending the parade on 14.5.1984, but due to the statement made in the explanation dated 25.5.1984. Since the defence taken by the petitioner in that explanation is permissible and available under law, the same cannot be construed as malicious allegation made against the management. Apart from the above aspects,

pending disposal of the above writ petition, the 1st petitioner-delinquent workman died and in his place, the second petitioner, namely, his minor daughter has been substituted as his legal representative. Inasmuch as the concerned workman is no more and his only legal heir, namely, his daughter is now pursuing the above writ petition on the hope that she would get entire monetary benefits available to her deceased father, I am considering this aspect along with the other infirmities pointed out above. Finally I conclude with the words of Hon"ble Mr. Justice V.R. Krishna Iyer in a decision reported in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, as follows:

Article 226, however, restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice; and more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand. What the Tribunal may, in its discretion do, the High Court too can, under Article 226, if facts compel it to do so.

22. In the light of what is stated above, the order of the Labour Court dated 27.6.1989 is quashed. In view of the death of the first petitioner, the first respondent-Management is directed to settle all the monetary benefits payable to the first petitioner till the date of his death in favour of the second petitioner within a period of four weeks from the date of receipt of a copy of this order. Writ petition is allowed as stated above. No costs.