

(1988) 06 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 9094 of 1984

A. Veeman

APPELLANT

Vs

Paramakudi Co. Op Urban Bank Ltd. and Another

RESPONDENT

Date of Decision : 22-06-1988

Acts Referred:

Citation : (1990) 1 LLJ 395

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

1. In this writ petition the challenge is to the award in Industrial Dispute No. 172 of 1982, passed by the second respondent in an industrial

dispute, raised by the petitioner against the first respondent over the non-employment of the petitioner by the first respondent. The petitioner, on

disciplinary action, has been sent out of service by the first respondent. The gravamen of the charge put forth against the petitioner is that the

petitioner made collections of moneys from the customers of the first respondent and did not on many occasions remit the collections into the bank

either on the same day or the next day as he was bound to under the rules and he used to retain such collections with him for a few days and that in

order to make it appear that the remittance was being done the next day after the collection, he used to alter the dates either in the carbon copy of

the receipts or the chittas maintained by him. By the impugned award, the second respondent found no warrant for interference with the action

taken by the first respondent against the petitioner and dismissed the reference.

2. Mr. M. Kalyanasundaram, learned counsel for the petitioner, would contend that the proceedings of enquiry prosecuted against the petitioner by

the first respondent stood vitiated on the ground of violation of the principles of natural justice in that the petitioner was denied an opportunity to

avail of the service of a legal practitioner in spite of his request. Before examining the tenability or otherwise of this contention of the learned

counsel for the petitioner, the factual aspects relating to this contention must be set down. There was an Enquiry Officer and he was an advocate.

So far as the Enquiry Officer is concerned, the petitioner never put forth a voice of grievance of bias or prejudice in the course of the prosecution

of the enquiry. The first respondent engaged a presenting-cum-prosecuting officer and he was the secretary. The first respondent and he was not a

legally trained personnel. The concerned rules do not give a right to a servant like the petitioner facing disciplinary action to avail of the service of a

legal practitioner to defend his case in the disciplinary action.

3. It has been always countenanced that a domestic enquiry in a disciplinary action against the workman is purely a managerial function and the

conduct of the same is to be done by the management without the aid or intervention on either side of men of legal profession. The reasoning

behind this proposition is not that men of legal profession are anathema to disciplinary action, but that the management need not necessarily be

scuttled down to strict rules of evidence and intricate legal procedures, and it would suffice the norms of disciplinary action if the delinquent servant

was afforded an adequate and a reasonable opportunity to defend himself and there is no violation of the principles of natural justice. There should

be fairplay and the servant arrayed in the dock in the disciplinary action should not be put to a disadvantage and when the management takes the

aid of legally trained personnel to present its case, the same advantage should not be denied to the servant. However, if there are rules laying down

the availing of the services of men of legal profession in the conduct of the disciplinary action, certainly the rules must govern. It was held by the

Supreme Court in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, , and *Brooke Bond India (P) Ltd. v. S. Subba Raman*.

1961 II LLJ 417, that there is no right to representation as such unless the company by its standing orders recognises such a right and refusal to

allow representation by any union unless the standing orders confer that right, does not vitiate the proceedings. In *The Dunlop Rubber Co. Vs.*

Workmen, , it was countenanced that where the standing orders of a company provide "that at domestic enquiries only a representative of a union which is registered under the India Trade Unions Act and is recognised by the company can assist, there is no denial of natural justice if the request of the workmen, who insist to be assisted by a representative of their own unrecognised union with the object of indirectly obtaining recognition to their union is rejected. In C.L. Subramaniam Vs. Collector of Customs, Cochin, , the Supreme Court dealt with the rule, the relevant portion of which said that the Government servant may not engage a legal practitioner for the purpose mentioned in that clause ""unless the disciplinary authority having regard to the circumstances of the case so permits"". The facts of that case showed that the case against the Government servant was being handled by a trained prosecutor, and that was held to be a good ground for allowing the Government servant to engage a legal practitioner to defend him, and the Supreme Court opined that the denial to the Govt. Servant to engage a legal practitioner had caused serious prejudice to the Govt. Servant and amounted to a denial of a reasonable opportunity to defend himself. In Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , the request of the servant facing enquiry to engage a legal practitioner was not only rejected, but at the same time a legal adviser and a junior assistant legal adviser were appointed as presenting officers before the enquiry officer. At the time of the commencement of the enquiry, there was no rule governing this aspect, but shortly after the commencement of the enquiry the rules came into force, which enabled the servant to avail of the services of a legal practitioner if the presenting officer appointed by the disciplinary authority was a legal practitioner. There was no review of the earlier order rejecting the request of the servant to engage a legal practitioner in spite of the rules coming into force. In that context, the question that fell for consideration by the Supreme Court was as to whether in a disciplinary enquiry by a domestic Tribunal, if the employer appoints presenting-cum-prosecuting officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself

thereby vitiating the essential principles of natural justice. After referring to the case-law on the subject, the Supreme Court opined, on the facts of that case as well as taking note of the coming into force of the rules referred to above. That the refusal to the employee to engage a legal practitioner to defend him would amount to denial of a reasonable opportunity that vitiated the enquiry. The basic proposition that in a domestic enquiry in a disciplinary action against the workman, he could not, as of any inherent right, insist on taking the assistance of a legal practitioner has not been disturbed, though the trend of the pronouncements has been to see to it that the workman does not stand at a disadvantage and there is no breach of the rule of fairplay. Of course, it would be a different matter if the rules lay down the norms therefor; and then they must alone hold the field.

4. In the instant case, as already noted, there is no rule which speaks about the right of a servant facing the disciplinary action to avail of representation through a legal practitioner. Furthermore, the first respondent had not engaged any legally trained personnel as a presenting-cum-prosecuting officer so that on facts it could be complained that the balance was uneven and the prosecution of disciplinary action turned out to be inequitable. As pointed out by the second respondent, the facts of the case were simple and the records that require to be adverted to and proved during the course of the enquiry were all without exception those prepared by the petitioner himself. As rightly held by the second respondent the facts of the case also did not warrant the permitting of the engagement of a legal practitioner to defend the cause of the petitioner.

5. However, Mr. M. Kalyanasundaram, learned counsel for the petitioner, would place heavy reliance on the pronouncement of Lord Denning in *Pett v. Greyhound Racing Association Ltd.*, (1968) 2 All ER 545, and in particular on the following observations (at page 549) :

I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.

6. This proposition was considered to be too general and too broad one and in the earlier pronouncements of the Supreme Court this proposition has not commended itself to it. The discussion of the principles by the highest

court in the land by the pronouncements referred to above leaves no room for doubt in the mind of this Court that, on the facts of this case, there could not be a complaint that the decline on the part of the first respondent to permit the petitioner to engage a legal practitioner to defend him in the course of the disciplinary action has breached the principles of natural justice on the ground that there was a denial of a reasonable opportunity to defend. With regard to the propriety and the quantum of the punishment, there is sufficient advertence to the question by the second respondent in paragraph 13 of the impugned award and it has been found that the petitioner has committed a breach of the confidence reposed in him by the first respondent and his conduct must be characterised as a reprehensible one and the punishment of terminating his services was the appropriate one. There is no warrant for reviewing this reasoning of the second respondent, since it suffers no infirmity, requiring correction in writ powers. No other point was urged. Under these circumstances, this writ petition falls and the same is dismissed.