
(2010) 04 MAD CK 0213

In the Madras High Court

Case No : Writ Petition No. 36204 of 2005 and W.P.M.P. No. 39045 of 2005

D. Solomon

APPELLANT

Vs

Commissioner (Disciplinary Authority), Corporation of
Chennai, Appointment committee, (Appellate Authority) and
State of Tamil Nadu

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 MAD CK 0213

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : D. Nagasaila, for the Appellant; G.T. Subramanian, for R1 and R2
and D. Geetha, Additional Government Pleader for R3, for the Respondent

Final Decision : Allowed

Judgement

T. Raja. J.

1. The present writ petition is directed against the punishment of reduction to minimum time scale of pay imposed on the petitioner by the 1st respondent whereby the petitioner, who was working as a Driver had lost the service benefit of 17 years from his service.

2. While the petitioner was driving the 1st respondent's Corporation lorry bearing registration No. TN 04 4059 to the Perungudi dump yard to dump the garbage, a boy came across the road in a cycle from behind a Metropolitan Transport Corporation bus which was stationary on the opposite side of the street. Though the petitioner was driving the vehicle slowly but, all of a sudden the boy came in contact with the stationary vehicle, hit the front bumper of the vehicle and fell on the pavement. Though there was no damage whatsoever either to the bus or to the cycle on which the boy was riding. The petitioner immediately rushed the boy in an auto to the nearby Royapettah Hospital and after admitting the boy in the said Hospital further, the petitioner, went to

Thuraipakkam, T1 Police Station and registered a F.I.R. narrating the above said incidents. Later on, it was informed that the boy sustained head injuries.

3. In view of the above said incident, the petitioner was suspended from service by order dated 07.10.1994. Immediately, the petitioner made a representation to revoke the suspension order. Following the suspension order, the 1st respondent by order dated 11.01.1995, revoked the suspension order and permitted the petitioner to join duty. In the meanwhile, on the basis of the F.I.R. registered against the petitioner, a criminal case was initiated against the petitioner and finally, the criminal case also came to be dismissed in favour of the petitioner on the ground that there was no evidence produced against the petitioner proving his guilt. After the order passed by the Criminal Court, the petitioner was acquitted of all the criminal charges by order dated 01.09.1997. There was no symptom of enquiry from the side of the respondent Department. However, on 31.07.2003, namely, with the delay of 9 years from the date of incident and with the delay of 6 years from the date of order of acquittal passed by the Criminal Court, a notice of enquiry was issued to the petitioner by the 1st respondent Department by which the petitioner was asked to come for an enquiry by letter dated 31.07.2003.

4. Pursuant to the notice issued by the respondent Department calling for explanation, the petitioner submitted his explanation denying all the charges. However, by letter dated 31.07.2003, the petitioner was asked to come for an enquiry. Accordingly on 13.08.2003, an enquiry was held. The said enquiry was in the nature of preliminary enquiry, because nobody was examined on behalf of the respondent Corporation nor any document was marked. Even the Presenting Officer was not present. When the Enquiry Officer asked the petitioner about the incidents, the petitioner denied the charges and stated that he did not drive the vehicle in a rash and negligent manner. Since he was driving the vehicle slowly he was able to halt the vehicle and there was no damage either to the bus or to the cycle of the boy. Only, when the boy fell down, unfortunately, got his head hit against the pavement and as a result, the boy died. Subsequently, when no case was established before the Criminal Court, the petitioner was acquitted of all the charges after accepting the innocence of the petitioner by the order of acquittal passed by the Criminal Court.

5. Mrs. D. Nagasaila, learned Counsel appearing for the petitioner submits that neither the 1st respondent Department has appointed any Presenting Officer to present case of the Department, nor any witness was ever produced nor any evidence ever adduced by the Department and it was also urged that no charge sheet or charge memo was issued. Under these circumstances the Enquiry Officer, by himself stepping into the shoes of the Presenting Officer, without even giving an opportunity to the petitioner to cross examine the case of the management, to complete the enquiry, presented the Enquiry Report. On the receipt of the report of the Enquiry Officer, the disciplinary authority namely, the 1st respondent, the Commissioner of Corporation, Chennai, imposed the

punishment of reduction to the minimum time scale of pay. Aggrieved by the said order, an appeal was filed. But, the appellate authority dismissed the appeal and, thereafter, the petitioner filed a revision which was also dismissed. Aggrieved by the order passed in the appeal as well as the revision, the present writ petition has been filed.

6. The contentions raised by the learned Counsel appearing for the petitioner in the present writ petition are that the enquiry proceedings is barred by the delay of 9 years from the date of incident, and, therefore, the enquiry initiated by the Department with the delay of 9 years cannot be in consonance with the principles of natural justice. On that basis, the learned Counsel prayed for quashing the impugned punishment imposed against the petitioner. Secondly, the impugned order also has been passed without holding a proper enquiry. Therefore, the order of punishment being violative of principles of natural justice, it was contended that the impugned order should be set aside as it is violative of Article 14 of the Constitution of India.

7. In support of her submission, it was further submitted that no witnesses or documents were marked by the Corporation to prove the charges levelled against the petitioner. That apart, the petitioner was not given an opportunity to cross examine, or, in any way, test the veracity of the charges levelled against him, and, thirdly, it was further urged that the petitioner was not informed of his right to be represented or assisted by a defence representative. Without following any of the mandatory principles of natural justice and fair play, the Enquiry Officer gave his findings on the basis of his own inferences and surmises. On the basis of the above submissions, she prayed for quashing of the impugned punishment.

8. In support of her submissions, the learned Counsel appearing for the petitioner had relied upon the Judgment of the Hon'ble Apex Court reported in *M.V. Bijlani Vs. Union of India (UOI) and Others*, to say that the disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, the Enquiry Officer performs a quasi-judicial function, who, upon analysing the documents, must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. But, in the present case, it was further contended that the Department, namely, the respondent herein did not even produce a single witness to support the case of the respondent. On the basis of the above said reliance the learned Counsel prayed for quashing the impugned punishment imposed against the petitioner.

9. In reply, Mr. G.T. Subramanian, learned Counsel appearing for respondents 1 & 2 submits that a charge memo was issued to the petitioner. After receiving the show cause notice as well as the charge memo, the petitioner submitted his explanations. The disciplinary authority was not satisfied with the explanation offered by the petitioner to conduct a preliminary enquiry, since the petitioner did

not come forward asking to hold a departmental enquiry. In support of his argument, the learned Counsel appearing for the respondents relied upon Rule 9 of the (Chennai) Corporation, Class III and Class IV Service (Discipline & Appeal) bye-laws wherein, the procedure for imposing penalties has been explained. In view of bye-law 9 of the Class III and Class IV Service bye-laws to impose on a member of a service, any of the penalties specified in Clauses (i),(ii),(iii),(v) and (vi) of bye-law 5, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before order of imposing the penalty is passed. As per Clause 2 of the bye-laws, since the petitioner did not come forward asking for an oral enquiry, the Department cannot be found fault with for not holding a proper domestic enquiry. However, on the question of delay of 9 years in holding the enquiry, the learned Counsel appearing for the respondents fairly submits that there is no case to support the point of delay.

10. Heard the learned Counsel on both sides.

11. Though Mrs. D. Nagasaila, learned Counsel appearing for the petitioner forcibly argued that even no Presenting Officer was appointed to present the case of the Department and no oral evidence was properly taken from the side of the Department, yet the petitioner was not given any chance to cross examine the Departmental witnesses. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, I may hasten to add that the same is dependent upon the facts and circumstances of the each individual case. Mr. G.T. Subramanian, learned Counsel for the respondents 1 & 2 was not able to dispute the non-appointment of Presenting Officer to present the case of the management.

12. In fact, there is no Presenting Officer to present the case of the Department. Admittedly, there was no single witness produced to support the case of the Department. It appears that the whole issue has been dealt with in such a way that the delinquent must be punished at any rate. Such a practice is opposed to the principles of natural justice, has been frowned upon by the Apex Court in a Judgment reported in Associated Cement Co. Ltd. Vs. The Workmen and Another, wherein it has been held as follows:

It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with the domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees

are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the present enquiry proceedings by which Malak Ram was elaborately cross examined at the out set constitutes another infirmity in this enquiry.

Again, it was further held that therefore we are satisfied that the view taken by the tribunal that the enquiry held against Malak Ram was not conducted in accordance with the principles of natural justice, cannot be successfully challenged by the appellant.

The above said procedure and principles of natural justice has been further reminded and simplified by the Supreme Court in a latest judgment reported in State of Uttaranchal and Others Vs. Kharak Singh, . In the instant case, the aforementioned procedure has never been followed. It is also seen that no witnesses were examined. Apparently, there was not even a Presenting Officer. A perusal of the report shows that the Enquiry Officer himself acted as the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice.

13. Therefore, in the above said background, when I look into the method adopted for conducting enquiry with this background it goes to show that there is neither a direct nor indirect evidence to hold the petitioner guilty of charge levelled against him and the method adopted by the Enquiry Officer also indicates that the Enquiry Officer failed to follow the principles of natural justice to find the petitioner guilty of the charges levelled against him.

14. In yet another Judgment reported in Roop Singh Negi Vs. Punjab National Bank and Others, , the Hon"ble Apex Court has held as follows:

23. ... In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence.

Further, in regard to the delay of 9 years in initiating the departmental enquiry, there was no sufficient cause shown by the department as to why the department had not come forward to initiate the disciplinary proceedings against the petitioner either immediately from the date of the incident, or in the

alternative, from the date of the order of acquittal passed by the Criminal Court on 01.09.1997. Learned Counsel appearing for the respondents unable to give any single reason about the delay of 9 years in setting on the departmental proceedings against the petitioner. Therefore, in the light of the above said judgment, I am of the considered opinion that the imposition of punishment by the disciplinary authority against the petitioner, unsupported by any evidence is liable to be set aside. As rightly contended by the learned Counsel appearing for the petitioner, it is not only a case of no evidence, but also a case of non-application of mind by the disciplinary authority and the entire method adopted by the Enquiry Officer is in violation of the principles of natural justice, therefore, the impugned order is set aside. Accordingly, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.