
(2000) 12 MAD CK 0098
In the Madras High Court
Case No : Writ Petition No. 13 of 1993

Elango P.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Citation : (2001) 2 LLJ 1675

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : C.R. Chandrasekaran, for the Appellant; S. Ravindran, for T.S. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—By an award, dated April 26, 1993 of the first respondent Labour Court, Madurai in I.D. No. 16 of 1989, which is impugned in the above writ petition, the order of dismissal, dated January 19, 1985, passed by the second respondent-management dismissing the petitioner was confirmed. Hence the above writ petition seeking for the issue of a writ of certiorarified mandamus calling for the records on the file of the first respondent in I.D. No. 16 of 1989, dated April 26, 1993, and to quash the same and consequently direct the second respondent to reinstate the petitioner with full back wages and other benefits.

2. The petitioner was charged for the violation of Clauses 16(12) and 16(26) of the Standing Orders of the company which read as follows:

"Clause 16(12): ... Drunkenness, riotous or disorderly behaviour inside the premises or use of abusive language or any act likely to cause breach of peace or any act subversive of discipline...

Clause 16(26): ... Threatening, abusing, intimidation or assaulting workmen/ supervisory staff/officer inside the premises or outside"

3. It is alleged that on June 29, 1984 between 3.20 A.M. and 3.30 A.M. the

petitioner is alleged to have thrown acid on the face of the co-employee, with regard to which a criminal case has also been filed and tried in S.C. No. 171, of 1985 before the learned Assistant Sessions Judge, Sivaganga, for an alleged offence punishable u/s 326 IPC, wherein the petitioner was originally convicted and sentenced to five years rigorous imprisonment. But, on an appeal in Crl. A. No. 73 of 1986 the Additional Sessions Judge, Ramanathapuram, at Madurai, by an order, dated April 27, 1987, acquitted the petitioner giving benefit of doubt as found in Para. 17 of the said order, dated April 27, 1987.

4. Pursuant to the disciplinary action initiated against the petitioner under a chargememo, dated July 2, 1984, the second respondent-management also suspended the petitioner from July 2, 1984. However the said suspension was lifted on August 25, 1984. Thereafter, an enquiry was conducted on October 27, 1984 in the light of the explanation offered by the petitioner to the said chargememo, dated July 2, 1984, and the enquiry officer in his report, dated November 22, 1984 found the petitioner guilty of the said charges and consequently the second respondent- management, after giving a second show-cause notice, dated December 13, 1984, to the petitioner, considered his explanation, dated December 17, 1984, dismissed the petitioner on January 19, 1985, which was ultimately confirmed by the first respondent-Labour Court in an award, dated April 26, 1993 in I.D. No. 16 of 1989, which is impugned in the above writ petition.

5. During the pendency of the industrial disputes the petitioner was acquitted by the Additional Sessions Judge, Ramanathapuram at Madurai by an order dated April 27, 1987, in Crl. A. No. 73 of 1986 and the said order was also marked to the first respondent- Labour Court on behalf of the petitioner. But, however the first respondent-Labour Court even though, has referred to the said order of acquittal dated April 27, 1987, in Crl. A. No. 171 of 1985, had not discussed the same.

6. According to Sri C.R. Chandrasekaran, learned counsel appearing for the petitioner, the impugned award, dated April 26, 1993, in I.D. No. 16 of 1989 is illegal inasmuch as the Labour Court failed to appreciate the order dated April 27, 1987 in Crl A. No. 171 of 1985 on the file of the Additional Sessions Judge, Ramanathapuram at Madurai, wherein the petitioner was acquitted of the charges which form basis for the impugned disciplinary action also.

7. Placing reliance on a decision of the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , the learned counsel for the petitioner contends that the petitioner was not paid subsistence allowance between July 2, 1984 to August 5, 1984, and therefore his right to defend himself in the impugned disciplinary action has been denied and consequently the impugned order of dismissal, dated January 19, 1985, is violative of the principles of natural justice.

8. Learned counsel for the petitioner also contends that order of suspension,

dated July 2, 1984, was lifted by the second respondent-management on August 25, 1984 since the charges are not grave in nature and if that be so, the impugned punishment of dismissal is shockingly disproportionate, inasmuch as the criminal Court has held that even though the complainant was found to have been injured on his face by alleged throwing of acid, one of his eyes had been affected and that in any event, the charges are held to be not proved, in the light of the findings of the learned Additional Sessions Judge, Ramanathapuram at Madurai in Crl. A. No. 73 of 1986.

9. Per contra, learned counsel appearing for the second respondent-management contends that there is no bar to initiate disciplinary action against the petitioner even though a criminal case has been filed against him with regard to the same occurrence. The petitioner was acquitted in the criminal appeal only on April 27, 1987, whereas the enquiry officer in his report, dated November 22, 1984 had arrived at a conclusion that the charges were held proved in the light of the materials placed before him during the enquiry, pursuant to which the petitioner was dismissed from service after giving a fair and reasonable opportunity to him during the enquiry and by proving a second show-cause notice before dismissing him by an order, dated January 19, 1985, which was confirmed by the first respondent Labour Court in the impugned award, dated April 26, 1993, made in I.D. No. 16 of 1989.

10. It could not be lawfully presumed that the charges are not grave in nature, merely because the order of suspension dated July 2, 1984 of the petitioner was lifted on August 25, 1984 in view of the decisions of the Apex Court in U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, that a threatening to cause violent assault on the co-employee itself is considered to be grave in nature.

11. Sri S. Ravindran, learned counsel for the second respondent-management, further contends that even though the petitioner was not paid the subsistence allowance between July 2, 1984 to August 25, 1984, he cannot have any grievance in that regard because the order of suspension was lifted on August 25, 1984 itself and only thereafter the enquiry was conducted viz., October 27, 1984.

12. I have given careful consideration to the submission of both sides.

13. No doubt, as held in Captain M. Paul Anthony case (supra), non-payment of subsistence allowance amounts to denial of fair and reasonable opportunity to the petitioner to defend himself in the disciplinary action. The denial of subsistence allowance is considered to be a slow poisoning. The act of non-payment of subsistence allowance can be likened to slow-poisoning of the employee, as the employee is not permitted to sustain himself on account of non-payment of subsistence allowance he would gradually starve himself to death. But, in the instant case, as rightly pointed out by the learned counsel for the second respondent-management, even though the petitioner was placed under

suspension on July 2, 1984 the same was lifted on August 25, 1984 and only thereafter an enquiry was conducted on October 27, 1984 in the light of the explanation offered by the petitioner to the chargememo, dated July 2, 1984, after giving fair and reasonable opportunity in the said enquiry. Hence I am unable to accept the contentions of the learned counsel for the petitioner that the petitioner was deprived of giving fair and reasonable opportunity of defend himself on account of non- payment or subsistence allowance from July 2, 1984 to August 25, 1984.

14. It is true that in Captain M Paul Anthony case (supra) it has been held as follows, in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, :

22. "The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii)...

(iii)...

(iv)...

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

Admittedly, the petitioner was found guilty by the enquiry officer in his report, dated November 22, 1984, after giving fair and reasonable opportunity to the petitioner in the enquiry and the petitioner has no grievance in that regard. It is well settled in law that it is not necessary to follow the strict rule of evidence. Similarly, learned Assistant Sessions Judge, Sivaganga, convicted the petitioner for the offence punishable u/s 326 of the Indian Penal Code and sentenced him to undergo five years of rigorous imprisonment in S.C. No. 171 of 1985. Even though on an appeal in Crl. A. No. 73 of 1986, the learned Additional Sessions Judge, Ramanathapuram at Madurai, acquitted only giving benefit of doubt. But the fact remains that the complainant was found injured on his face, though his eyes were not lost. The Apex Court in a decision in Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan, , held that the acquittal in a criminal trial on benefit of doubt, is not a bar to impose a penalty in the departmental proceedings. Taking into consideration the above fact that the enquiry officer found the petitioner guilty of charges and the trial Judge viz., the Assistant Sessions Judge Sivaganga in S.C. No. 171 of 1985 convicted the petitioner for an offence punishable u/s 326 of the Indian Penal Code and

sentenced him for five years of rigorous imprisonment and the learned Additional Sessions Judge, Ramanathapuram at Madurai, on an Appeal in Crl. A.No. 73 of 1986 held that the complainant's face was found injured though both of his eyes were not lost, but still acquitted him giving benefit of doubt, I do not find any violation to the ratio laid down by the Apex Court in Captain M. Paul Anthony case (supra), as referred to above.

15. On the other hand, it is well settled in law that the judgment in criminal case acquitting the person concerned is not a complete bar against the departmental proceedings as held in Narayanan v. State of Tamil Nadu 1999 (1) L.L.N. 693 and Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, .

16. In view of the finding of the enquiry officer that the charges were held proved which corroborates with the orders of the Assistant Sessions Judge, Sivaganga in S.C. No. 171 of 1985 as well as with the finding of the learned Additional Sessions Judge, Ramanathapuram at Madurai in Crl. A. No. 73 of 1986 by order, dated April 27, 1987, that the complainant's face was found injured, I am of the considered opinion that the merciless petitioner cannot be shown any mercy as held in Precipenium Valve Manufacturers v. Presiding Officer, Fifth Labour Court, Bombay 2000 (4) L.L.N. 168.

17. Further, held in Uttar Pradesh State Road Transport Corporation case (supra), that even threatening to assault the co-employee amounts to serious misconduct and punishment of removal was therefore held not disproportionate. I am of the considered opinion that the impugned order of dismissal as confirmed by the second respondent-management dismissing the petitioner by an award dated April 26, 1993 in I.D. No. 16 of 1989 cannot be complained as shockingly disproportionate.

18. Therefore there are no merits in the writ petition and hence the writ petition is dismissed. No costs.