
(1999) 06 MAD CK 0028
In the Madras High Court

G.V. Rangarajan

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 14-06-1999

Acts Referred:

Citation : (1999) 3 MLJ 201

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Division Bench

Judgement

M. Karpagavinayagam, J.—G.V. Rangarajan, the petitioner, herein, has filed this writ petition seeking to issue a writ of certiorarified

mandamus calling for the records of the first respondent, viz., the Presiding Officer, Labour Court, Coimbatore in I.D. No. 284 of 1985 and quash

only that portion of the award dated 16.11.1989 published in Tamil Nadu Government Gazette No. 19-B, Part II, Section 2, dated 16.5.1990 by

which 75% backwages has been denied to the petitioner and directing the second respondent to pay the full backwages together with all

consequential benefits.

2. The facts that are required for the disposal of the writ petition are as follows:

(a) The petitioner joined the services of the second respondent the Management of Coimbatore District Consumers Co-operative Whole stale

Stores Ltd. in the year 1959. He rose up from ranks and was promoted as the Superintendent of the Village Shop Programme Department from

1979. From March, 1980, he was given additional charge of the empties section. He was also incharge of purchase of empty covers for packing

of commodities. The total requirements of such empty covers were determined by the section. In order to help the petitioner, two other Assistants

by name Jaganathan and Natarajan were posted.

(b) In the matter of placing orders by the section which was under the control of the petitioner with different parties, for the purchase of 17,00,000

covers for the year 1980-81, it was found that there was misappropriation of a sum of Rs. 1,06,104.33 of the society's funds by making fictitious

entries by the said two assistants, in connivance with the petitioner.

(c) In November, 1981, the petitioner and the two Assistants were suspended. After following the required formalities, the charges were framed

against the delinquents, including the petitioner, with reference to the above embezzlement and falsification of records. After giving opportunity to

the delinquents to give their written explanation, the enquiry was held.

(d) After enquiry, the enquiry officer submitted his report stating that the said Jaganathan and Natarajan, Assistants, joined together and

misappropriated the said sum by fraudulent means and fabrication of records and that the petitioner Rangarajan had been used by the said two

persons for this fraudulent act and that he was negligent and did not bestow his care expected of him of preventing such a huge loss to the society

due to the said misappropriation.

(e) Based on the report of the enquiry officer, the petitioner as well as the other two assistants was dismissed from service. The petitioner

aggrieved over the same, raised the industrial dispute before the first respondent-the presiding officer, Labour Court, coimbatore in I.D. No. 284

of 1985.

(f) After hearing the parties, the first respondent held that the enquiry was fair and proper and the findings of the enquiry officer were correct.

However, the order of dismissal was set aside, and the Labour Court modified the punishment by directing the second respondent to reinstate the

petitioner with continuity of service and with 25 per cent backwages drawn by the petitioner at the time of his termination.

(g) Aggrieved over this award directing for the reinstatement of the petitioner by setting aside the punishment of dismissal by the Labour Court, the

Management of Coimbatore District Consumers Co-operative Wholesale Stores Ltd., the second respondent herein, filed a separate writ petition

in W.P. No. 17702 of 1990.

(h) The main ground urged in the said petition by the second respondent herein that the dismissal order as against the petitioner ought not to have

been disturbed, since there was no finding that the said order of dismissal was not justified.

(i) After hearing the counsel for the parties, I have disposed of the said writ petition in a separate order rejecting the said prayer and holding that

the direction for reinstatement and for payment of 25 per cent backwages was perfectly correct and valid.

(j) The present writ petition, i.e., W.P. No. 17022 of 1991, having aggrieved over the denial of 75 per cent backwages has been filed by the

petitioner on the ground that the petitioner ought to have been reinstated with full backwages and in the light of the finding that the charge of

misappropriation was not proved against him, especially when there is no material to show that he was negligent in his duties and there is no

specific charge for the same.

3. Mr. Ramasubramaniam, the learned Counsel appearing for the petitioner, would mainly contend that though the petitioner who was charged for

the misappropriation, was found not guilty of the said charge by the enquiry officer, but, unfortunately, he was held guilty by the enquiry officer of

the charge of negligence for which no charge was framed against him and no opportunity was given to him.

4. On the strength of this submission, the learned Counsel would contend that the findings rendered by the enquiry officer and the first respondent-

Labour Court are perverse and so, both the orders impugned are to be quashed. It is also pointed out that the Enquiry Officer found the petitioner

guilty of the charge which was not framed against him and that the said finding was not on the basis of any material to establish same.

5. In support of his contention, the learned Counsel for the petitioner, cited the following authorities:

(1) Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, ; (2) State of Assam v. Mohan Chandra AIR 1972 S.C. 2535; (3) The State

of Punjab and Others Vs. Bakhtawar Singh and Others, and (4) Remington Rand of India Ltd. Vs. Tahir Ali Saifi and Another, .

6. In reply to the said submission, Mr. Ibrahim Kalifulla, the learned Counsel appearing for the second respondent, would point out by reading the

relevant portion of the charge as well as the findings of the Labour Court and other forum that the findings with regard to the charge of negligence

rendered through the impugned order are correct. He would also cite the decision In of the Apex Court in Managing Director, E.C.I.L.,

Hyderabad v. B. Karunakar (1994) 1 L.L.J. 196, in which it is held that the court ordinarily should not interfere and mechanically set aside the

order of punishment on some technical ground, in the absence of any prejudice.

7. In the light of the above submissions made on either side, let us now go into question as to whether the impugned orders would suffer from any

infirmity pr not.

8. It cannot be disputed that before the conclusion arrived at in the domestic enquiry, the deinquents must be made aware of the charges that they

have to face in the said enquiry. Similarly, to hold that the delinquent is found guilty of a particular charge, there shall be some evidence to connect

the delinquent with the allegation of the said charge.

9. It is settled law that natural justice requires that the person complained of should be informed of the charges against him and that he should be

given a reasonable opportunity to contest the charges levelled against him by rebutting those charges.

10. The grievance of the petitioner is that no charge had been framed against him with reference to the charge of negligence to enabling him to

rebut such charge and that further in the absence of any material, he has to be held not guilty of the said charge.

11. In order to appreciate this aspect, it is appropriate to refer to the charge memo issued to the petitioner dated 20.3.1982. Totally there well 11

charges. The main charges regarding misappropriation of Society's funds to the tune of Rs. 1,06,104.33, viz., charge Nos.1, 4, 5 and 10 would

indicate that he was charged for the allegation of misappropriation of funds and for falsification of records, along with two others, namely,

Jaganathan and Natarajan. But, charge Nos.2, 36, 7 and 8 would indicate that he failed in discharging of his duties as superintendent.

12. It is mentioned in the charge memo that the petitioner failed to check the manipulations of accounts records made by Natarajan that he failed to

maintain proper account for the purchase of packing materials, though he was responsible for the section, that he failed to expose the false

manipulation in the indents, purchase order books and office notes, that he failed to scrutinise the quotations, but approved the entire purchases,

and that he did not assess the annual requirements of paper bags properly out of the purchase of 2,30,500 B.G.P. 100 gram bags during 1979-80,

whereas the society used only 1,79,480 covers upto 8.9.1981 leaving substantial quantity as balance stock.

13. In response to the charge memo dated 20.3.1982, the petitioner, while denying all the charges, would specifically state that his functions were

of supervisory nature, that the manipulations of indents and falsification of records were done by two other Assistants in a very subtle manner, and

that a person having a minimal supervisory powers cannot detect them. He would also state that he exhibited such caution as are necessary and as

a superintendent, he has not been either negligent or rash in any manner.

14. In the light of the details in the charge memo and the reply given by the petitioner, the enquiry officer conducted the enquiry by examining the

witnesses produced by the parties and held that the petitioner's role in the misappropriation of funds could not be established, but the petitioner,

who is the superintendent and is incharge of the section, under whom other people were working, was negligent in supervising their works. The

following is the relevant observation:

It is very vital to observe that V.M. Natarajan, has taken the interest of introducing this establishment, Vijaya Agencies to Bankers on 18.7.1980.

His explanation was that he did it at the instance of superintendent G.V. Rangarajan, one of the charge-sheeted employee. He has not brought in

anything to prove his content in the enquiry. However, viewing the nature and frequent encashment of cheques, passing of bills, etc., it cannot be

ruled out that the other charge-sheeted employees have the knowledge about it. Further, the entries filed in Ex.M-4 are in the hand writing of V.M.

Natarajan.

...

The above points bereft of any satisfactory explanation by the charge sheeted employees prove that they namely Jaganathan and V.M.Natarajan

Joined together and misappropriated a sum of Rs. 1,06,104.33 of the management by fraudulent means. In this context, I have to observe that

G.V.Rangarajan is the superintendent of the section and from the evidence let in

before me, I find his role in the misappropriation of the amounts is minimal. I can only say, from the proceedings of the enquiry, that G.V.Rangarajan has been utilised by persons like Jaganathan and V.M.

Natarajan for this fraudulent act. However, it is no gainsaying the fact that had he been vigilant and bestowed the care expected of him such huge

loss to the society could have been avoided. His utter disregard for duty had indirectly helped the other two to indulge in such fraudulent acts.

15. So, the observation made above would indicate that the enquiry officer came to the conclusion that these manipulations would not have been

committed by the other two Assistants without the knowledge of the petitioner. However, since the materials are not sufficient for the direct

involvement of the petitioner, he could be held negligent and failed in his duties in making proper supervision over the activities of his subordinates.

16. In view of the fact situation, it cannot be contended that there is no material to find the petitioner guilty of the charge that he failed in his duties

as superintendent in preventing the other two assistants working under him from making a huge loss to the Society.

17. As indicated earlier, the charge of failure to do his duties in making proper supervision which enabled the other two assistants commit

fabrication of the records and misappropriation of the funds of the society is already there in the charge memo. Even in the reply, the

petitioner/delinquent has specifically stated that he could not detect since the said manipulation committed by other two assistants in a subtle

manner and that he was not negligent.

18. In such, circumstances, I am not able to countenance the submission made by the counsel for petitioner that the impugned orders are liable to

be set aside on the ground that there is no reasonable opportunity afforded to the petitioner/delinquent.

19. In this context, the following observation of the Supreme Court in the decision reported in Managing Director E.C.I.L., Hyderabad v. B.

Karunakar (1994) 1 L.L.J. 196 is quite relevant:

The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to

vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice

has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.

20. In the light of the above observation, I do not find any merit in this writ petition and accordingly, the same is dismissed. No costs.