

(2006) 08 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23371 of 1999

J. Ravi Kumar

APPELLANT

Vs

Chief General Manager, Hindustan Petroleum Corporation
Limited and Another

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 20, 226, 311(2), 32
Evidence Act, 1872 — Section 25
Penal Code, 1860 (IPC) — Section 379

Citation : (2006) 5 ALD 539 : (2006) 5 ALT 309 : (2006) 3 ALT(Cri) 200

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : K. Srinivas, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

G. Chandraiah, J.—Heard both the counsel.

2. This writ petition is filed for a writ of Mandamus by calling the records relating to and connected with proceedings dated 29-7-1998 issued by the 1st respondent wherein the petitioner was imposed the penalty of reduction to a lower grade (R.W.3) without reduction in salary for a period of three years with effect from 29-7-1998 as confirmed by the 2nd respondent in proceedings dated 4-5-1999 and declare them as illegal, arbitrary and without any evidence and consequently set them aside and to pass orders as are deemed fit and proper in the circumstances of the case.

3. In the affidavit filed in support of the writ petition it is stated that the petitioner was working as Operations Technician in Hindustan Petroleum Corporation Limited, Visakhapatnam (for short "the Corporation") and the 1st respondent-Chief General Manager, placed him under suspension by order dated 10-1-1998 stating that it was reported that the petitioner has stolen the

Corporation's property from its Additional Tankage Project Area and Maintenance Department and that this amounts to misconduct as per Standing Orders of the Corporation. Both the suspension order and charge sheet are issued in the same proceedings dated 10-1-1998 and pursuant to the same, the petitioner gave a detailed reply dated 9-2-1998 denying the charge of theft. Not being satisfied with the explanation, an enquiry was conducted and after completion of the same, summation report was submitted by the enquiry officer and the petitioner has filed explanation to the same. Eventually the 1st respondent - Chief General Manager by order dated 29-7-1998 imposed the punishment on the petitioner by reduction to a lower grade without reduction in salary for a period of three years with effect from 29-7-1998. In the appeal, the Director - Refineries - 2nd respondent confirmed the order of the 1st respondent through proceedings dated 4-5-1999 and the subsequent review petition by the petitioner also ended in dismissal on the ground of delay and laches by order dated 2-9-1999. It is stated the charge against the petitioner was that he has stolen the property of the Corporation, which is based on the remand report given by the Sub-Inspector of Police, Malkapuram Crime P.S. Visakhapatnam city dated 8-1-1998, wherein the case of the Sub-Inspector is that certain properties were seized from the possession of the petitioner during the late hours of 7-1 -1998 and that the petitioner admitted before the police regarding the theft of property of the Corporation. In the said remand report it is stated that "during the course of investigation efforts have been made to establish the ownership of the seized property in HPCL but not established." Based on the said remand report a case in Crime No. 3/1998 was registered and the same was numbered as C.C. No. 187/1998 on the file of VIII Metropolitan Magistrate, Gajuwaka, Visakhapatnam for the offence of theft u/s 379 I.P.C. Before completion of criminal case, domestic enquiry has been completed, wherein the petitioner was held to be guilty of misconduct of theft. The criminal case ended in clean acquittal by judgment dated 19-3-1999. It is stated that the entire enquiry proceedings have started on the premise that the petitioner has stolen the property and that punishment was imposed by the 1st respondent only on the ground that the petitioner had confessed before the Sub-Inspector with regard to committing of theft and the subsequent identification of the property of the Corporation. The criminal Court has disbelieved the version of the Sub Inspector of Police, who was examined as P.W.6. The respondent though conducted enquiry on the ground that the petitioner has stolen the property, did not lodge any complaint and as per the remand report the efforts made for establishment of the ownership of the property ended in futile. The tenor of the affidavit is that there is no evidence before the disciplinary authority to impose the punishment of demotion of the petitioner and that even though the evidence before the enquiry officer and the criminal Court is similar, the appellate authority did not give any credence to the judgment of the criminal Court acquitting the petitioner, while confirming the order passed by the initial authority. With these averments inter alia, the petitioner sought for setting aside the impugned orders.

4. No counter is filed.

5. The learned Counsel for the petitioner reiterating the averments made in the writ affidavit further submitted that there was no evidence before the disciplinary authority to impose the penalty of demotion on the petitioner and hence the same is illegal. He stated that when there is no evidence for inflicting the punishment, this Court under Article 226 of the Constitution of India can interfere with the findings of the disciplinary authority. In support of this contention, he relied on the judgments of the Apex Court in *Union of India (UOI) Vs. H.C. Goel*, *State of Assam v. Mohan Chandra* AIR 1972 SC 2535 and the judgment of the learned single Judge of this Court in *K. Sitaram Vs. Vice-Chancellor, S.V. University, Tirupati and another*, . Relying on the judgment of the learned single Judge of this Court in *K. Raghuram Babu Vs. Railway Protection Force, South Central Railway, Secunderabad and others*, he submitted that as the charges and witnesses are same before the departmental enquiry and the criminal Court, the findings in departmental proceedings cannot be given contrary to that given in criminal case. He submitted that as the petitioner is acquitted in criminal case based on the same charges and the evidence, which were considered in the departmental enquiry, he cannot be inflicted with punishment in the departmental proceedings. In support of this contention, he relied on the judgment of the Apex Court in *G.M. Tank v. State of Gujarat and Anr.* 2006 (4) SCJ 13 : 2006 (4) ALT 31 : 2006 (1) (NRG) 563(SC). With these submissions he sought for allowing of the writ petition by setting the impugned proceedings dated 29-7-1998 and 4-5-1999.

6. On the other hand the learned Counsel appearing for the respondents submitted that this Court under Article 226 of the Constitution of India cannot act as an appellate authority and re-appreciate the evidence and come to a different conclusion than the one arrived in the departmental proceedings and hence the writ petition is not maintainable. It was further contended that the nature of departmental and criminal proceedings are different and in the former strict rules of evidence cannot be made applicable and only preponderance of probabilities have to be looked into and whereas in the later, strict rules of evidence are applicable and the prosecution has to prove the guilt of the accused beyond all reasonable doubt. It is further contended that before the criminal Court the prosecution has failed to prove the guilt of the accused, because the panch witnesses turned hostile and therefore, the benefit of doubt enured to the petitioner and, therefore the petitioner was acquitted and hence the same cannot be taken as a "clean acquittal" and furthermore, mere acquittal in a criminal case does not automatically result in dropping of the departmental proceedings and as stated above, both operate in different fields and hence one cannot have bearing over the other. With these contentions the writ petition is sought to be dismissed.

7. In view of the above rival contentions the points that fall for consideration are:

1. Whether this Court under Article 226 can interfere with the findings of the

enquiry officer or the disciplinary authority in a domestic enquiry, if they are sought to be proved on no evidence?

2. Whether the acquittal of an employee in the criminal proceedings based on the same charges and the evidence as in the departmental enquiry, would exonerate him from the misconduct alleged in the departmental proceedings?

8. The main grievance of the petitioner in this writ petition is that the disciplinary authority imposed punishment without there being any evidence on record. In this regard it is necessary to look into the rulings of the Constitutional Bench judgment of the Apex Court in H.C. Goe/'s case(1 supra), wherein it was held thus:

20....It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract. Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.

9. The Apex Court in Mohan Chandra's case (2 supra) held that in departmental enquiry, charge cannot be sustained on mere conjectures in the absence of evidence. The Apex Court in the decision reported in Kuldeep Singh v. The Commissioner of Police and Ors. JT 1998 (8) SC 603 held that if the findings of the enquiry officer or the disciplinary authority in the departmental enquiry are based on no evidence and are perverse, the same can be interfered with under Article 32 or 226 by the Supreme Court or the High Court, as the case may be. In the said judgment the Apex Court considering the entire evidence on record, found that absolutely there was no evidence in support of the charge framed against the appellant therein and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse. The relevant portion is extracted as under:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by any ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In *Nand Kishore Prasad Vs. State of Bihar and Others*, , it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

8. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of Andhra Pradesh Vs. Sree Rama Rao*, , in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India Ltd. Vs. Prakash Chand Jain*, and *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, . In *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, , it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A learned single Judge of this Court in *K.Sitaram's case* (3 supra) considering the scope of judicial review on the departmental proceedings in the light of various judgments of the Apex Court, held that if the findings of the

enquiry officer are not based on evidence, they can be interfered with. The learned Judge has framed certain guidelines for exercise of judicial review under Article 226 of the Constitution in the departmental proceedings. They are extracted as under for better appreciation:

10. The parameters of judicial review of disciplinary proceedings are too well recognized and settled to merit an exhaustive and detailed analysis of the governing concepts as has evolved over a period of time. The concepts, however, to the extent relevant to the facts on hand may be summarized as under:

(a) In an application under Article 226 of the Constitution, High Court is not constituted as a Court of appeal against the decision in a disciplinary proceedings. It is merely concerned with determining whether the enquiry is held in accordance with the procedure prescribed, in conformity with the principles of natural justice and whether there is some evidence, which the authority entrusted with the duty to hold enquiry has accepted and which evidence may reasonably support the conclusions that the delinquent officer is guilty of the charges alleged.

(b) It is extraneous to the judicial review function to either review or re-appreciate the evidence so as to arrive at an independent finding on the evidence. High Court would however be within its ordained function to consider whether the authority has disabled itself from reaching a fair decision by considerations extraneous to the evidence and the merits of the case or by allowing itself to be influenced by irrelevant consideration or whether the conclusion on the very fact of it is so wholly arbitrary and capricious that no reasonable person could have arrived at that conclusion on similar grounds. Vide *State of Andhra Pradesh Vs. Sree Rama Rao*, .

(c) Disciplinary proceedings by a public authority constitute a species of administrative action amenable to the broad principles and concepts operative on every administrative action. The validity of an administrative order which includes the appreciation of evidence by disciplinary authority is susceptible to be tested as every other administrative action on the touchstone of the tests enunciated by a catena of authority including in the celebrated case *Associated Provincial Picture House Ltd. v. Wednesbury Corporation* 148 (1) KB 23. A conclusion even of the disciplinary authority as to the evidence considered would be vitiated if it is one which would be arrived at by no reasonable person or on no evidence, is irrational or based on conjectures, surmises or suspicions vide *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, ; *R.S. Saini Vs. State of Punjab and Others*, .

(d) Even in case of circumstantial evidence considered as a foundation to arrive at a finding of guilt in a departmental proceedings it is necessary that the circumstances on which the conclusion is to be drawn should be fully established. Facts established should reasonably support the conclusions of the enquiring authority and the chain of circumstantial evidence must be adequate enough as

to avoid any scope for surmises, conjectures and suspicions needed to fill up the potential gaps in the chain of circumstances. In the absence of any direct authority on the quality of circumstances warranted in a disciplinary proceedings this Court has fine tuned the decision of the Supreme Court in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, , (which is a decision rendered in a criminal case) to the conceptual requirement of a disciplinary case.

11. The quintessence of the above decisions is that though the High Court under Article 226 of the Constitution of India is not an appellate authority over the order passed by the disciplinary authority, yet it is within the jurisdiction under Article 226 of the Constitution of India, to consider whether the principles of natural justice have been followed; whether the charged employee is able to prove that the findings of the disciplinary authority are based on no legal evidence and are perverse findings; whether there is some evidence, which reasonably supports the conclusions of the enquiry officer; whether the enquiry officer is carried away by irrelevant considerations extraneous to the evidence and the merits of the case and mere surmises and conjectures and recorded findings which no ordinary prudent person could have arrived at on such grounds and; in circumstantial evidence, whether the circumstances are fully established and that mere suspicion cannot take the place of proof.

12. In the light of the above position now it is necessary to look whether there is any legal evidence to support the conclusion arrived at by the enquiry officer or the disciplinary authority, as the case may be. The charge against the petitioner is that he has stolen the Corporation's property mentioned in the charge sheet - cum - suspension order dated 1-10-1998 from Additional Tankage Project area and Maintenance Department and that he was arrested by the Malkapuram Crime Police Station, Visakhapatnam on January 7, 1998 at about 11,30 p.m. while in the possession of the above stolen properties and that this amounts to misconduct as per the Standing Orders. A perusal of the record and the impugned proceedings shows that the basis of the above charge is the arrest of the petitioner on 7-1-1998 by the Sub-Inspector of Police, Malkapuram Crime Police Station and the remand report submitted by him to the VIII Metropolitan Magistrate, Visakhapatnam at Gajuwaka. In the remand report it is stated that on 7-1-1998 at about 23.30 hours, the petitioner was arrested by the Sub Inspector in the presence of mediators when he was in possession of the items mentioned therein and that he has confessed to have stolen them from the Corporation and after completion of formalities, the seized property along with the petitioner was brought to the police station at 4.30 a.m. on 8-1 -1998 and a case in Crime No. 3/1998 was registered. It is also stated therein that during the course of investigation, efforts have been made to establish the ownership of the seized property in H.P.C., but not established. After completion of the formalities, petitioner was produced before the Court. As already stated above, this remand report was mainly relied on by the enquiry officer. During the course of departmental enquiry, one witness by name S.M. Ketkar, Manager-Security was examined. He stated that on the letter of the S.I. of Police, Makapuram Police

Station dated 7-1-1998, he visited the police station on 10-1-1998 and identified the property, From a perusal of the impugned order dated 29-07-1998 it is clear that the petitioner was found guilty of misconduct only on the alleged confession made by him before the police and the subsequent identification of the property by the Manager, securities. The petitioner through his explanations while denying the charges has also denied that he made any confession before the Sub inspector, Malkapuram, however subsequently the same was disbelieved by the Criminal Court. Be that as it may, it is well settled that Clause (3) of Article 20 of the Constitution of India prohibits self-incrimination and Section 25 of the Indian Evidence Act states that no confession made to police officer shall be proved as against a person accused of any offence. Though the strict rules of the Indian Evidence Act may not be made applicable to the domestic enquiry, still the essence of the Act can be made applicable and the provisions of the Constitution stares at the proceedings and they cannot be given a go-by. Further the Apex Court in the decision reported in H.C. Goel's case (1 supra) held as under:

26.... It may be that the technical rules which govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.

13. Further the Apex Court in Kuldeep Singh's case (supra) noted the law laid down by the earlier decision of Apex Court in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, , wherein it was held that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the findings can be rejected as perverse. The relevant portion was already extracted above. It is well settled that the confessions or admissions before the police officials at any stretch of imagination cannot form basis for arriving at a conclusion and that as per the decision of the Apex Court in H.C. Goel's case (supra) the principle that innocent are not punished applies not only to criminal proceedings, but also to domestic enquiries.

14. It is to be further seen that as per charge sheet dated 1-10-1998 the charge against the petitioner is that he had stolen the Corporation's properties from its Additional Tankage Project Area and Maintenance Department. Therefore, the charge is that he has stolen the property. When the property of the Corporation is stolen, it forms their bounden duty to lodge a complaint. But the departmental charge sheet was issued based on the remand report of the police officials. The witness who was examined on behalf of the Corporation in the departmental proceedings deposed that on 10-1 -1998 he visited the police station and identified the property. The occurrence took place at about 11 -30 p.m. on 7-1-1998 and a case was registered on 8-1-1998 and the identification took place on 10-1-1998 and in the meanwhile as noted above, no complaint was lodged by the Corporation before the concerned police station. Further in the

remand report the case of the Sub Inspectors that the petitioner confessed that he committed the theft of the property from the premises of the Corporation, which obviously belongs to the Corporation. But subsequently it is stated that during the course of investigation, efforts have been made to establish the ownership of the seized property in H.P.C.L. but not established. It is to be further seen that this is a case of theft and there is no direct witness and hence it is a case where circumstantial evidence has to be looked into and as per the above judgments of the Apex Court and this Court, it is necessary that the circumstances on which the conclusion is to be drawn should be fully established and that the evidence must be adequate to avoid any scope for surmises, conjectures and suspicions needed to fill up the potential gaps in the chain of circumstances. In view of these circumstances, the confession of the petitioner before the police officer and the subsequent identification of the property by the Manager-Security of the Corporation cannot be taken as evidence against the petitioner and it is as good as no evidence and findings based on this evidence is perverse.

15. In view of the above judgments of this Court and the Apex Court, this Court under Article 226 of the Constitution can interfere with the perverse findings and set them aside and accordingly the first issue is answered in the affirmative.

16. In view of answering first issue in affirmative, the second issue needs no consideration, as it becomes merely an academic.

17. In view of the above facts and circumstances and the foregoing discussion, the impugned proceedings cannot be sustained and the same are set aside and the petitioner is entitled to all the consequential reliefs, including monetary and service benefits,

18. The writ petition is accordingly allowed. No costs.