

(2011) 11 KAR CK 0138

In the Karnataka High Court

Case No : Writ Petition No. 35311 of 2011 (L-RES)

Jyothi Kondaraju

APPELLANT

Vs

Additional General Manager (CS and HRD) Disciplinary
Authority, ITI Ltd., Bangalore

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) LLR 236

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M.V. Narasimhan, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner when employed as a sweeper in the respondent-Industry, a memorandum of charge dated 25.4.1997 was issued alleging that 3 cartons of Pole Ultra High Sensitive Polarized Miniature RA Relays imported from Singapore were found missing and when the petitioner was enquired in that behalf had admitted to have taken 2 cartons from the bonded warehouse in the 1st week of December, 1996 and further admitted to have taken the 3rd carton from the small bonded warehouse on 14.12.1996; that the petitioner had packed the relays in plastic covers and took them out of the factory by concealing them on his body on several occasions, hoodwinking the Security Personnel; and that he had handed over all the stolen relays to one Pandu of Wood Works Department for personal gain. Petitioner was charged with dishonest intention of making monetary gain at the cost of the company by committing theft of Company's property and thereby committed misconduct under para 13(iv) of the Standing Orders of the company. Petitioner was also issued with a memorandum of charge dt. 28.2.1997 for acts of unauthorized absence for a period of 23 days during 1995-96; 87 days during 1996-97; and a further memorandum of charge dt. 23.7.1997 for absence for a period of 34 days from 1.2.1997 to 17.4.1997.

2. Petitioner filed his reply dt. 5.5.1997 to the charge memo dt. 25.5.1997 over theft and an explanation to the charge memo dt. 23.7.1997, while, did not offer an explanation to the charge memo dt. 28.2.1997.

3. The disciplinary authority not being satisfied with the explanation offered and being of the opinion that there were grounds to enquire into the truth of the charges, appointed an enquiry officer, who held a domestic enquiry, extended reasonable opportunity of hearing and by a report dt. 8.10.1997, held the charges proved. The disciplinary authority, extended to the petitioner a 2nd opportunity by issuing a notice dt. 4.7.1997 to show cause, on the basis of the report of the enquiry officer, to which the petitioner responded by reply dt. 21.9.1997 denying the charge of theft, and said nothing over the charge of absenteeism. The disciplinary authority, on an independent assessment of the facts, circumstances and evidence on record, held the petitioner guilty of the charges and having lost confidence in the petitioner, dismissed him from service by order dt. 8.11.1997.

4. Petitioner filed W.P. No. 5944/98 calling in question the order of dismissal dt. 8.11.1997 whence RVRJ, as he then was, considered the following contentions and rejected the same:

(1) that the enquiry ought not to have been proceeded during the pendency of the criminal proceeding against the petitioner;

(2) that the petitioner did not have the assistance of a co-worker or legal practitioner; and

(3) the enquiry report is based on the evidence of a police officer and therefore vitiated.

5. The 1st contention was rejected on the premise that it had become irrelevant in the light of the petitioner having participated in the disciplinary proceedings and not challenged the same at its inception and in the light of the decision of the Apex Court in State of Rajasthan Vs. B.K. Meena and others, , observing that disciplinary proceeding should not be stayed as a matter of course, merely because criminal proceedings are pending and that the approach and object of criminal proceedings and disciplinary proceedings is distinct and different, while in the disciplinary proceeding the question is, whether the employee is guilty of conduct as would merit his removal from service or other punishment? The question in the criminal proceeding is, whether the offences are established and if so, what sentence should be imposed upon him? In addition to, pointing out the standard of proof, the mode of enquiry and the rules governing that enquiry and trial being completely different.

6. The 2nd contention was rejected since the petitioner had not made a request for the assistance of a co-worker in the proceedings before the domestic enquiry.

7. The 3rd contention too, was rejected on the premise that the invoking Art. 226 of the Constitution of India would not entitle the petitioner to a judicial

review as if the court sits in an appeal over the decision of Domestic Tribunal, unless it is shown that the finding is based on no evidence since even a wrong decision of the Tribunal cannot be interfered on the ground that a different conclusion is possible in the light of the decision of the Apex Court in Nand Kishore Prasad Vs. State of Bihar and Others, . The petition when rejected by order dt. 6.3.1998, is final and binding since not carried in an appeal.

8. Petitioner when prosecuted in CC No. 22654/97 for having committed theft of company property, an offence under the Indian Penal Code, the X Addl. C.M.M., Bangalore City, by order dt. 13.1.2005 held that the prosecution failed to prove the guilt of the accused and accordingly acquitted him.

9. Petitioner in the year 2006 instituted conciliation proceeding under the Industrial Disputes Act, 1947, which when resulted in a failure report, the State Government by order dt. 22.12.2006 referred the industrial dispute of termination of petitioner's service, for adjudication before the II Addl. Labour Court, registered as Ref. No. 1/2007. Petitioner entered appearance filed a claim petition to which the respondent, arraigned as 2nd party, resisted the claim by filing a counter statement, advancing the plea that the delay of 8 1/2 years in raising the dispute, being a stale claim was liable to be rejected, in the absence of a plausible explanation. The Labour Court, in the premise of pleadings of parties framed additional issues over the maintainability of the claim as well as validity of the domestic enquiry. Petitioner filed a reply stating that the criminal proceeding was pending and until a final decision therein, did not choose to initiate conciliation proceeding and that immediately on acquittal of the charges by order dt. 13.1.2005, initiated conciliation proceeding, and that he had filed W.P. No. 5944/98 on 5.3.1998 which was dismissed on 6.3.1998 and hence no delay.

10. Before the Labour Court, the respondent examined 2 witnesses as MWs. 1 and 2, marked 40 documents as Ex. M1 to M40, while the petitioner was examined as WW.1 and 11 documents marked as EX.W1 to W11. The Labour Court by order dt. 3.9.2010 answered Issue No. 2 over the validity of the domestic enquiry in the negative holding that the enquiry was fair and proper, where afterwards the petitioner was further examined on victimization.

11. The Labour Court having regard to the evidence, both oral and documentary, marshaled in the domestic enquiry and keeping in mind that the degree of proof required in a domestic enquiry, was one of preponderance of probability and not strict proof of evidence, affirmed the findings recorded by the enquiry officer over the charges of theft and unauthorized absence, by an elaborate discussion over the testimony of the witnesses examined for the respondent in the domestic enquiry and in the absence of justification for having raised the dispute 8 years and 3 months, after the dismissal from service, accordingly, rejected the Reference by the award dt. 29.3.2011. Hence this petition.

12. The 1st contention of the petitioner that the delay of 8 years and 3 months in

initiating proceedings to refer the Industrial Dispute over the order dt. 8.11.1997 of dismissal was justified cannot be countenanced. Admittedly the petitioner challenged the order of dismissal by filing W.P. No. 5944/98 on 5.3.1998 when the petition was dismissed on 6.3.1998 and became final since not carried in appeal, whereafter the petitioner slept over his rights, until after the order dated 11.1.2005 in C.C.No.22654/97 when acquitted. In the claim statement filed before the Labour Court, there was not a whisper over the explanation for the inordinate delay in raising the dispute, though in the reply he stated that the conciliation was initiated after the decision in the prosecution. It is needless to state that criminal proceeding and disciplinary proceeding are distinct and different. An employee suffering an order in the disciplinary proceeding is entitled to eke out his remedy provided under the labour laws. Similarly an accused in a criminal proceeding is entitled to a remedy under the laws in force, if found guilty of the commission of offences under the Indian Penal Code or Criminal Laws. The question that arise for consideration in a disciplinary proceeding is, whether the employee is guilty of such conduct as would merit his removal from service or other punishment? While the question for consideration in a criminal prosecution is, whether the offences are established and is so, what sentence should be imposed upon him? If this is kept in mind. It is needless to state that the petitioner did not evince interest to question the order dt. 8.11.1997 of dismissal from service, at the earliest but did so only after lapse of 8 years and 3 months. In the absence of an acceptable explanation over the inordinate delay in raising the dispute, the explanation of paucity of funds, as recorded in paragraph 29 of the award impugned is far from satisfactory. No exception can be taken to the reasons, findings and conclusions arrived at by the Labour Court. In fact, when a power is conferred by a statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably and exercise of the same within reasonable period would be a facet of reasonableness, as observed in the State of Karnataka & Anr. v. Ravikumar, 2009 (III) LLJ 206 (SC), following the decisions of the Apex Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , Regional Provident Fund Commissioner Vs. M/s. K.T. Rolling Mills Pvt. Ltd., ; and Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC .

13. It is next contended that the findings of the Magistrate in the criminal proceeding acquitting the petitioner of the charges being clean and honourable, the Labour Court fell in error in recording a finding that the charges were proved. This contention too, in my considered opinion, deserves rejection. A perusal of the order dt. 11.1.2005 in C.C. No. 22654/97, Annex. H, disclosed that some of the witnesses for the prosecution had turned hostile, while testimony of some of the other witnesses was not in the direction of establishing the guilt of the accused and therefore the Magistrate opined that the prosecution had utterly failed to prove the guilt against the accused and hence acquitted him. In that view of the matter, the petitioner not honourably acquitted based upon the

material evidence, the contention is without merit.

14. Even otherwise, as noticed supra, the degree of proof required in a departmental proceeding being one of preponderance of probability, the depositions of the witnesses by names X.J. Rajan; M.B. Mallikarjuna Swamy; Y.V. Veerappa and C.R. Ramachandra, pointed out to the guilt of the workman of having committed, theft of company property so as to make unlawful gain.fAs regards the charge of absenteeism, there being no material placed before the Domestic Tribunal over the justification for the petitioner to have remained absent, except an assertion of not keeping good health, the Labour Court was justified in concurring with the findings of the Enquiry Officer and Disciplinary Authority.

No other grounds are urged.

Petition, devoid of merit, is accordingly rejected.