(1997) 10 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25716 of 1997

K. Srisailam	APPELLANT
Vs	
Andhra Pradesh State Handloom Weavers Co-operative Society Ltd., Hyderabad	RESPONDENT

Date of Decision : 16-10-1997

Acts Referred:
Andhra Pradesh Shops and Establishments Act, 1988 — Section 41
Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (1998) 4 ALD 181 : (1998) 1 ALT 588

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. A. Suryanarayana Murthy, for the Appellant; Mr. M. Panduranga Rao, for the Respondent

Judgement

1. Aggrieved by the orders of the respondent in Ref. No. L & C/L4/ Mangalagiri/ H.L.R.D.C./96, dated 31-10-1996 refusing to re-consider the order of dismissal dated 05-03-1983, in the light of the changed circumstances, the petitioner approached this Court for setting aside the said order by issuance of writ of mandamus and consequently to direct the respondent to reinstate him into service with all consequential benefits.

2. The undisputed facts of this case are that the petitioner was appointed as Asst. Sales Manager in the year 1960 and by the year 1980 he became Marketing Officer by earning promotions from time to time with an unblemished record. At the relevant point of time he was working in the Research and Development Centre, Mangalagiri. While things stood thus, on 18-09-1980 the petitioner along with four others including one Mr. Chandrasekhara Rao, who was working as cashier in the Centre were suspended on the ground that they embezzled the funds of the respondent Society. Thereafter one Mr. K. Sriramulu, Asst. Marketing Officer (Vigilance) was directed to conduct a preliminary enquiry and submit his report. On the basis of the report submitted by him, a charge-

sheet was issued to all the five delinquent employees on 18-09-1980 (sic). After receiving the explanation from the delinquent employees, the inquiry officer chose to examine only Mr. Sriramulu on behalf of the management and using his evidence as substantive evidence held that the charges levelled against the employees were proved in his report dated 30-11-1981. Thereafter the respondent gave a show-cause notice to all the delinquent employees to submit their explanation that why they should. not be dismissed from service. After receiving the explanation, the delinquent employees were dismissed from service. The petitioner in his explanation 06-05-1982 categorically stated that the other four employees are related to the higher-ups in the 1st respondent Society and to save them, he was implicated in the following terms:

"I also submit that the persons who were involved are having close relationship with the persons holding responsible position of the institutions or close association.

1. Sri. V. Sutrapt Raju related to Sri Anamola Venkateswarloo, Ex-Board Director of Guntur.

2. Sri T. Manikya Rao, Related to Sri Bapaiah Ex-M.D.

3. Sri T. Chandrashekar Raju, related to Sri A. Venkateswar Rao, former Secretary to Co-fabrics and present C.R. & D.O., of Central Office.

4. Sri M. Gurunadham, Cloth Incharge follower of Sri B. Balaram, Senior Accounts Officer, Central Office.

I therefore, believe that the whole enquiry from preliminary to domestic was either influenced or due consideration was not given with some weightage and with intentions to save them from their own sins and throw the blame on me. Moreover Sri A.V. Ramana, T.A., was spared from issuing of suspension order because he is having close contacts with some Board Members and high officials.''''

3. Without adverting to the plea of the petitioner, by order dated 05-03-1983 the petitioner was dismissed from service along with the four other employees involved in the alleged misappropriation.

4. Having initiated disciplinary proceedings against the delinquent employees, the respondent Society have also given a complaint to the S.H.O., Mangalagiri on 15-11-1980. The S.H.O., having conducted the investigation filed charge-sheet in the crime and the same was taken on file by the Munsiff Magistrate, Mangalagiri in C.C. No.270 of 1986. While the criminal case is pending for trial, Mr. Chandrasekhara Rao cashier working in the Centre, filed an appeal before the competent authority u/s 41 of A.P. Shops and Establishments Act, assailing the order of dismissal. The Labour Court in S.F. No. 523 of 1987 by order dated 23-10-1987 set aside the order of dismissal of Mr. Chandrasekhara Rao for want of evidence and directed to reinstate him with backwages. Thereafter the respondent Society carried the matter in appeal before the Labour Court. While

the appeal is pending adjudication, the respondent entered into a settlement with Mr. Chandrasekhara Rao u/s 18(1) of the Industrial Disputes Act. It will be useful to extract the settlement entered into between the 1st respondent and Mr. Chandrasekhara Rao and is extracted hereunder:

"Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act

Name of the parties : (1) AP. State Handloom Co-operative Society Narayanaguda, Hyderabad. (2) T. Chandrasekhara Rao

Representing employer : Managing Director

Representing workman : T. Chandrasekhara Rao, (workman himself) Short recital of the case:

The employee Sri. T. Chandrasekhara Rao was dismissed from service by an order dated 05-03-1983 for committing certain irregularities, after domestic enquiry. He questioned the termination by filing an appeal before the authority under Shops and Establishment Act. The Authority passed an order in S.F.No.523/87, dated 23-10-1987 setting aside the termination order and directed the employer to reinstate him with full backwages and other benefits. Questioning the order dated 23-10-1987 in S.F. No.523/87, the A.P.S.H.W.C.S. Ltd., filed the second appeal before the Labour Court and the same is pending now. Meanwhile the employee approached the employer and expressed that he is prepared to forego the entire back wages if he is reinstated to service. After prolonged discussions the parties have reached to the following settlement.

Terms of Settlement:

1. The workman will be reinstated in service, from the date of signing this settlement, with continuity of service.

2. The period from the date of suspension to the date of reinstatement will be treated as leave.

3. The workman is not entitled to any backwages.

4. The employer will pay Rs.25,000/-(Rupees Twenty five thousand only) towards the damages etc., to the employee as a special case, on humanitarian grounds.

5. The workman will not have any claim of whatsoever nature against A.P.S.H.W.C.S. LTD., and the cases, if any, filed by him against A.P.S.H.W.C.S. Ltd., are deemed to have been closed.

6. Parties have agreed to file a copy of this settlement before the Labour Court along with a joint memo, to enable the Labour Court to pass an order on the basis of settlement and to close the second appeal.

7. The settlement is entered to the entire satisfaction of both the parties.

Signatures of parties:

(1) Employer : sd/-

Managing Director

(2) Worker : sd/-

T. Chandrasekhara Rao Witness:

1. sd/-

2. Copy to:

1. The Asst. Commissioner of Labour, Circle II, Bakaram, Hyderabad.

2. The Secretary, LENT, Secretariat, Hyderabad.

3. Deputy Commissioner of Labour (TN), Bakaram, Hyderabad.

5. In the meantime, the criminal case came up for trial and on 18-07-1995. Pursuant to the settlement entered into between the parties, the respondent filed a memo seeking permission of the Court to withdraw the case against A-5. During the course of the trial, the respondent examined as many as eleven witnesses and marked as many as 281 documents as exhibits. Having considered the entire evidence, the Munsiff Magistrate by order dated 14-12-1995 acquitted all the accused by giving benefit of doubt, since the prosecution failed to prove the offence alleged against the petitioner and other accused in the case. Though the Magistrate loosely worded that the petitioners were given benefit of doubt, in fact, the case was dismissed for want of evidence to prove the charge. It is useful to extract the order to the extent it is relevant.

"Though the evidence of P. Ws. 1 to 4 have alleged that the amount was misappropriated by A-5, he is exonerated of all the charges and his statements cannot be used against A-1. Lastly, the prosecution had miserably failed to establish in what way the accounts have been falsified and the intention of the accused persons in defrauding the Society in the absence of any physical verification made by the Inspecting Authorities. Adding to it, the Investigation Officer took no steps in ascertaining the facts from the statements made by the accused-persons before P.Ws.1 to 6. The Investigating Officers took steps only in reproducing the information collected by P.Ws.2 to 4. As far as the recording of statements of the witnesses are concerned, there appears a discrepancy in the mode of recording i.e., it has been stated by the witnesses that the Investigating Officer recorded their statements in Telugu."

6. From this I am of the opinion that though the Magistrate has used the word ''benefit of doubt'', it is a clean acquittal and the prosecution failed to prove the charge levelled against the petitioner and the other accused. The judgment of the Criminal Court became final as the management did not chose to prefer an appeal against the order of acquittal. In those circumstances, the petitioner filed an application on 7-7-1996, before the 1st respondent bringing to its notice about the order of acquittal as well as the settlement entered into by the 1st

respondent with Mr. Chandrasekhara Rao and requested for re-consideration of the order of dismissal passed against him. When the respondent failed to act upon the representation, the petitioner 61ed Writ petition No. 16316 of 1996 on the file of this Court and after receipt of the notice, the respondent appeared before the Court and submitted that he is considering the representation of the petitioner and he is going to pass orders shortly. Acting upon the representation made by the respondent, the writ petition was disposed of. Thereafter, by order dated 31-10-1996, the impugned order was passed rejecting the representation of the petitioner by contending that the case of the cashier stands on a different footing and the petitioner cannot derive any benefit from out of the settlement entered into between the management and Mr. Chandrasekhara Rao and also on the ground that the petitioner was dismissed thirteen years back and the order of dismissal cannot be reopened after thirteen years.

7. Questioning the said orders, the present writ petition is filed by contending that the action of the respondent resulted in hostile discrimination against the petitioner and it offends Article 14 of the Constitution of India. The respondent society filed its counter by contending that the charges framed against the cashier were with regard to the embezzlement of the funds of the society, whereas the charges framed against the petitioner includes his failure to exercise proper supervision and control over the accounts of the society and also for instigation of the subordinate staff by using his official position with mala fide intention.

8. Mr. Srikanth Counsel appearing for the respondent Society tried to sustain the order by contending that the writ petition is liable to be dismissed on the ground of latches as the order of dismissal was passed way back on 31-05-1983 and the petitioner approached the respondent Society for the first time only on 7-7-1996, i.e., thirteen years after the passing of the order of dismissal. He also contended that in any domestic enquiry strict rules of evidence are not applicable and the enquiry has to be conducted on the ground of probabilities whereas in a criminal proceedings, the charge has to be proved beyond all reasonable doubt and on the ground of acquittal in a Criminal Court, the proceedings of domestic tribunal cannot be set aside.

9. I find no substance in any of the contentions raised by the respondent Counsel.

10. With regard to the first contention, that the petitioner was charged with offence of not only embezzlement, but also lack of supervision and also for abetting other accused to commit the offence, I am of the opinion that when once the very charge of embezzlement was not proved, the question of lack of supervision or the question of abetting the other accused does not arise. By the very conduct of the respondent in entering into an agreement with the cashier during the pendency of the statutory appeal before the Labour Court and in not preferring any appeal on the acquittal recorded by the Criminal Court clearly indicates that having realised that the Society has no case had choosen to enter into settlement with the cashier u/s 18(1) of the Industrial Disputes Act and also

allowed the order of acquittal to become final. When once the charge of embezzlement is not proved, the other charges also falls to ground.

11. It is not the case of the respondent that the petitioner was not charged with the offence of mis-appropriation of funds along with cashier. When once that charge fails against the petitioner, the other charges also have to fail. Accordingly, I find no substance in the first contention of the petitioner.

12. Coming to the second contention, i.e., the employer need not reconsider the punishment already awarded in a domestic enquiry after the Criminal Court acquitted the petitioner, he relied on a Division Bench judgment of this Court in the General Manager, Redesignated as Managing Director, A.P.S.R.T.C.., Hyderabad and Another v. K. Seshagiri Rao. 1991 (2) An. W.R. 49 (1).

13. I have gone through the above judgment. In that case the respondent filed writ petition on the file of this Court questioning the findings recorded by the Domestic Tribunal after he got an acquittal in the Criminal Court on the ground of inadequacy and insufficiency of the evidence produced in the domestic enquiry. This was found favour with the learned single Judge and the writ petition was allowed. When the matter was carried in appeal a Division Bench of this Court held that merely on the ground that the Criminal Court acquitted the employee, the High Court cannot consider the inadequacy or insufficiency of the evidence and question the finding of guilty recorded by the domestic tribunal. The facts of the case are altogether different. Immediately, after the Criminal Court recorded the order of acquittal, the petitioner approached the respondent society by way of a representation and it is well settled principle that the management is bound to consider the representation of the delinquent employee in the light of the orders passed by the Criminal Court more so, in the light of the settlement it has entered u/s 18(1) of I.D. Act with the cashier having realised its inability to prove the charge of embezzlement, after the order of dismissal was set aside by the competent authority and during the pendency of the appeal filed by it, is pending before the Labour Court. When the respondent failed to act upon the representation, the petitioner filed Writ Petition No. 16316 of 1996 on the file of this Court and the respondent gave categorical undertaking that it is considering the representation of the petitioner and it is going to pass orders shortly. Acting upon the statement made by the respondent, that writ petition was disposed off. Thereafter the impugned order was passed not no merits but on technical grounds. The reasons given for rejecting the representation were already extracted supra.

14. In the light of the fact that the respondent Society entered into a settlement having failed to defend the order of dismissal of the cashier coupled with the observation made by the Criminal Court, while acquitting the petitioner, it is established beyond doubt that the order of dismissal is passed without any evidence. It is a case of total lack of evidence. Hence, the respondent cannot contend that the case of the petitioner stands on a different footing than that of the cashier who, according to the respondent society, actually embezzled the

society''s monies. When the charge of embezzlement falls to ground, the other charge i.e., lack of supervision automatically vanishes away.

15. As far as delay is concerned, it should be kept in mind that though the petitioner was dismissed following domestic enquiry in 1983, but in the case of cashier entered into a settlement u/s 18(1) of the Industrial Disputes Act on 5-2-1988 for the reasons set out supra. As the criminal case is pending the petitioner might not have immediately moved the respondent. The moment the criminal proceedings ended in acquittal, without any loss of time the petitioner filed the representation before the respondent. Keeping the events that have taken place thereafter the respondent cannot raise the plea of latches. In fact, in the first round of litigation, they have categorically stated before this Court that the representation of the petitioner is being considered and orders are going to be passed. When they have not raised the question of latches in the first round of litigation, they are estopped from raising that plea at this belated stage.

16. The respondent-society in support of its contentions relied on a judgment of Supreme Court in Sudhir Vishnu Panvalkar v. Bank of India (2). I have gone through that judgment. In that case, the services of the appellant who is Grade-III officer in Bank of India were terminated and the termination order did not give any reasons. When the appellant insisted for reasons for his termination, the bank informed him that the termination was resorted to because of lack of confidence in him. Thereafter, the appellant waited till the Criminal Court acquitted him of the charge. Further, from the facts of the case, the Hon''ble Supreme Court recorded a finding that the appellant was involved in misappropriation of society''s funds and though the relevant documents were furnished by the bank to the appellant along with the counter in the Supreme Court long before the case was taken up for hearing, he could not dispute the correctness of those documents in the rejoinder filed by him. From this it is evident that there is sufficient material to establish the fact of embezzlement by the appellant. Hence, the respondent-bank has chosen to terminate the services of the appellant without assigning any reasons and paid the salary for the notice period. But, in the instant case, the facts are altogether different. Initially, the petitioner was charged for an offence of embezzlement along with the cashier and other employees. But, in the case of cashier, the competent authority, under Shops & Establishments Act set aside the order of the respondent for want of evidence and directed his reinstatement with backwages. The subsequent events were already adverted supra. Though the petitioner did not assail the order of dismissal, the fact remains that a competent Court went into the question of dismissal of another employee under the same orders and held that there is no evidence to prove the charge of embezzlement. In fact, the Criminal Court also categorically recorded a finding that before framing a charge, the respondent society did not even take the physical verification of the stocks and the finding recorded by the Criminal Court became final. Hence, the respondent cannot contend that the order of dismissal can be sustained on the ground of probabilities in the domestic enquiry. Hence, the said judgment cannot be made

use of by the respondent-society.

17. In the light of the foregoing discussion on the contentions raised by the Counsel for the respondents and the reasons given in the impugned order, I hold that there are no merits in the case of the respondents. Consequently, the petitioner has to succeed in the writ petition and the impugned order dated 05-03-1983 is liable to be set aside, with a consequential direction for his reinstatement forthwith.

18. Then the question remains to be answered would be whether the petitioner should be granted backwages for the period during which he was out of employment or to award a lumpsum compensation as in the case of cashier.

19. Admittedly, the petitioner was dismissed from service on 05-03-1983, pursuant to the domestic enquiry held by the respondent-society and he failed to question the correctness of the said order till the criminal case ended in acquittal on 14-12-1995. Only thereafter, he submitted a representation to re-consider his case. In the normal course, he is entitled to claim salary from that date. But, at the same time, no material is placed before this Court to establish that the petitioner is not employed gainfully elsewhere. On that ground, any direction to the respondent-society to hold an enquiry to find out whether the petitioner is gainfully employed or not, for payment of arrears of salary, the same will be a time consuming process. As the petitioner is already subjected to severe financial stringency and mental agony for over 15 years, I feel that the ends of justice will be met by awarding a lumpsum compensation to the petitioner than directing the respondent society to pay arrears of salary. Accordingly, the respondent-society is directed to pay Rs. 50,000/- in lumpsum towards arrears of salary from the date of his termination from service. At the same time the respondent-society is directed to regularise the break in service by granting leave to which the petitioner is entitled and the respondents shall treat this period as continuity in service for all other purposes except backwages.

20. In the light of the above discussion, a writ of mandamus shall issue striking down the order of the respondents in Ref. No. L&C/ L4/Malkajgiri/H.L.R.D.C/96, dated 31-10-1996 with a consequential direction to the respondent-society (1) to reinstate the petitioner into service forthwith, (2) to pay Rs. 50,000/-in lumpsum towards arrears of salary, (3) to regularise the break in service by granting leave to which the petitioner is entitled and treat the same as continuity in service. But, in the circumstances, there will be no order as to costs.

