

(1999) 12 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No's. 6320 and 6321 of 1992 and M.P. No's. 9031 and 9032 of 1992

Krishnan M.

APPELLANT

Vs

Management of Terrace Estate and Another

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 2A
Penal Code, 1860 (IPC) — Section 302

Citation : (2000) 86 FLR 520 : (2000) 3 LLJ 805

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Since in these writ petitions, the subject-matter involved and also the respondents are one and the same, both these writ petitions were taken up together and are disposed of by this common order with the consent of the parties concerned.

2. Invoking Article 226 of the Constitution of India, these writ petitions have been filed by the petitioners herein seeking for writ of certiorari to call for the records connected with the award of the Labour Court, Coimbatore, the second respondent herein in I.A. Nos. 314 and 316 of 1986, dated October 5, 1990, including the preliminary order, dated July 19, 1990, and to quash the same.

3. In support of the writ petitions, the petitioners herein have filed separate affidavits wherein they have narrated all the facts and circumstances that forced them to file the present writ petition and requested this Court to allow the writ petitions as prayed for. Per contra, on behalf of the respondents, the first respondent has filed a counter-affidavit rebutting all the material allegations levelled against them one after the other and ultimately they have requested this Court to dismiss the writ petition for want of merits.

4. Heard the arguments advanced by the learned counsel appearing for the parties. I have perused the contents of the affidavits and the counter-affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments. I have also perused the various decisions cited by the learned counsel appearing for the rival parties in support of their respective cases.

5. In the above facts and circumstances of these cases, the only common point that arises for consideration in these cases, is as to whether there are any valid grounds to allow these writ petitions or not.

6. The brief facts of the case of the petitioners as seen from their affidavits are as follows: The petitioners herein were employed as labourers in the first respondent estate in Naduvattam and they were implicated in a criminal case u/s 302, IPC, for allegedly murdering one Balakrishnan, who was a co-worker at 12.30 P.M. on April 8, 1981, along with another co-worker. The police registered a case. During the pendency of the criminal case, on a complaint by the wife of the deceased, the management issued a show cause notice to them and another on April 23, 1981 alleging the murder of co-worker Balakrishnan. They submitted their explanation denying the charges. A detailed charge memo was issued to them and another on May 8, 1981 for which they submitted the explanation denying the charges. The management conducted the domestic enquiry in respect of the charge levelled against them and another. The enquiry officer held that was proved, on the basis of the enquiry report, the management passed orders on May 25, 1981, dismissing these petitioners and the another from service. Thereafter they raised separate industrial disputes u/s 2-A of the Industrial Disputes Act against the non-employment and the disputes cause to be referred by the Government of Tamil Nadu for adjudication by the Labour Court, Coimbatore. Their disputes were numbered as I.D. Nos. 314 and 316 of 1986. They filed their claim statements and the management filed their counter-statements. In their claim statements they contended that the domestic enquiry was not fair and proper, that the copy of the complaint was not given, the enquiry officer was biased and acted as a prosecutor and a Judge, that the list of witnesses was not given in advance, that the enquiry was pursued while the criminal case in respect of the said charge was pending. Further according to the petitioners herein, in respect of the criminal case though they were convicted along with the mother, they were all acquitted by the High Court. According to them the Labour Court took up the propriety of the enquiry as a preliminary issue and held that the enquiry was fair and proper. The Labour Court finally passed an award holding that the non-employment of the petitioners herein and the another was justified and that the punishment of dismissal was not proportionate to the charges proved. In that view of the matter, all the three disputes were dismissed by the Labour Court, Coimbatore, the second respondent herein in its common award, dated October 5, 1990. Aggrieved by

the said common order, the petitioners herein have come forward with these writ petitions.

7. The impugned award of the Labour Court, the second respondent herein is challenged by these petitioners on the grounds that the finding of the Labour Court that the enquiry was fair and proper is not correct, that the Labour Court should have held that since in respect of the same incident criminal proceedings were pending against these petitioners, the conduct of the disciplinary proceedings against them in respect of the same incident was not justified and legally sustainable and that in any event though the dismissal order was earlier to the judgment of this Court acquitting them, the Labour Court should have taken into consideration of the judgment while passing the award. The judgment was marked in the industrial dispute and since it is a public document it should have been considered and that the view of the Labour Court that this is the evidence and therefore, cannot be considered is erroneous. It is also contended by the petitioners herein that the Labour Court while considering several decisions to show that criminal proceedings is not a bar for taking disciplinary proceedings, failed to take into consideration of the decisions of the Supreme Court in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, . Further according to the petitioners, another important question that missed the attention of the Labour Court in this case is that the incident did not take place in the residential quarters. It is also their strong case that it was not established that the incident had any connection with the affairs of the estate or conditions of service. Therefore it is contended by the petitioners herein that the Labour Court should have therefore held that the alleged misconduct for which the petitioners were dismissed from service were not within the purview of the Standing Orders of the estate. Further according to the petitioners herein, the Labour Court has u/s 11-A of the I.D. Act has powers to re-appreciate the evidence in the domestic enquiry and can come to a different conclusion, that when once the Labour Court found that the enquiry is found to be proper, its only duty is to see whether the punishment is justified or not and that in this case, the Labour Court has failed to exercise its power to re-appreciate and re-assess the evidence in the domestic enquiry and thus has failed to exercise its jurisdiction.

8. Per contra, in the counter-affidavit filed by the first respondent, it is contended by them that the first respondent is a Tea Plantation Estate and it has got its own certified Standing Orders. The petitioners herein were employed as field workers. On April 8, 1981, the petitioners along with another workman and one Shanmugaraj, all belonging to one family, assaulted worker Balakrishnan in the estate and Balakrishnan succumbed to the attack Balakrishnan's mother gave a complaint to Naduvattam Police Station. On April 23, 1984, a show cause notice was issued to the petitioners herein and two other workmen for having conducted themselves in a riotous and disorderly manner and attacking co-worker Balakrishnan. The petitioners and others denied the charges. Thereafter, three separate enquiries were held against the petitioners and the other two

workers. On May 25, 1981, the enquiry officer gave his report holding the charge against these petitioners were proved. On the basis of the report of the enquiry officer, orders were passed dismissing the petitioners and other two workers from service. It is also conceded by the respondents that even though the petitioners herein and others were convicted by the trial Court on appeal this Court gave a judgment on February 9, 1985 acquitting the petitioners and another workman. The petitioners and others raised industrial disputes challenging their dismissal. By a G.O. No. 2376, dated November 14, 1986, the dispute: raised by the petitioner was referred to the second respondent for adjudication and the dispute raised by the petitioner were numbered as I.D. Nos. 314 and 316 of 1986 on the file of the second respondent. Before the second respondent the documents on the part of the petitioner and two other workmen were marked as W-2 to W-35 and the documents of the first respondent were marked as M-1 to M-7. The petitioners and other workman challenged the fairness of the enquiry. The second respondent took up for consideration in the first instance the question whether the three domestic inquiries held against the petitioners and others were fair and proper. The domestic enquiries were challenged on the ground that as a criminal case was pending, the first respondent ought not to have proceeded with the domestic enquiry. The petitioner also challenged the enquiry on the ground that the Manager had acted as enquiry officer and as punishing authority. On July 19, 1990, the second respondent passed orders holding that the pendency of the criminal case was no ground to bar the domestic enquiry. It was further held that the Manager was entitled to hold the enquiry and award the punishment in the terms of Standing Orders. Thereafter, the dispute was taken up for enquiry on merits. On consideration of the materials placed before him, the second respondent passed the impugned award, dated October 5, 1990, holding merely because the petitioner and the other two workmen were acquitted by the Court, it cannot be said that domestic enquiry was vitiated or the findings of the enquiry officer were not justified. The second respondent also held that the petitioner and the other two workmen were charged for misconduct under Standing Orders 23.11 riotous and disorderly behaviour, 23.12 Acts subversive of discipline, 23.25 causing danger to the security of the life of the co-workers, that the criminal case was for the offence of murder, that the criminal case and the domestic enquiry cannot be said to be for the same offence, that after completion of the enquiry, the enquiry officer gave a report, dated May 25/29, 1981, that based on the report, the workmen were dismissed, that long after the dismissal the criminal Court gave its verdict on November 30, 1981 and the appeal against the Sessions Court judgment was rendered on February 8, 1985, that the domestic enquiry had been completed even before the criminal Court judgment and that the acquittal of the petitioner and other two workmen in the criminal case would not in any manner affect the validity of the dismissal. According to the respondents the second respondent has analysed the evidence of witnesses Tukkai Amma, Subbaiah, Subramani and Karalan and held that the findings of the enquiry officer were justified by the evidence on record. As far as the punishment was concerned, the second respondent held that the misconduct

proved against the petitioners and other workmen merited the punishment of dismissal. Therefore it is contended by the respondents that the impugned award of the second respondent does not suffer from any error of law or jurisdiction calling for interference by this Court. According to them the second respondent has given valid reasons for holding that the enquiry was fair and proper, and that the acts of misconduct for which disciplinary action was taken against the petitioners were different from the offences with which they were charged in the police case. They contend that the criminal proceedings and the decision of the criminal Court has no bearing on the domestic enquiry and the order of the dismissal. It is their case that since the incident had taken place at 1 P.M. in the estate it cannot be said that the misconduct had no nexus with the employment. They also contend that the second respondent was fully conscious of its powers u/s 11-A of the I.D. Act and on an appreciation of the evidence the second respondent confirmed the findings of the enquiry officer and also that the second respondent rightly held that as the petitioners and other workmen indulged in violence, the punishment of dismissal was fully justified and that therefore the award of the second respondent cannot be faulted. Thus according to the respondents there is no merit in the writ petition and the same deserves to be dismissed.

9. Having seen the entire material available on record and from the facts and circumstances of these cases and also from the claims and counter claims made by the rival parties, the following are the admitted facts: The petitioners herein were employed as field workers in the first respondent Tea Plantation Estate. On April 8, 1981 the petitioners herein together with others assaulted co-worker Balakrishnan in the estate itself and the said Balakrishnan succumbed to the attack. Subsequently the said Balakrishnan died. Police case was registered and the petitioners herein and others were tried by the Sessions Court. In the meanwhile on the complaint by the wife of the deceased the management issued a show-cause notice to these petitioners and others on April 23, 1981 alleging the murder of co-worker Balakrishnan. They submitted their explanation denying the charges. Thereafter charge memo was issued to them and then also they submitted explanations denying the charges. Subsequently the management conducted the domestic enquiry in respect of the charge levelled against him and others. The enquiry officer held that the charge was proved and on the basis of the enquiry report the management passed order on May 25, 1981 dismissing the petitioners, herein and others from service. Thereafter, the petitioners herein and others raised separate industrial disputes and in the said industrial dispute claim statements, they contended that the domestic enquiry was not fair and proper. Copy of the complaint was not given, the enquiry officer was biased and acted as prosecutor and a judge, etc., and also that the enquiry was pursued while the criminal case in respect of the same charge was pending. The Labour Court after examining the witnesses and enquiry passed the impugned award holding that the non-employment of these petitioners and others was justified and that the punishment of dismissal was not disproportionate to the charges

proved. Thereafter, however, after the dismissal of these petitioners by the management on May 25, 1981 and before the impugned award, dated October 5, 1990, the Sessions Court convicted these petitioners on November 30, 1981 but however, in the appeal preferred by them to this Court, by order, dated February 8, 1985, these petitioners were acquitted. That being so, it is significant to note that it is the case of the petitioners that the finding of the Labour Court that the enquiry was fair and proper is not correct and that the Labour Court should have held that since in respect of the same incident when criminal proceedings were pending against them, the conduct of the disciplinary proceedings against them in respect of the same incident was not justified and legally sustainable. But it is nowhere their case that there was no such incident or that they have not involved in the said incident. But their main contention is that while criminal proceedings were pending against them on the same incident the conduct of the disciplinary proceedings against them in respect of the same incident was not justified. It is well settled that criminal and disciplinary proceedings by the department are different and they are not interconnected. Therefore, in this case it has been rightly held by the second respondent that the pendency of the criminal case was no ground to bar the domestic enquiry and also the Labour Court has clearly found that the Manager was entitled to hold the enquiry and award the punishment in the terms of Standing Order. Therefore, in the above circumstances it is the categorical contentions of the respondent that merely because the petitioner and the other two workmen were acquitted by this Court, it cannot be said the domestic enquiry was vitiated or the findings of the enquiry officer were not justified. Further in this case it is significant to note that the petitioners herein and others were charged for misconduct under Standing Orders 23.11 riotous and disorderly behaviour, 23.12 acts subversive of discipline, 23.25 causing danger to the security of the life of the co-worker whereas the criminal case was for the offence of murder. Therefore it is contended by the respondents that the criminal case and the domestic enquiry cannot be said to be for the same offence. That apart it is also significant to note in this case that after completion of the enquiry, the enquiry officer gave a report, dated May 25/29, 1981 and based on the report the workmen were dismissed and long after the said dismissal the criminal Court gave its verdict on November 30, 1981 and the appeal against the Sessions Court judgment was rendered on February 8, 1985. Therefore, it is the strong contention of the respondents that the domestic enquiry had been completed even before the criminal Court judgment and that the acquittal of the petitioners and others would not in any manner affect the validity of the dismissal. That apart a careful perusal of the impugned order goes to show that the second respondent has analysed the evidence of witnesses and then only held that the findings of the enquiry officer were justified by the evidence on record and so far as the punishment was concerned, the second respondent rightly held that the misconduct proved against the petitioner and others merited the punishment of dismissal. Therefore, I see every force in the various contentions raised by the respondents. In the above circumstances of these cases, I am of the clear view

that the impugned award of the second respondent does not suffer from any error of law or jurisdiction calling for interference by this Court as contended by the petitioners herein in these writ petitions.

10. Further in support of the case of the petitioners, the learned counsel appearing for the petitioners relied on the decision reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, held thus:

".....Departmental proceedings and criminal case based on identical set of facts and evidence in both proceedings common employee acquitted in criminal case and the said order of acquittal can conclude departmental proceedings and the order of dismissal already passed before decision of criminal case liable to be set aside."

Thus it was held by the Supreme Court in the above case that since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof would not be applicable to the instant case. Thus it is clear that the cited case is not an usual case and that, therefore, it was held by the Supreme Court that the usual distinction which is drawn in between the departmental proceedings and the criminal case on the basis of approach and burden of proof cannot be applied to the said case which is exceptional. Therefore the said ratio of law laid down by the Apex Court in the said case is only applicable to cases of such nature alone. But on the contrary in the case on hand the offence involved is not "raid and recovery" but murder of a co-worker. Therefore, I am of the clear view that in the facts and circumstances of the present cases, the above decision relied on by the petitioners is not in any way helpful to them in advancing their case.

11. Also the respondents have relied on the following decisions in support of their case. State of Rajasthan Vs. B.K. Meena and others, :

"..... in law there is no bar to, or prohibition against, initiating simultaneous criminal proceedings and disciplinary proceedings. Indeed not only the said two proceedings, but if found necessary, even a civil suit can also proceed simultaneously....."

(2) Nelson Motis Vs. Union of India and another, , wherein it has been held as follows:

"The point whether disciplinary proceeding could have been continued in the face of an acquittal in a criminal case has no substance whatsoever and does not merit a detailed consideration. The nature and scope of criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal cannot conclude the departmental proceeding.

(3) State of Karnataka and Another Vs. T. Venkataramanappa, , wherein it has been held:

"Police constable acquitted in criminal proceedings for want of evidence of bigamy and the said acquittal is not a bar for departmental enquiry for contracting a second marriage without permission of Government".

(4) Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan, wherein it has been held thus at p. 1314:

"The Supreme Court held that while in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt, in departmental proceedings, the standard of proof for proving the charge is preponderance of probabilities. The Tribunal was, therefore, in error in holding that in view of the acquittal of the respondent by the criminal Court on their charge, the finding in the departmental proceedings could not be upheld....."

(5) Naryanan v. State of Tamil Nadu, 1999 I LLJ 693, wherein it has been held:

"Workman indulging in violent activities outside the factory premises after office hours and assaulting Factory Manager and calling him by names and shouting slogans whether misconduct under the Standing Orders - Disciplinary proceedings whether can be initiated against him for such activities - Held that if the assault is proved it would amount to act subversive of discipline irrespective of the place where assault took place and the workmen are liable to consequential penal action".

(6) Venugopal V. and Another Vs. Management of Reed Relays and Electronics Ltd. and Another, wherein it has been held thus at pp. 1458 & 1459 :

"9. that the gravity of the offence proved against the appellants in this case is such, that it cannot be considered that punishment inflicted on the appellants is grossly disproportionate and that such imposition of punishment amounts to victimisation.

10. Such indecent action cannot at all be alerted in the facts and circumstances of the case. The Labour Court, therefore, rightly has come to the conclusion that such action on the part of the appellants warranted only the extreme punishment of dismissal. The Court should not encourage the use of indecorous or indecent and violent behaviour, exhibiting indiscipline. Such acts on the part of the workmen should be discouraged at any cost. Since the appellants were terminated from service for serious misconduct proved and established before the Labour Court, no interference is called for in the finding of the Labour Court....."

(7) Ashok Leyland Ltd. and Michael Selvaraj S. Vs. Presiding Officer, Labour Court and Another, wherein it has been held thus:

"Power of Labour Court to interfere with quantum of punishment-workman convicted by Criminal Court for assault-such workman summarily dismissed from service for assaulting departmental head and causing bleeding injury Labour Court has to act judiciously in interfering with quantum of punishment - power to

interfere with quantum of punishment cannot be exercised where charges were grave in nature and reinstatement of workman would affect morale and discipline of entire factory".

(8) Dawn Mills Company Ltd. v. Sukhdev Prasad Dhaneswar, 1989 I LLJ 156, wherein it has been held thus:

"Manager of employer-company was disciplinary authority by virtue of Standing Order and therefore, he issued charge-sheet, held inquiry, considered its finding and imposed punishment of dismissal on petitioner - No bias can or should be inferred - Manager was not judge in his own cause for there is nothing to show that he had any personal interest in the matter - Domestic enquiry need not have been held by an independent person not interested in the affairs of employer-company".

(9) State Bank of Patiala and others Vs. S.K. Sharma, wherein it has been held as follows at p. 299 of LLJ:

"8..... Though a list of documents/ witnesses was furnished to the respondent before the commencement of the enquiry, the copies of the documents and statements recorded during the preliminary enquiry were not supplied to the respondent. Half an hour before the commencement of the enquiry proceedings, the respondent was advised to peruse the documents, which he did.....The question is whether on the above facts there was a violation of Regulation 68 and whether the violation if any vitiated the enquiry.

9. The issue laid down to this whether the failure to literally comply with Sub-clause (iii) of Clause (b) of Regulation 68 vitiates the enquiry altogether or whether there has been in the circumstances of the case of substantial compliance with the said sub-clause and on that account whether the enquiry and punishment awarded could not be said to have been vitiated".

(10) State of Tamil Nadu Vs. Thiru K.V. Perumal and others, wherein it has been held thus, in para 4, pp. 800-801 of LLJ:

"The duty of the enquiry officer/disciplinary authority is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. Equally it is the duty of the Tribunal to record a finding whether any relevant documents were not supplied and whether such non-supply has prejudiced the defendant's case".

11. That being so, in these cases it has been made very clear that the petitioners herein along with others assaulted a co-worker and subsequently he died. Criminal case was booked against them for murder. Though the Sessions Court convicted them however the appellant Court acquitted them. But the gravity of the offence proved against the petitioners herein is such that it could not be considered that punishment inflicted on them was disproportionate. Such indecent action could not be tolerated and Courts also should not encourage the use of indecorous or indecent and violent behaviour, exhibiting indiscipline. Such

acts on the part of the workmen should be discouraged at any cost. That apart it is well settled law that while in a criminal case, the charge has to be proved by the standard of proof beyond reasonable doubt, but in departmental proceedings, the standard of proof for proving charge is preponderance of probabilities and that the nature and scope of criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal cannot conclude the departmental proceedings. Therefore, the above decisions relied on by the respondents clearly support the case and stand taken by them in these cases.

12. Therefore, for all the aforesaid reasons and in the facts and circumstances of the cases, and also in the light of the various decisions discussed in this regard and also in view of my above discussions with regard to the various aspects of this matter, I am of the clear view that the petitioners herein have failed to make out any case in their favour and that therefore there is no need for any interference with the award impugned in these writ petitions. Thus these writ petitions fail and are liable to be dismissed for want of merits.

13. In the result, the writ petition is dismissed. No costs. W.M.Ps. Nos. 9031 and 9032 are also dismissed.