
(1990) 04 MAD CK 0001
In the Madras High Court

M. Palani

APPELLANT

Vs

The Executive Engineer, Anti Power Theft Squad, Tamil Nadu
Electricity Board and Another

RESPONDENT

Date of Decision : 17-04-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1990) 2 MLJ 124

Judgement

1. In this case, an important question of law arises as to whether a disciplinary proceeding can be initiated and continued departmentally against a person who has been convicted by the Sessions Court on a charge of murder and sentenced to life imprisonment, during the pendency of the appeal against the said judgment in this Court. There is no decision directly governing this aspect of the matter, while learned Counsel for the petitioner draws my attention to a judgment of the Supreme Court in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, .The Supreme Court, after referring to some earlier cases, observed thus:

The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be

interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula

valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we

do not think it necessary to say anything more particularly when we do not intend to lay down any general guideline.

Though in that particular case, the Supreme Court held that the criminal action and disciplinary proceedings being grounded upon the same set of

facts, they should have been stayed by the High Court, the facts and circumstances to be considered in such cases are not set out. Nor does the

Supreme Court frame any guidelines as to the matters to be taken into account by the Court while considering the aforesaid question.

2. The problem, is, how long should the department wait. If the departmental proceeding cannot be initiated till the criminal proceedings attain

finality, it may extend over a period of 10 to 15 years. Should the department pay salary or subsistence allowance to the employee till then? I am

of the view that this is a matter which requires to be decided by a Division Bench of this Court authoritatively.

3. Hence, I direct the office to place all the papers in this writ petition before the Honourable the Chief Justice for consideration and orders as to

constitution of a Division Bench.

In pursuance of the order by the Honourable Justice Srinivasan dated 20.3.1990 and as directed by the Hon'ble Chief Justice this petition coming

on for hearing on this day in the presence of Mr. B.T. Seshadri, Advocate for the petitioner and of Mr. K.P.H. Thulasiraman Advocate for the

Respondents, the Court made the following order:

4. This writ petition stands listed before us as a Bench because of an order of reference made by the learned single Judge, who heard the writ

petition earlier. As to what prompted the learned single Judge to make a reference of this writ petition to a Bench can be gathered when we

recapitulate the necessary facts of the case. The petitioner is under the employ of the respondents. On 16.8.1988 the petitioner has been convicted

for an offence u/s 302 of the Indian Penal Code by the First Additional Sessions Judge of the Court of Sessions of Salem Division of Salem

District, in SC No. 219 of 1985. He has been sentenced to life imprisonment. The

respondents invoking the Standing Order 19(xxii), issued the show cause, on 24.9.1988 as to why the petitioner should not be visited with an order of dismissal. For this, reliance was placed on Standing Order 20(c). Standing Order 19(xxii) reads as follows:

19. Acts and omissions constituting misconduct....

(xxii) Act/Acts resulting in conviction in any Court of Law for any criminal offence involving moral turpitude.

Standing Order 20(c) reads as follows:

20. Punishment for misconduct....

(c) if on the conclusion of the enquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges

framed against him and it is considered after giving the workman concerned a reasonable opportunity of making representation on the penalty

proposed that an order imposing any of the punishments mentioned in Clause (1) above would meet the ends of justice, the competent authority

shall pass an order accordingly.

The petitioner, as against his conviction in S.C. No. 219 of 1985, has preferred an appeal to this Court in C.A.No. 447 of 1988 and the same is

pending and suspending the sentence passed of him, he has been enlarged on bail on 28.9.1988 The petitioner has filed the writ petition, projecting

the following prayer:

For the persons stated in the accompanying affidavit, it is prayed that this Hon''ble Court may be pleased to issue a Writ of mandamus or such

other writ, order or direction directing the respondents 1 and 2 herein from proceeding with the disciplinary proceedings against the petitioner in

terms of the communication dated 24th September, 1988 in Ku. A. No. Ma. Pa. Po./Sa.Mi./Vi.Va/Sa/Ni. Pi 3/UI/Ko.O. No. 2326 AD/3352/88

on the file of the Superintending Engineer, Salem Electricity Distribution Circle, Salem-the 2nd Respondent herein or otherwise, against the

petitioner pending the final decision in respect of the criminal proceedings forming the subject-matter of Crime No. 198 of 1985, Kichipalayam

Police Station, Salem and Sessions Case No. 219 of 1985 on the file of the First Additional District and Sessions Judge, Salem, except in

accordance with law and pass such further or other orders as this Hon''ble Court

may deem fit and proper in the circumstances of the case.

The learned single Judge, who initially heard the writ petition, adverted to the ratio of the Supreme Court in *Kusheshwar Dubey Vs. Bharat Coking*

Coal Ltd. and Others, , and expressing an opinion that there has been no delineation in the above decision with regard to the facts and

circumstances to be considered in for cases of the, present nature and there are no guidelines set down as to the matters to be taken into account

by the Court while considering the question, deemed fit to refer the matter to a Bench.

5. In our view there is no need in the present case to dwell upon norms or guidelines with regard to the prosecution of the disciplinary action when

criminal proceedings are simultaneously pending. In the present case, we are concerned with a specific Standing Order, which enables the

employer to penalise the employee at the conclusion of the criminal proceedings wherein the employee has been found guilty of the charges framed

against him. What we have said above is nothing but a re-production in substance of Standing Order 20(C) in our own language. Standing Order

20(c) has without any ambiguity used the expression "'on the conclusion of the criminal proceedings'". On the conclusion of the criminal proceeding

the employee ought to have been found guilty of the charge against him. The question is as to whether even though there is a conviction and a

sentence passed on the employee by the first Court, but when there is an appeal preferred against such conviction and sentence, could it be stated

that there was a conclusion of the criminal proceedings in which the employee has been found guilty of the charges framed against him. It is only in

this connection, Mr. B.T. Seshadri, learned Counsel for the petitioner, draws our attention to two pronouncements; one of a learned single Judge

of the High Court of Allahabad in *R.S. Das Vs. Divisional Superintendent, Allahabad*, and another of Bench of this Court in *Union of India v. R.*

Akbar Sheriff AIR 1960 Madras 486. The learned Single Judge of the High Court of Allahabad in *R.S. Das Vs. Divisional Superintendent*,

Allahabad, had occasion to construe what Article 311(2), Proviso, Clause (a) of the Constitution of India, when it spoke about "'led to conviction

on the Criminal Charge'" could mean. This is what the learned Judge observed:

But apart from the above consideration, the main thing to be considered is the

true meaning of the words in the proviso "which has led to his conviction on a criminal charge". Do these words merely indicate as the respondent has contended, that there was at one stage of the proceedings conviction against the public servant, or do they further imply a conviction finally uphold: The words "led to his conviction" mean, in the context they have been used, not merely, to bring a criminal charge against the delinquent servant but further imply that as a result or consequence it has ended in conviction also. A proceeding will not be said to have led to his conviction if it has not resulted ultimately in conviction or as a consequence of appeal, has filed in an acquittal. Appeal is a continuation of the proceedings commenced on the criminal charge and it does not conclude in a conviction where an appeal is preferred against the order of the trial Court or of any subsequent Court until these subsequent proceedings have-finally ended.... At the same time it is clear that the order of dismissal passed by the Divisional Superintendent cannot be supported on the ground stated in Sub-clause(s) of the proviso under Clause 2 of Article 311. This is so because of the finding arrived at earlier that the Sub-clause implies a final conviction. If that is so, the very foundation on which the dismissal order was based and which in its turn gave occasion for a reinstatement order to be passed has fallen, and if the foundation should disappear, the edifice must also necessarily go.

6. A Bench of this Court in Union of India (UOI) Vs. R. Akbar Sheriff, has respectfully agreed with the principle laid down by the learned single Judge of the High Court of Allahabad in R.S. Das Vs. Divisional Superintendent, Allahabad, .

7. We have already adverted to the verbalism of Standing Order 20(c). It speaks about the conclusion of a criminal proceedings wherein the employee has been found guilty of the charges framed against him. If the intention was to take steps to impose the penalty proposed immediately on the conviction by the first Court, the Standing Order would not have been worded in the manner as it stands. There is one test that could be safely taken note of and applied to find out how the standing order has got to be worked out. There could be cases where the employee was acquitted by the first Court and at the appellate level or revisional level, there could have been a finding of guilt as against an employee of the

charges framed against him. Then the question is as to whether the employer could not take advantage of such conviction. When we asked this question, Mr. K.P.H. Thulasiraman, learned Counsel for the respondents, was alert enough to give the answer in the affirmative. In our view the Standing Order being couched in an appropriate and generous manner, which would be beneficial both to the employee and the employer, it must give its due meaning and further the said meaning must be given effect to. If so done, it will be appropriate to await the conclusion of the criminal proceedings wherever it is found that they have not concluded in the sense as against the decision of the first court, there is a further agitation before the High Court and such agitation has not reached any finality. The aspect of delay need not necessarily be taken note of to put up a different construction on the Standing Order, which has got a Solemnity and sanctity, the same having stemmed forth, pursuant to statutory requirements. If there is, a question of ameliorating delay, appropriate steps could be taken for expeditious disposal of the criminal proceedings if they continued to be unduly pending. Our construction of the Standing Order 20(c), which alone is being invoked in the present case, being what it is, as expressed by us above, we find a warrant to allow the writ petition and accordingly this writ petition is allowed. No costs.