
(1997) 04 MAD CK 0118
In the Madras High Court

M. Rajamanickam

APPELLANT

Vs

The Executive Director, Bharat Heavy Electricals Limited and
Another

RESPONDENT

Date of Decision : 16-04-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1998) 1 MLJ 359

Hon'ble Judges : AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—The writ appeal is directed against the order of a learned single Judge of this Court in W.P. No. 1623 of 1983 dated 17.2.1983 dis-missing the W.P. filed against the order dated 3.4.1989 passed by the first respondent confirming the order of the 2nd respondent dated 8.11.1980 removing the appellant from service w. e. f. 10.11.1980. 2. The short facts of the case of the appellant are as follows: The appellant was appointed as a pharma-cist in Bharat Heavy Electricals Limited, Tiruchirapalli, in the year 1965. On 7.7.1980 he was served with a charge sheet by the Deputy General Manager/Personnel and Accounts the second respondent herein which reads as follows:

You were restored to work between 8.00 a. m. and 4.30 p. m. on 4.7.1980 in the Casualty counter. At about 1.00 p. m. on 4.7.1980 Shri Ayyappan, staff No. 208845, Security Guard (Intelligence) apprehended one Smt. Kannammal said to be the Mother-in-law of Shri B. Meenakshi-sundaram, staff No. 2005379, Sr. Dresser Grade II near the Main Hospital premises with an Olive green colour cotton bag with marking "N.A. Karupiah Pillai and Company" which contained soiled white uniform (both shirt and pants with marking "BMS") and also drugs belonging to the company valued about Rs. 250 concealed in the bag under the above clothes. A list of the drugs recovered from the bag is enclosed. On enquiry by the Security Staff, Shri Meenak-shisundaram stated that the bag in question was handed over by you to him with the drugs with instructions to take the same

to home. This was confirmed by Smt. Kannammal, mother-in-law of Shri B. Meenakshisundaram. A true copy of each of the statements recorded from Shri Meenakshisundaram and Smt. Kannammal is enclosed. Your action in taking away drugs belonging to the company is an act of theft of company's property. You have committed the above misconduct when you were in charge of the medicines as Pharmacist. This serious mis-conduct on your part amounts to cheating the company.

Pending enquiry into the above charges, you are placed under suspension with immediate effect. During the period of your suspension you shall not enter the Hospital premises except with the special permission of the Management or when you are specially called by the Management in connection with the enquiry. You shall also not leave the station without the written permission of the Management. You shall be entitled to a subsistence allowance at an amount equal to the leave salary admissible to you during half pay leave besides Dearness Allowance on such leave salary provided the suspending authority is satisfied that you are engaged in any other employment, business, profession or vocation.

The charge comes under items 2, 31, 33, 35 and 36 of the acts and omissions listed in Standing Order No. 60 and you are requested to submit your explanation showing cause why disciplinary action should not be taken against you. The explanation should be in writing and should reach you supervisor not later than three days from the date on which you receive the charge sheet. Please acknowledge receipt by signing and returning the enclosed spare copy.

Sd/-

Depy General Manager/Pers. Admn. " 3. The allegation in brief was that on 4.7.1980, at about LOO p. m. the Security Guard Ayyappan by name intercepted one Kannamma (mother-in-law of an employee by name Meenakshisundaram) while she was about to leave the premises of the BHRL and on examining the cloth bag which she had in her possession found medicines worth about Rs. 250. The Security Guard on questioning her, came to know that it was her son-in-law Meenakshisundaram who had given her the bag and asked it to be taken to the house. The said Meenakshisundaram was apprehended and questioned, and he appeared to have stated that the appellant had given the medicine to be taken to the house.

4. The charge was framed against the appellant solely on the statement of the said Meenakshisundaram who had necessarily to say so, in order to save his skin and based on the above allegation, an enquiry was held and finally the appellant submitted his written representation on 23.8.1980 to the Enquiry Committee.

5. In the middle of November, 1980, the appellant received a communication on the heading "Penalty advice" dated 8.11.1980 in which the appellant was informed that,

I regret to inform you that DGM/P&A has on consideration of all the evidence passed orders as follows:

He shall be removed from service with immediate effect.

You are accordingly removed from service with effect from forenoon 10.11.1980.

It is pertinent to note that at this stage itself that there was absolutely no other communication from the enquiry committee or from the Deputy General Manager after the enquiry was concluded till the receipt of the said termination order. It is the case of the appellant that he was surprised to receive this termination order all of a sudden without being afforded with an opportunity to answer to the proposed penalty and that the order passed by the Deputy General Manager was bereft of particulars which led him to pass this order. Even the copy of the enquiry report was also not be accompanied. The appellant had to sum-mon copy of the findings of the Enquiry Committee. The appellant was furnished with a copy of the report of the enquiry committee only after the service of the termination order. Even this report of the enquiry committee does not even bear the date on which it was signed.

6. Aggrieved by the said order, the appellant preferred an appeal to the Executive Director, the competent authority to hear the appeal as provided for under Order 6 of the Standing Orders. The competent authority who is the Executive Director, the first respondent rejected the appeal without assigning any reasons on 3.4.1981.

7. Aggrieved by the order impugned, the appellant has preferred W.P. No. 1623 of 1983. The respondents have not filed any counter affidavit. Ramalingam, J, by his order dated 4.1.1991 dismissed this writ petition. The correctness of this order in the W.P. is challenged in this writ appeal.

8. We have heard Mr. V. Prakash, learned Counsel for the appellant Mr. Sanjay Mohan on behalf of M/s. Ramasubramaniam Associates for the respondents.

9. It was submitted before the learned single Judge and before us that the order of the second respondent is not a speaking order. The order is purported to be the result of the enquiry B.P. P2.20288756 dated 7.7.1980. The 2nd respondent has not given any reasons for coming to the conclusion and arriving at a decision to dismiss the appellant.

10. The order being a final order has to be preceded with a show cause notice in relation to the quantum of punishment that is to be imposed according to the BHE1 Standing Orders as well as the Model Standing Orders. As such the said order has been passed without jurisdiction and hence the same is illegal. The appellant was not served with any such notice and consequently the final order of dismissal has to be set aside.

11. The findings of the Enquiry Committee has not been accompanied with the dismissal order.

12. The order issued by the first respondent is also not a speaking order. The order is the result of the appeal of the appellant herein as provided for under Rule 66 of the Standing Orders and consequently the order should be in the nature of speaking order. The order is bereft of any materials and hence by no stretch of imagination can it be said to be an order in relation to an appeal. Hence, the order becomes illegal and has to be set aside.

13. The competent authority to pass the appeal order is the first respondent but curiously the Personnel Manager has signed the order. It is reliably understood that the appellate authority has not passed any order. According to Rule 66 of the Board Standing Orders, the appeal has to be heard by the authority next above the punishing authority. In the present case, the punishing authority was the Deputy General Manager, the 2nd respondent and the dismissal order was signed by the Personnel Manager. The Personnel Manager who is below the rank of the second respondent is not empowered to sign the order and hence the order is liable to be set aside.

14. Further, the order reads as if the Executive Director and Deputy General Manager do not see any new points which merit reconsideration of the case. When an appeal is filed, it is the satisfaction of the appellate authority alone that is concerned. But curiously in the present case, it appears that the Deputy General Manager who has the authority who came to the conclusion in the original jurisdiction as also considered the appellate order which again is a flagrant violation of law. Hence, the order is liable to be set aside.

15. The finding of the Enquiry Committee are per verse. Admittedly, it is the mother-in-law of one Meenakshisundaram who was accosted and searched. Her version is that it was her son in law Meenakshisundaram who had given the bag containing medicines and admittedly according to the Security Officer, while he was searching the bag brought by the mother-in-law of the said Meenakshisundaram. The said Meenakshisundaram approached the Security Officer and pleaded guilty and requested him to excuse him and not to report the matter to the higher authorities since he would have to lose his job. While this being the state of affairs, by no stretch of imagination the appellant can be said to have committed the offence. It is only subsequently that the said Meenakshisundaram in order to save his skin has now thrown the blame on the appellant. What is more surprising is the said Meenakshisundaram also faced an enquiry and he has been let off with the very minor punishment. An authority who is to judge the fate of an employee ought to have exonerated the appellant while recommending for the dismissal of the aforesaid Meenakshisundaram.

16. The authority below ought to have further seen that there is a vital contradiction between the two persons as to where the bag containing medicines was handed over to the mother-in-law of the said Meenakshisundaram. According to the son-in-law Meenakshisundaram and his mother-in-law the bag was handed over near the operation theatre. But according to Ayyappan, the bag is said to have been given near the casualty department. The two places are separated by

room and are of different places. This is yet another circumstance to show that appellant could not have been involved in the alleged incident.

17. It is contended that; even according to the statement of Meenakshisundaram, it only reads that he asked his mother-in-law to take the bag home. It does not say that the bag should be taken to the house of the appellant. This again absolves the appellant herein.

18. Mr. Prakash contended that the learned Judge failed to see that the enquiry committee and the authority imposing punishment are two different authorities and as per settled law the appellant ought to have been given the findings of the enquiry and given an opportunity to show cause regarding its unacceptability.

19. It is next urged that the learned Judge ought to have upheld the contention regarding discrimination between the appellant and Mr. Meenakshisundaram who was merely visited with the punishment of in-crement cut. It is the case of the appellant that the learned Judge failed to see the enquiry findings are perverse and no reasonable person could have come to the conclusion of guilt and the learned Judge ought to have allowed the writ petition on the ground of perversity.

20. It is also contended that the learned Judge failed to see that the appellant is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and that the case relating to his removal from service is an Industries disputes and the appropriate Government having erroneously declined to refer the dispute for adjudication and when the remedy u/s 11-A of the Industrial Disputes Act permits re-appreciation of evidence and also interference in the quantum of punishment could have well avoided adjudication of merits reserving the liberty for the petitioner to persue his remedy under the Industrial Disputes Act.

21. Arguing per contra, Mr. Sanjay Mohan submitted that the enquiry officer as well as the punishing authority have carefully considered the case of the appellant and passed the order of removal taking note of the gravity of the offence of theft and that the appellate authority has also passed an order confirming the order of removal stating that he does not find any merits in the appeal. On the question of hostile dis-crimination put forward by the petitioner, it is submitted by the respondent that the said plea cannot be sustained since the appellant played the principal role and that the other Meenakshisundaram was only a medium through whom, the alleged stolen articles were removed out of the factory premises and therefore, the appellant cannot claim equal privilege of reinstatement in service. Ramalingam, J. on a consideration of the materials placed before him and on a perusal of the relevant files which were produced before him pursuant to his directions, held as follows:

It is seen from the files that the inquiry was conducted into the charges framed against the petitioner in an elaborate manner, witnesses were examined, documents were marked and facility of cross-examination was also allowed. The Inquiry Officer has marshalled the evidence, analysed and after analysis of the facts and materials has rendered a finding of guilt against the petitioner. In so

rendering the finding, the Inquiry Officer has also taken note of the explanation offered by the petitioner. Therefore, it is obvious that the punishing authority, viz. the 2nd respondent had before him the carefully prepared inquiry report conducted in accordance with the Standing Order and there is no reason why the Inquiry Officer's report should not be accepted and accordingly, he passed an order of removal taking note of the gravity of the offence of theft by a reasonable officer. The petitioner preferred an appeal before the 1st respondent. One could describe that appeal as an ineffective one had only the petitioner not been furnished with copies of the inquiry report. But, in the affidavit, the petitioner has frankly admitted that he had applied for and detained a copy of the findings of the In-quiry Committee and also he was furnished with a report of the Inquiry Committee. Therefore, the petitioner had the benefit of the reasons adduced by the Inquiry Committee in support of its conclusion that the petitioner is guilty of the charges framed against him. In the appeal memorandum filed by the petitioner, he has attacked the correctness of those findings rendered by the Inquiry Committee. The files relating to appeal were also perused and it is seen that a note was put up dis-cussing each one of the grounds urged by the petitioner and coming to the conclusion that none of the grounds merits approval. It is thereafter, the Appellate Authority, viz. the 1st respondent has passed an order confirming the order of removal stating that he does not find a new point which merits reconsideration in this case. " 22. Learned Judge has also held in para. 6 while considering the case hostile discrimination put forward by the appellant observed as follows:

The last of the submissions of the petition is that Meenakshisundaram who is also an accused along with the petitioner, was ordered to be reinstated in service and hence, the petitioner alone has been subjected to a hostile discrimination. This plea cannot be sustained. The petitioner played the principal roll. The other person Meenakshisundaram was only a medium through whom the stolen articles were removed out of the factory premises. Mr. Meenakshisundaram had tendered an apology and if that had been accepted, the petitioner cannot claim the equal privilege of reinstatement in service.

23. Therefore, we are of the view that no infirmity can be alleged in regard to the conduct of the departmental enquiry by the enquiry officer and the disposal of the matter by the punishing authority and the appellate authority. The learned single Judge himself has perused the relevant files produced before him and satisfied himself that the enquiry has conducted into the charges framed against the appellant in an elaborate manner and after affording sufficient opportunity and facility to the appellant to put forward his case. A perusal of the enquiry officer's report would reveal that he has analysed the evidence and has rendered a finding of guilt against the appellant, after taking note of the explanation offered by the appellant. The punishing authority and also the appellate authority passed an order of removal taking note of the gravity of the offence of theft by the appellant. Therefore, we are unable to countenance the contention of the appellant that the enquiry was not consistent with the principles of natural

justice. How-ever, we are unable to appreciate the stand taken by the respondent department in imposing the punishment of removal on the appellant. In this context, we are inclined to accept the contention of Mr. Prakash that the appellant alone has been subjected to a hostile discrimination. The finding of the learned single Judge that the appellant has played a principal role and that the other person Meenakshisundaram was only a medium through whom the alleged stolen ar-ticles were removed out of the factory premises cannot be correct. At the time of hearing, our attention was drawn to the charges framed and the findings of the enquiry committee that enquired into the charges levelled against the appellant herein. Even though there is involvement of Meenakshisundaram, the charges were framed against the appellant solely on the statement of the said Meenakshisundaram. We have also perused the findings of the enquiry Committee. Admittedly, it is the mother-in-law of Meenakshisundaram who was accosted and searched. Her version is that it was her son-in-law Meenakshisundaram who had given the bag containing the medicines and admittedly according to the security officer while he was searching the bag brought by the mother-in-law of the said Meenakshisundaram. The said Meenakshisundaram approached the security officer pleaded guilty and requested him to excuse him and not to report the matter to the higher authorities since he would have to loose the job. While this being the state of affairs, the appellant cannot be said to have committed the offence. It is only subsequently, the said Meenakshisundaram, in order to save his skin, would have thrown the blame of the appellant. There is vital contradiction between the two persons as to where the bag containing medicines was handed over to the mother-in-law of the said Meenakshisundaram. According to the son-in-law Meenakshisundaram and his mother-in-law, the bag was handed over near the operation theatre. But according to Ayyappan the security officer, the bag is said to have been given near the casualty department. It is in evidence that these two places are different places and separated by rooms. Mr. Prakash was able to point out the above discrepancy to show that the appellant could not have been involved in the alleged incident. Even according to the statement of Meenakshisundaram, it only reads that he asked his mother-in-law to take the bag home and he does not say that the bag should be taken to the house of the appellant. This again, as rightly pointed out by Mr. Prakash absolves the appellant from the charges. Therefore we are of the opinion that the findings of the enquiry officer as perverse. The said Meenakshisundaram who also faced an enquiry has been let off with a very meagre punishment, which is not only surprising, but also discriminatory. The evidence of Ayyappan, Security Officer as M.W. 1 can be usefully noticed and appreciated in the present content. His evidence runs as follows:

Shri Meenakshisundaram (M.W. 2) entered into the dispensary with an empty bag and soiled cloths at about 12.40 p. m. and that both filled up the bag with medicines seeing this side and that side furtively and after concealing the medicines with the cloths, Shri Meenakshisundaram handed over the bag through

the eastern side counter to his mother-in-law (page 2). But Shri Meenakshisundaram said that he went to meet the doctor in the casualty to get some medicines for his ailments and not finding him there was coming out of casualty room. At that time, Shri Rajamanickam (appellant) engaged him in conversation and requested his help saying that he can send the bag through his mother-in-law whom he pointed out. He passed on the bag received from Shri Rajamanickam (appellant) through the eastern side counter remaining outside the dispensary and handed over the same to his mother-in-law standing on the steps instructing her to give it in his Rajamanickam's (appellant's) house. M.W. 1 Ayyappan said that at about 12.20 p. m. that Meenakshisundaram received a bag from his mother-in-law near the casualty and went to the lunch room. But both M.W. 2 and M.W. 3 (Meenakshisundaram and Kannammal) who were examined one after the other on the same day deposed that the bag containing the lunch was handed over to Shri Meenakshisundaram by M.W. 3 near the operation theatre. It is not disputed that M.W. 2 was engaged in the operation theatre on the day in question.

24. The report of the committee would also reveal that the committee concludes that the appellant had chosen a time to remove the medicines and attempted to take them outside the dispensary with the help of Meenakshisundaram. It is seen from para 3(b) of the findings of the enquiry committee that Meenakshisundaram was aware of the contents of the bag that was passed on to him by the appellant and this was confirmed by him during questions put to him. Thus it is seen that Meenakshisundaram who has also gone along with the appellant was ordered to be reinstated in service and the appellant alone has been subjected to a hostile discrimination. The evidence recorded by the enquiry officer would reveal that both the appellant and the said Meenakshi-sundaram have played the role. Therefore, the contention of the learned Counsel for the management that Meenakshisundaram is only a medium through the alleged articles were lifted from the factory premises, cannot be accepted. When the management accepted the apology from Meenakshisundaram who has tendered apology, the appellant in our opinion can claim an equal privilege of reinstatement in service by tendering apology to the management. We, therefore uphold the contention regarding discrimination between the appellant and Meenakshisundaram who was merely imposed with a punishment of increment cut. The enquiry findings, in our opinion, are not based on the evidence tendered and there is no reason for them to come to the conclusion of guilt on the appellant and therefore, in our opinion, the order of the learned single Judge is liable to be interfered with, on this ground alone.

25. The principles laid down by the Supreme Court in the decision reported in *Sengara Singh and Others Vs. State of Punjab and Others*, can be usefully followed and applied to the case on hand. In that case, as a consequence of the police agitation, the State Government dismissed about 1,100 members of the police force on the allegation that they participated in the agitation. The State Government also filed criminal proceedings against a large number of agitators.

Subsequently, the State Government reinstated 1,000 dismissed members of the police service in their original post and also withdrew the criminal case against them also. However, the appellants before the Supreme Court were weeded out for discriminatory and more severe treatment than those who were similarly situated. That was challenged before the court. The High Court dismissed the petitions on an earlier occasion. The State Government thereafter constituted a committee to review the cases of all dismissed agitators and the committee picked and chose some for its indulgence leaving the rest to fend for themselves. The Supreme Court while quashing the order of the High Court directed the State of Punjab to reinstate the appellants subject to the same conditions set out at Annexure P-II subject to which the other dismissed personnel of the police force were reinstated. A further direction was given that they should be reinstated forthwith from the date of the order and their service should be treated as continuous and the period between the date of the dismissal and the reinstatement shall be treated as leave if available and admissible or leave without pay if leave of any kind is not available. In the concluding para of the judgment, the Supreme Court has observed as follows:

But approaching the matter from this angle, all the 1,100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the court the distinguishing features and therefore we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The court must accordingly interpose and quash the discriminatory action.

26. We are of the view that there is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination writ large on the record and the court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned Counsel for the management failed to explain to us the distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The court must accordingly interpose and quash the discriminatory

action,

27. Further, we are also not inclined to remit the case to the disciplinary authority or the appellate authority as the case may be, since in our opinion the appellant was subjected to a hostile discrimination in regard to the award of punishment. Therefore, it is still open to us in exercising the jurisdiction under Article 226 to interfere with the order of punishment on the ground that the penalty imposed on the appellant is hostile discrimination, harsh and disproportionate to the proved misconduct.

28. Therefore, for all the foregoing reasons, the writ appeal is allowed and the appellant would be entitled to order of reinstatement, if he has not already retired on superannuation and shall be entitled to all other attendant monetary benefits. However, there will be no order as to costs. Time for payment of monetary benefits three months from today.