
(1999) 03 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No. 16583 and W.M.P. No. 26013 of 1990

Management of Dunlop India Ltd.

APPELLANT

Vs

S. Ganesan and Another

RESPONDENT

Date of Decision : 08-03-1999

Acts Referred:

Citation : (2001) 3 LLJ 418

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—The writ petition is filed challenging the order of the Labour Court, Madras in I.D. No. 138 of 1987, dated

August 31, 1990.

2. The first respondent is an employee of the writ-petitioner. The short facts leading to the filing of the writ petition are as follows:

The first respondent was employed as an operator of the General Stores Section and on October 10, 1981 a chargesheet was issued to him

wherein it was alleged as follows:-

A. ""That on October 6, 1981, while Sri Ganesan was on duty, he was found to be drunk, and was threatening the co-workers inside the factory

with a knife.

B. That on October 6, 1981, at about 2 P.M., he threatened Sri M. Joseph, Check No. 3227.

C. That on October 6, 1981, After 2.30 P.M., he abused Sri Anandan, Card No. 986 using filthy language and also threatened by saying.

Vernacular matter Omitted

D. That at about 2.30 P.M. on October 6, 1981 when Sri Venkateswaran, senior store keeper was standing near the railing in the traffic section

he hit him in his stomach and used abusive language.

E. That little later on the same day, he came to the General Stores where Venkateswaran, senior store keeper, Mookiah (store keeper) and

Mothilal (store keeper) were sitting and abused them saying.

Vernacular matter Omitted

F. That at about 4.15 P.M. on January 6, 1981, Sri Ganesan pulled forcibly Sri Mathew, Assistant Buyer to M.B.S. room and talked to him in an

obscene manner about Sri Krishnan, Superintendent. Stores and Stock Control, and threatened to finish them off to-night and that further he

threatened Sri Mathew for giving evidence against him in an earlier incident; and

G. That on the date at about 6.30 P.M. at the puja packet distribution point in the sports pavilion of the company Sri Ganesan quarrelled with the

volunteers and then attacked with a knife a co-employee Sri William Pichaimuthu Clerk No. 5344 who escaped without injuries and that on seeing

the police and the sports ground gate, he ran away.

3. The first respondent by a letter, dated October 12, 1981, requested one week time to file his reply to the said charges levelled against him. On

October 20, 1981, the first respondent sent his reply to the charges levelled against him denying the charges levelled against him. On October 30,

1981, the writ- petitioner issued an enquiry notice for holding an enquiry with reference to the charges framed against him. On July 7, 1981, the

Security Manager of the petitioner-company was present and the first respondent was also present. The first respondent was permitted to appear

through his representative. The enquiry was adjourned to November 12, 1981. On November 7, 1981, the management furnished the list of

witnesses to be examined on their side and the list of the documents was furnished. The management also furnished the reports of six persons as

the documents which the management intended to rely upon during the course of enquiry. They also furnished a list of witnesses to be examined on

the side of the management. The enquiry was held on the basis of the documents furnished to the first respondent. The first respondent was also

given opportunity to participate in the enquiry and there is no dispute that he has availed of the same.

4. The enquiry officer, who happened to be a retired District Judge, went into the charges levelled against the first respondent and concluded that

the first respondent was guilty of the charges. The writ-petitioner accepted the findings of the enquiry officer and after issuing a show-cause notice

for the termination of the employment of the first respondent and after considering his explanation, passed an order of termination dismissing the

first respondent from the services of the writ- petitioner.

5. The first respondent challenged the order of termination in I.D. No. 138 of 1987 before the Labour Court, Chennai, In his claim statement, the

first respondent has raised a plea that there was a violation of principles of natural justice in holding the enquiry and therefore, the Labour Court

framed a preliminary issue as to whether the procedure adopted by the enquiry officer in the enquiry was in accordance with the principles of

natural justice.

6. The first respondent challenged the enquiry on the basis that along with the chargesheet, the copies of the complaints given by the witnesses

were not attached and hence, he could not give adequate reply. The second group of challenge was that he was not paid the subsistence

allowance. The Labour Court decided the matter, i.e., the preliminary issue and found that the complaints of the first respondent were justified and

therefore, it set aside the enquiry on the two grounds urged by the first respondent. The writ petitioner thereupon approached this Court in W.P.

No. 728 of 1989 against the order of the Labour Court holding that the enquiry was not conducted in accordance with the principles of natural

justice. This Court in the said writ petition, following the decisions of the Apex Court in D.P. Maheshwari Vs. Delhi Administration and Others,

and The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , though expressed its view that the failure to furnish a copy of the complaint could

certainly cause very much prejudice to the workman of the company and the finding of the Labour Court regarding non-payment of subsistence

allowance cannot be interfered with and dismissed the joint petition. However, the matter was again posted before the learned single Judge and the

learned single Judge after hearing the parties held as under:

Even though there is no observation as such is necessary, it is made clear that in case an award is passed against him, it is open to him to putforth

all the contentions challenging the award including the one raised in this Writ petition.

With the above observation, the learned Judge maintained his order of the writ petition.

7. The matter once again went back to the Labour Court. Before the Labour Court, the writ petitioner did not produce any further evidence. It

was specifically stated that he was not going to examine any other evidence in support of his case. The Labour Court came to the conclusion that

the non-furnishing of the copy of the complaints along with the chargesheet vitiated the enquiry. The Labour Court further held that since the writ

petitioner has not adduced any further evidence and when the Labour Court in earlier proceedings already held that enquiry vitiated, it sustained

the earlier finding and held that the enquiry was not conducted properly and the charges were not proved. The Labour Court further held that the

order of termination of the first respondent was not valid and directed reinstatement of first respondent with full back-wages and other allowances.

This is the subject-matter of the present writ petition.

8. Sri Sanjay Mohan, learned counsel for the petitioner, submitted that the order of the Labour Court is erroneous in point of law as it failed to

notice that the petitioner has furnished the first respondent with all the copies of complaints even at the second sitting of the enquiry and the inquiry

began only after furnishing of the reports of various complainants to the first respondent. The learned Counsel also submitted that the first

respondent after getting the copies of complaints cross-examined the complainants and there was no complaint by the first respondent before the

enquiry officer that because of the non-furnishing of the copies of complaints by various complainants, he was not able to participate in the

enquiry. The learned counsel for the petitioner therefore submitted that there is no violation of the principles of natural justice and there was no

prejudice caused to the first respondent during the course of holding the enquiry.

9. Learned counsel for the petitioner also submitted that the view of the Labour Court regarding non-payment of subsistence allowance is also

erroneous on facts as well as in law. He also submitted that the Tamil Nadu Payment of Subsistence Allowance Act, came into force only with

effect from January 1, 1982, and the first respondent was suspended from

service in the month of October 1981 and from October 1981 to January 1982, the petitioner was not required to pay subsistence allowance as there is no Standing Order of the petitioner-company to pay subsistence allowance to the employee suspended from service during the enquiry proceedings. But, however, the petitioner-company paid the subsistence allowance to the first respondent after, the said Act came into force from January 1, 1982 and though the first respondent in his claim petition has admitted that the first respondent was not provided with any subsistence allowance for more than five months, in the counter-statement filed by the petitioner before the Labour Court, the writ-petitioner, has given particulars regarding payment of subsistence allowance and it was specifically stated that the first respondent was paid subsistence allowance for the period from January 1, 1982 to October 25, 1982. The learned counsel further pointed out that in the preliminary award one of the documents marked on behalf of the first respondent in Exhibit W5 shows that the first respondent was paid subsistence allowance till the date of his dismissal. The first respondent herein has not given any complaint before the enquiry officer that because of the non- payment of subsistence allowance, he was not able to participate in the enquiry, and the Labour Court was not correct in holding that due to the non-payment of subsistence allowance, the enquiry held was vitiated.

10. Sri K.M. Ramesh, learned counsel for the first respondent, submitted that there is a violation of principles of natural justice as the petitioner has not enclosed along with the chargesheet the copies of complaints and without the copies of complaints, the first respondent was not able to submit his effective reply to the charges framed against him. The learned counsel for the first respondent also submitted that he could not send the detailed explanation to the chargememo and it cannot be expected that the worker should demand the copies of documents. According to the learned counsel for the first respondent, it is the bounden duty of the writ-petitioner to enclose the copies of the complaints of six persons along with the chargesheet and once there is a prejudice caused to the workman, there is no further need to prove the prejudice by independent proof. He also submitted that because of the non-furnishing of the report of the complaints, the employee was not able to putforth his defence and meet the

charges levelled against him.

11. As regards non-payment of subsistence allowance is concerned, the learned counsel for the first respondent submitted that the subsistence

allowance was paid in lump sum after the period of four months from the commencement of the said Act. He further submitted that when a

workman is placed under suspension and when the subsistence allowance was not paid, it will not be possible for him to participate in the enquiry.

He also submitted that the subsistence allowance was paid belatedly after the conclusion of the enquiry. The third submission of the learned counsel

for the first respondent was that this Court in W.P. No. 728 of 1989 has accepted the conclusion of the Labour Court and the finding of the

Labour Court was not challenged by the writ petitioner by preferring an appeal and since the findings have become final, it would operate as res

judicata in the present proceedings as well. The learned counsel relied upon the decision in S.V. Angappan Vs. The Tamil Nadu Electricity Board

and Another,

12. I have carefully considered the submissions of the learned counsel for both the parties. The Labour Court set aside the order of termination on

two grounds. Firstly there was a violation of principles of natural justice in not enclosing the copies of complaints along with the chargesheet.

Secondly, non- payment of subsistence allowance to the first respondent vitiated the enquiry.

13. In so far as the finding with regard to violation of principles of natural justice is concerned, though the writ- petitioner had not enclosed the

copies of complaints along with the chargesheet on October 10, 1981, the first respondent requested one week's time to file his reply and he also

submitted his reply to the chargesheet. He has not made any complaint before the enquiry officer or at any prior point of time that because of non-

furnishing of the copies of complaints, he was not able to submit his reply to the charges levelled against him. Further more, when the enquiry

proceedings were initiated and the enquiry was held, the writ-petitioner has furnished the first respondent with the copies of all complaints given by

various persons. The first respondent in the claim statement made before the Labour Court himself has admitted that he was provided with the

copies of complaints on November 12, 1981 and on the same day, the writ-

petitioner gave a list of witnesses during the course of enquiry. The first respondent has also admitted that the cross-examination of the first witness commenced on December 3, 1981. The above admission ex facie shows that even before the commencement of the cross-examination of the first witness of the management, the first respondent was furnished with the copies of all complaints. The first respondent has not made any complaint before the enquiry officer regarding the non-furnishing of the copies of complaints along with the chargesheet. Further, he participated in the enquiry. He cross-examined the witness and the witnesses were cross-examined with reference to their statements on behalf of the first respondent.

14. It is not the first respondent that there is any Standing Order or statutory rule in the petitioner-company that copies of complaints should be furnished along with the chargesheet. The first respondent also has not established and proved that he was prejudiced because of non-furnishing of the copies of complaints which were marked as documents on behalf of the writ-petitioner and he was not able to conduct the enquiry effectively.

In this factual situation, the question that arises is whether it can be held that there was a violation of principles of natural justice.

15. The Apex Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, dealt with a case where a list of documents and witnesses was furnished to the employee before the commencement of the enquiry, but the preliminary enquiry documents were not supplied to the first respondent and the first respondent was advised to peruse the documents just half an hour before the commencement of the enquiry and the question that arose before the Supreme Court was whether there was a violation of principles of natural justice which would vitiate the enquiry.

The Supreme Court held that in the case of a procedural provision which is not of mandatory in nature, the complaint of violation has to be examined from the stand point of substantial compliance, and whether such violation had caused prejudice to the delinquent employee. The Supreme Court after analysing the various decisions laid down the following principles which are relevant for the purpose of this case in State Bank of Patiala and others Vs. S.K. Sharma, :

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the

rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire

whether -

(a) the provision violated is of a substantive nature, or

(b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained herein before and the theory of substantial compliance or the test of

prejudice would not be applicable in such a case.

Applying the law laid down by the Apex Court in the above case, it must be held that there was no violation of statutory provisions or Standing

Order in this case. It is not a case where there was no notice or there was no opportunity or there was no enquiry. The first respondent was

furnished all copies of complaints in the second sitting of the enquiry even before the commencement of the examination of the witnesses. In my

view, the first respondent was afforded a fair hearing and he was allowed to have representation by a third party in the enquiry and it cannot be

said that there was no fair enquiry conducted by the enquiry officer during the enquiry.

16. The Supreme Court in the case of R.C. Sharma Vs. Union of India (UOI) and Others, , held that the enquiry would be vitiated only if a

mandatory provision of law is vitiated or if there is a contravention of principles of natural justice. The Supreme Court emphasised that prejudice

from the alleged violation must be proved. On the facts of the case, I am of the view, the first respondent has not proved that there was a prejudice

from the alleged violation of principles of natural justice. As already seen, the defect in not furnishing the copies of complaints along with the

chargesheet got cured before the commencement of the enquiry by furnishing the copies of the same to the first respondent.

17. The Supreme Court in the case of Kashinath Dikshita Vs. Union of India (UOI)and Others, has reiterated that the prejudice must be

established and held that whether or not the non-furnishing of copies of documents has resulted in prejudice to the employee facing departmental

enquiry depends upon the facts of the case and the prejudice must be established.

18. In this context, it is profitable to make it clear that the Supreme Court in the

case of State Bank of Bikaner and Jaipur Vs. Srinath Gupta and another, , wherein it was held that it is well settled that the strict rules of evidence are not applicable to the departmental enquiry and what is to be seen is that the principles of natural justice are complied with and the delinquent employee had an opportunity to defend himself. The Supreme Court after analysing the earlier decision in the case of Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, , held that if the statements were given before the witnesses were examined that would meet the requirement of the law. On the facts, it is clear that the first respondent was furnished with the copies of complaints before the commencement of the enquiry and he participated in the enquiry by a third party and it cannot be said that the principles of natural justice, was violated because of the non-filing of the copies of the complaints along with the chargesheet.

19. A Division Bench of this Court in Hindustan Lever Ltd., Tiruchirapalli Vs. The Presiding Officer, Labour Court, Madurai and Another, , that the violation of principles of natural justice should not be of a form but, it must be one of substance and the question whether there was a violation of the natural justice would depend upon the facts of the case. Applying the principles of law laid down by the Division Bench of this Court, there was a compliance of the principles of natural justice by furnishing the copies of documents to the delinquent workman before the commencement of enquiry.

20. In the case of P.J. Lazar v. Labour Court, 1975 II LLJ 97, G. rAMANUJAM, J., dealt with a case of an employee who was dismissed for the misconduct after domestic enquiry and in that case also, the employee was not furnished along with the chargesheet a list of witnesses or documents in support of the charges. This Court held that the employer was not bound to give the list of documents and witnesses along with the chargesheet and since the list of documents and witnesses were given to the employee before the commencement of the enquiry. The learned single Judge, following the decision of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. v. Ganesh Dutt, 1972 (1) LLJ 172 (SC) held that it is sufficient if the documents were given before the commencement of the enquiry. Applying the principles laid down by the Supreme Court as well as the learned single Judge (both cited (supra)), I hold that there

was no violation of principles of natural justice by non-furnishing of the copies of the complaints along with the chargememo and even assuming that there was such a violation, it got cured at the enquiry stage as the first respondent was supplied with the documents well before the commencement of the enquiry.

21. Now it is necessary to consider the decisions relied upon by the learned counsel for the first respondent. The learned counsel for the first respondent relied upon the decision in the case of Prabhudan Charan v. State of Rajasthan and Ors., 1992 XI LLJ 830 (SC). But the above decision has no application to the facts of the case as in the instant case, it has not been found that there was any prejudice caused to the delinquent employee by not furnishing the copies of documents along with the chargesheet.

22. It is also necessary to notice the decision of the Apex Court in State of U.P. Vs. Shatrughan Lal and Another, , wherein the Supreme Court has held that a person must have an effective opportunity in the departmental proceedings and where chargesheet is issued to the incumbent, the chargesheet should be enclosed with copies of documents which are proposed to be utilized by the person. The Supreme Court has held that where there is a failure, it cannot be said that the opportunity was not provided to the delinquent and the relevant portion of the judgment reads thus, : (1998)IILLJ799SC :

..... one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretense. In departmental proceedings where chargesheet is issued and the documents which are proposed to be utilised against that person are indicated in the chargesheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him.....

23. In my view, the above decision is not applicable to the facts of the present case. The first respondent has not made any request to the writ-petitioner to furnish him the copies of complaints given by various complainants. Further, he was given copies of documents and the records of the

enquiry officer show that the documents which were indicated in the chargesheet were supplied to the first respondent. The first respondent has

cross-examined the witnesses and he has not established that any prejudice was caused to the first respondent in establishing defence. Therefore, it

cannot be said that there was violation of principles of natural justice and it must be held that an effective opportunity was given to the first

respondent and he has not proved that any prejudice was caused to him in defending himself in the enquiry proceedings. The submissions of Sri

K.M. Ramesh that there is no independent proof of prejudice is not well founded on the facts of the case. The learned counsel relied upon the

decision of the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, , wherein the Supreme Court made the following observations:

In our view, the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural

justice had been observed. The non- observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of

denial of natural justice is unnecessary. It will come from a person who has been denied justice that the person who has been denied justice is not

prejudiced. As we said earlier where on the admitted or indisputable fact only one conclusion is possible and under the law only one penalty is

permissible, the Court may not issue writ to compel the observance of natural justice, nor because it is not necessary to observe natural justice

but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

24. The above decision was distinguished by the Supreme Court in 1996 II LLJ 296 (*supra*) and after analysing the decision in *S. L. Kapoor v.*

Jagmohan; (*supra*)), the Supreme Court held that there is a distinction between cases where there was no notice and cases where there was no

adequate opportunity and in the later category of cases, the violation of principles of natural justice, has to be tested on the touchstone of prejudice

and whether the person did or did not have a fair hearing. Hence, the decision relied upon by the learned counsel for the first respondent is not

applicable as it is not case of no hearing or no enquiry.

25. The second reason given by the Labour Court to hold that the enquiry was vitiated because there was non-payment of subsistence allowance

by the writ-petitioner from the date of suspension till the date of dismissal. The above finding of the Labour Court is not sustainable both on facts

and in law. The Labour Court failed to notice that the first respondent in his claim statement has stated that he was not provided with any

subsistence allowance for more than five months. The first respondent has not given any particulars regarding the months during which he was not

paid the subsistence allowance and the averments made by him that he was not paid the subsistence allowance for more than five months must be

held to be vague. The writ-petitioner in his counter-statement has stated that the first respondent was paid the subsistence allowance for the period

from January 1, 1982 to December 25, 1982, and he was terminated from service on January 13, 1983. During the period from October 1981 to

January 1, 1982, i.e., a period of three months, there was no requirement to pay any subsistence allowance to the first respondent under the

Standing Orders of the petitioner-company. The Tamil Nadu Payment of Subsistence Allowance Act came into force from January 1, 1982 and

the first respondent was paid subsistence allowance after that date. The documents marked on behalf of the first respondent in Exhibit W6 show

that the petitioner paid to the first respondent the subsistence allowance till the date of his dismissal from service. The Labour Court overlooked the

documentary evidence as well as the admission made by the first respondent in his claim statement and recorded a finding that the non-payment of

subsistence allowance amounted to violation of principles of natural justice and against the provisions of the said Act. In my view, there is a warrant

for such a finding and the finding arrived at by the Labour Court is without any material on record.

26. In *Tube Products of India v. First Additional Labour Court* 1994 II LLJ 203, a learned single Judge of this Court has held as under, in Para 7

at pages 207 and 208:

..... That apart, as stated already, the second respondent could not have been paid subsistence allowance by reason of the absence of the

provisions in the Standing Order, the absence of claim for payment of subsistence allowance during the domestic enquiry and and the absence of

any demand in the claim petition before the Labour Court and the absence of direction by the Labour Court to pay subsistence allowance during

the pendency of the industrial dispute. In fact, the second respondent had effectively-participated in the enquiry. Considering the facts in the instant case and the facts of the Supreme Court the decision of the Supreme Court will not be squarely applicable to the instant case.

27. In the instant case, the first respondent has not made any claim for payment of subsistence allowance during the course of domestic enquiry

and there is no Standing Order for the payment of subsistence allowance during the course of the enquiry, and in the absence of any claim for

subsistence allowance before the enquiry officer to pay subsistence allowance during the pendency of the domestic enquiry, it cannot be held that

the non-payment of subsistence allowance had prejudiced the first respondent in defending himself. After the Tamil Nadu Payment of Subsistence

Allowance Act came into force it was proved that the first respondent was paid subsistence allowance till the date of dismissal. Therefore, I am

unable to accept the submission that there was non-payment of subsistence allowance after the said Act came into force and the finding of the

Labour Court that the enquiry was vitiated for non-payment of subsistence allowance is not sustainable in law.

28. It is now necessary to consider the submission of Sri K.M. Ramesh, learned counsel for the first respondent, that this Court in Writ Petition

No. 728 of 1989 has given a finding that the failure to furnish a copy of the complaint has caused prejudice to the first respondent in meeting the

charges and the finding of the Labour Court was that non-payment of subsistence allowance had vitiated the enquiry and, therefore, it is not open

to this Court to re-examine the case once again. I am unable to accept the submission of the learned counsel for the first respondent as the learned

single Judge himself in his order has clarified that it is open to the parties to put forth all the contentions challenging the award including the one

raised in the writ petition. When the matter was left open by this Court to be decided by the Labour Court, it cannot be said that the earlier

observation of the learned Judge would preclude the writ petitioner from raising the issue. Hence, the contentions raised by the learned counsel for

the first respondent that in view of the earlier observation of this Court, this Court should not re-examine the question is rejected.

29. In the result, the award of the Labour Court is liable to be set aside and unfortunately, the Labour Court has not gone into the question of

merits of the matter as it found that the enquiry was vitiated because of violation of principles of natural justice. In view of my decision the view of the Labour Court that there was violation of principles of natural justice is not legally sustainable, and has no option but Court to set aside the impugned award and remit the matter for fresh consideration. However, I make it clear that in view of the representation made by the writ petitioner before the Labour Court during the course of second enquiry that it did not intend to examine further witnesses or mark any new document it will not be open to the writ petitioner to adduce any further evidence either oral or documentary to substantiate the charges. The writ petition is allowed. Rule nisi is made absolute. No costs. Consequently, Writ Miscellaneous Petition No. 26013 of 1992 is dismissed.