

(2011) 04 MAD CK 0504

In the Madras High Court

Case No : Second Appeal No. 1977 of 1999 and C.M.P. No's. 5950 of 2000, 1562 of 2001, 10182 and 10183 of 2001

N. Munuswamy

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 09-04-2011

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Government of India Act, 1935 — Section 240
Industrial Disputes Act, 1947 — Section 11A
Railway Protection Force Act, 1957 — Section 9(1)
Railway Protection Force Rules, 1959 — Rule 41

Citation : (2011) 04 MAD CK 0504

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : T.P. Kathiravan, for the Appellant; V.G. Suresh Kumar, for the Respondent

Judgement

R. Subbiah, J.—The unsuccessful Plaintiff in O.S. No. 326 of 1989 on the file of IV Assistant Judge, City Civil Court, Chennai, is the Appellant and he preferred the present second appeal aggrieved over the decree and judgment dated 25.04.1997 passed by the learned II Additional Judge, City Civil Court, Chennai, in A.S. No. 172 of 1996, whereby the decree and judgment passed in the said suit were set aside and the suit was dismissed.

2. The case of the Plaintiff, in brief, is as follows:

The Plaintiff entered into service in the Railways as Rakshak in the year 1964. During February 1978, he was under the direct control of the Assistant Sub-Inspector, Protection Force, Tuticorin and he was on duty from 16.00 hours to 24.00 hours on 24.02.1978 and on 25.02.1978 while he was handing over charge to Rakshak Rang an, there was no shortage of consignments and for this, necessary entries were made in the General Diary. Therefore, he can not be held responsible for anything happened after his duty hours. But, he was issued with

a charge sheet falsely stating that a theft HAD occurred when he was on duty on 24.02.1978 and the charge was that while the Plaintiff was on duty at A & B points, he failed to be vigilant in his duty hours, and as a result of which, a wagon NEBC 20205, which was boarded with 620 bags of M.O. Potash was broke open by the outside criminals and 20 bags of M.O. Potash were removed and kept within the beat limits of the Plaintiff. But it is the case of the Plaintiff that there was no shortage or any report of shortage by any authority. Subsequently, the Railways Administration initiated a criminal proceedings against one person, who has given the alleged confession statement, but he was acquitted by the Criminal Court. Similar charge sheet was issued against one co-worker, viz., Govindasamy, but he was able to prove that the entire charges were foisted. An enquiry was conducted in contravention of the rules of various well settled principles and the Enquiry Officer gave a finding that the Plaintiff was guilty of the charges and on the basis of the enquiry report, he was issued with an order of dismissal from service on 03.03.1979. The appeal preferred by him was also rejected by the appellate authority by its order dated 04.02.1988. When the authorities taken back to duty the coworker, pursuant to an order passed in W.P. No. 3980 of 1980, the authorities ought to have reinstated the Plaintiff into service. Hence, the Plaintiff filed the suit against the Respondent herein for a declaration that the dismissal order dated 03.03.1979 passed by the authorities, which was confirmed by the appellate authority by its order dated 09.02.1988, as unjust, improper and illegal.

3. The Defendant filed a written statement stating that the Plaintiff was removed from service in the year 1975 on a criminal offence registered in Madurai Railway Police Station Crime No. 64 of 1968 and on appeal, he was reinstated in service from 01.11.1976. During his service, he was awarded with 10 punishments including "removal from service". So far as the present case is concerned, while he was on duty at Tuticorin on 24.02.1978 at A & B points, he had miserably failed to be vigilant in his duty hours and as a result of which, the wagon No. NEBC 20205, which was stabled in his beat limit, was broke open by some criminals and 20 bags of M.O. potash were removed from the wagon and the Plaintiff was not aware of the same and the same was noticed by the Plaintiff's reliever. Further, from the confessional statement of one of the accused by name Rathnam Asari, who was arrested in the case, it was established that the consignments were removed from the wagon in question was stabled in his beat limits and the same were removed outside. Further, the wagon at the time of unloading, was noticed with a shortage of 4 bags of M.O. Potash at Coimbatore, the destination station. The criminal case ended in acquittal in respect of his coworker was based on certain contradictions and not on merits. The co-worker Govindasamy was deployed in between Cand D points. In view of the fact that the wagon in question was found in his neighbouring beat limits, he would have prevented the offence had he been little alert in his beat limits. Though his connivance with the criminals was not established, his gross remissness and negligence were established and as such, he had been given the penalty of

dismissal. Against which, he filed a writ petition and it was allowed with the imposition of 7 days pay cut as the penalty for his negligence. So far as the Plaintiff is concerned, he was actually in charge of the point A and B where the offence had been committed. Therefore, he cannot take advantage of the minor punishment given to the co-worker, who was in charge of the neighbouring beat limits C and D. The Plaintiff was supported by an able defence counsel and all opportunities and privileges were given for defending his case during the course of enquiry and all the principles of natural justice were observed and the enquiry was conducted to the entire satisfaction of the Plaintiff and since the charges were framed against him were proved, the punishment of dismissal was imposed. Since the Plaintiff was dismissed after departmental enquiry and the charges framed against him were proved, the suit for declaration is liable to be dismissed.

4. On the said pleadings, the trial court framed necessary issues and on the side of the Plaintiff, he examined himself as P.W.1 and marked Exs.A-1 to A-15 and on the side of the Defendant, Exs.B-1 and B-2 were marked, but no witness was examined. The trial court, after considering the entire evidence on record, both oral and documentary, had decreed the suit. Challenging the said finding, the Defendant filed A.S. No. 172 of 1996 on the file of II Additional Judge, City Civil Court, Chennai, wherein the decree and judgment of the trial court were set aside and the appeal was allowed and the suit was dismissed. Against which, the Plaintiff filed the present second appeal.

5. At the time of admission of the second appeal, this Court has framed the following substantial questions of law for consideration:

(1) Whether the enquiry officer conducted the enquiry in accordance with the Sub-rule 6 of Rule 44 of R.P.F. Rules, 1959 and principles of natural justice when he himself cross-examined the prosecution witness repeatedly and also not summoned the duty point both for this Appellant and his reliever RK. Rang an on 24/25.2.78 at 16.24hours, since no material was missing when the Appellant handed over charge to his relieverRK. Rang an at 0.05 hours on 24/25.2.78 ?

(2) Whether the entire department enquiry proceedings conducted by the Respondent is vitiated as contemplated under Sub-rule 6 & 7 of Rule 44 of R.P.F. Rules, 1959 when the sole material witness Mr. Ratna Asari who had not been examined to prove the allegation made against this Appellant ?

(3) Whether the enquiry is defective one and charges are vague and the dismissal order dated 3.3.79 is liable to be set aside when his co-worker RK. Govindasami faced joint enquiry for the same charge along with this Appellant as held by the Hon'ble High Court in W.P. No. 3980/80, the very same charge itself is defective one and his dismissal order was set aside ?

6. Learned Counsel for the Appellant/Plaintiff submitted that the Respondent/Defendant Railways issued a charge sheet under Rule 44 of Railway Protection Force Rules, 1959, wherein the charge was framed that on 24.02.1978, while the Plaintiff was in charge of A and B points, he was failed to be vigilant in his duty

hours and as a result of which, the wagon bearing No. NEBC 20205 was broke open and a theft has been committed in respect of 20 bags of M.O. Potash. In this regard, the learned Counsel further submitted that a similar charge sheet was issued to the person, who was in charge of C and D points and the said person, by name, Govindasamy, challenged the dismissal order in W.P. No. 3980 of 1980; but this Court has quashed the charge on a finding that the charge framed was defective and subsequently, a joint enquiry was conducted and the co-worker Govindasamy was reinstated into service. Thus, the learned Counsel for the Appellant submitted that when the Appellant as well as the co-worker were charge sheeted for the same allegations, the reinstatement of Govindasamy into service and the dismissal of the Appellant from service, would amount to utter discrimination.

7. By inviting the attention of this Court to the evidence deposed by the management witnesses, the learned Counsel submitted that subsequent to the cross examination of the management witnesses by the Appellant, the Enquiry Officer had also cross examined the management witnesses in detail and thus he had acted as a Prosecutor, which would show that by violating all the rules, the enquiry officer had conducted the enquiry. Moreover, all the witnesses had categorically stated in their evidence that the theft took place only at 02.00 Hours on 24.02.1978 but the charge says as if the offence took place on 24.02.1978 at 21.00 hours. The lower appellate court, by considering the major contradictions, ought to have confirmed the judgment and decree of the trial court. Moreover, the accused was acquitted by the criminal court. The Appellant and HRK-16, Chinnathambi arrested all the accused, viz., Muthupandian, Chelliah, Rathina Asari, Paulraj, Singaram and produced them before the ASPF/TN at 05.30 AM on 25.02.1978 as per the instructions at 01.30 hours on 25.02.1978. When the Appellant acted as instrumental in arresting the accused, the question of charging him for negligence is not correct. Further more, no material loss occurred to the Respondent to award a major punishment of dismissal of the Appellant from service as per the provisions under the Railway Protection Force Act. The learned Counsel further submitted that no detailed conclusion was given by the Enquiry Officer to hold that the Plaintiff was guilty of charges. Therefore, the order passed by the Respondent is not sustainable in law and as such, the finding arrived at by the lower appellate court is liable to be set aside.

8. Per contra, the learned Counsel for the Respondent submitted that the other co-worker Govindasamy was not in charge where the offence took place and, as such, he was reinstated into service with the imposition of a minor punishment. Moreover, the Appellant was punished with tentimes including the dismissal from service. The disciplinary authority had put forth certain questions only by way of clarification. Therefore, the enquiry officer cannot be said that he has acted as prosecutor. Moreover, as per the said Rules, he was rightly dismissed from service for the negligence and duty, which resulted in causing loss to the Railways. The learned Counsel further submitted that by granting the benefit of doubt, the Criminal Court had acquitted the accused. The Respondent is always

having a right to conduct enquiry based on the available evidence and since the criminal court acquitted the offender, it does not mean that the Appellant is not liable to be charged. Moreover, the Appellant has not recorded any dissatisfaction with regard to the manner in which the enquiry was conducted and as such, now it cannot be said that the enquiry was conducted not in accordance with the principles of natural justice. The learned Counsel has also relied on the decisions reported in *State of Uttar Pradesh Vs. Om Prakash Gupta*, *State of Haryana and Another Vs. Rattan Singh*, 2001 (2) AWC 1125 (SC) and *Workmen of Balmadies Estates Vs. Management Balmadies Estate and Others*, .

9. This Court has paid its anxious considerations on the submissions made by the learned Counsel on either side.

10. To sum up, the submissions of the Appellant/Plaintiff are,

(i) the co-worker Govindasamy, who was charge sheeted for same allegations, had filed the writ petition and pursuant to the order passed by this Court in the writ petition that the charges are defective, the said co-worker was re-instated into service; but the same yardstick has not been adopted to the Appellant;

(ii) after cross-examination of the management witnesses, again the Enquiry Officer had conducted cross examination and thereby he had acted as Prosecutor;

(iii) the Appellant along with another person arrested the accused and produced them before ASPF/TN, as seen from Ex.D-2 and when he himself acted as instrumental to arrest the accused, the question of alleging negligence against the Appellant does not arise;

(iv) the witnesses before the criminal court had deposed that the offence took place at 2.00 hours, whereas the charge says that the offence took place at 21.00 hours; this major contradiction would show the allegation of negligence attributed against the Appellant is not correct;

(v) no proper opportunity was given to the Appellant to put forth his case and the enquiry was not conducted in a proper manner;

(vi) the enquiry officer has not given any detailed conclusion holding that the Appellant is guilty of offence; and (vii) the major punishment of dismissal from service for the alleged negligence is highly disproportionate.

11. In view of the above, this Court has to see, whether the order dated 03.03.1979 passed by the Respondents liable to be set aside ?

12. It is the submission of the learned Counsel for the Appellant/Plaintiff that this Court in the writ petition has found that the charges are defective. In support of the same, the learned Counsel has also invited the attention of this Court to the order passed by this Court in W.P. No. 3980 of 1980 dated 18.06.1984 filed by the co-worker, wherein the relevant portion of the order reads as follows:

On the admitted facts, I find that there is a fundamental defect in the charge as

framed which would certainly have a decisive impact on the punishment that was imposed on the Petitioner. I have already referred to the charge; according to its plain reading the Petitioner's remissness/negligence in the discharge of his duties during the stated hours on 24.2.1978 resulted in the theft of 20 bags of M.O. Potash. Thus, really, there are two charges; (i) he was negligent and (ii) such negligence resulted in the theft of 20 bags of M.O. Potash. From the records it is fairly conceded that the theft did not take place during the points namely C and D which are alone under the control of the Petitioner. On the other hand, theft took place while the wagon was at the points A and B which was under the exclusive charge of one Munusamy. That is evident from the following paragraphs found in the order passed by the Enquiry Officer:

There is evidence on record that a shortage of 4 bags of M.O. Potash was noticed at the time of unloading in seal defective wagon No. NEBC 20205 at the loaded with 620 bags of M.O. Potash was criminally interfered with at the Cotton Shed Road No. 4, before 21.00 hours on 24.2.1978.

13. On a perusal of the said order, I find that this Court has observed in the said order that there was evidence on record only for a shortage of 4 bags of M.O. potash and not 20 bags, as mentioned in the charge sheet; moreover, the co-worker Govindasamy was not in charge of A and B points, where the offence took place; whereas he was in charge of C and D points. Only on that ground, this Court has held that the charges are defective. But, on the other hand, it is not in dispute that there was a shortage of M.O. Potash bags in A and B points, in which place the Appellant was in charge at the relevant point of time.

14. On a further perusal of the said order, I find that though this Court has set aside the order of dismissal, has held as follows:

In the result, though the order of dismissal is set aside, I am constrained to hold that the Petitioner is guilty of remissness/negligence in the performance of his duties as Rakshak and that he shall suffer a punishment of fine of 7 days pay....

Hence, from the above, it is clear that since the co-worker Govindasamy was not in charge of actual place of occurrence, the order of dismissal was set aside and the Court has imposed the punishment of fine of seven days' pay. Therefore, in my considered opinion, the Appellant cannot take shelter the order passed by this Court in the said writ petition saying that by adopting a different yardstick, he was dismissed from service.

15. The next fold of submission of the Appellant is that the Enquiry Officer himself had cross examined the witnesses and had acted as a prosecutor. But, on a perusal of the same, I find that the Enquiry Officer has put some questions only by way of clarification. Moreover, under the witnesses. Therefore, it cannot be said that the Enquiry Officer had acted as prosecutor while conducting the enquiry proceedings.

16. The other submission of the Appellant is that he himself along with co-

Rakshak M.W.9 arrested all the outside criminals as per the instructions of AISF at 01.30AM on 25.02.1978 and hence no negligence could be attributed against him. But, in my considered opinion, since he has arrested the witnesses, it cannot be said that there is no negligence on the part of the Appellant, particularly it is an admitted fact that at the time of theft, he was in charge of A and B points, where the offence had been committed.

17. With regard to the other submission of the learned Counsel for the Appellant that the accused arrested in the criminal case had given statement to the police officer that they committed the offence at 2.00 AM. Had the statement of the witnesses as well as the accused been looked into, it could be safely inferred that the offence had not been committed while the Appellant was on duty i.e. from 16.00 hours on 24.02.1978 to 12.00 Noon midnight provisions of Railway Protection Force Rules, 1987, the Enquiry Officer is entitled to put questions for clarification. Hence, I do not find any wrong in the questions put forth by the Enquiry Officer to the (24.00 Hours on 24.02.1978); but these statements were omitted to be marked. Hence, by way of additional documents, the Appellant filed C.M.P. No. 1562 of 2001 to receive the additional documents Exs.P-1 to P-7, Exs.D-1 and D-2 and the judgment in C.C. No. 411 of 1978 on the file of the Judicial Magistrate Court No. I, Tuticorin, as additional documents. But, I am of the opinion that the statements recorded by the police officials cannot have any significance in this case because independently, the Respondent had examined the matter and found that the offence took place at 21.00 Hours. Moreover, from the materials, it could be understood that when the Appellant had handed over the charge to his reliever, the wagon was in open condition. Therefore, the statements relied upon by the Appellant may not be helpful to set aside the order of dismissal.

18. Further, I find that the Plaintiff had not expressed any dissatisfaction during the course of enquiry. Therefore, at this length of time, he cannot say that the enquiry was not conducted in accordance with the principles of natural justice. Though it has been stated by the learned Counsel for the Appellant that the dismissal order was highly disproportionate punishment for the act of negligence, it could be found that the Appellant had been charge sheeted under Rule 44 of R.P.F. Rules, 1959. Rule 41 deals with the nature of penalties and it reads as follows:

41. Nature of penalties: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Force, namely-

- (a) dismissal;
- (b) removal;
- (c) compulsory retirement;

....

2. In this connection your attention is invited to Section 9(1) of the R.P.F. Act, 1957, according to which any superior officer of the Force may dismiss or remove from service any member of the Force when he shall think him remiss or negligent in the discharge of his duty or unfit for the same. Generally the punishment of dismissal or removal from service may be imposed on the members of the Force on circumstances such as the following:

(a) Dismissal

(i) Conviction by a criminal court;

(ii) Serious misconduct;

(iii) Neglect of duty resulting in or likely to result in loss to Government or danger to the lives of persons using the Railways

19. A reading of Section 42(2)(a) of R.P.F. Rules, 1959, would show that the dismissal is the punishment for negligence of duty. When the Rules prescribe dismissal as punishment for negligence, I do not find any infirmity in the order of dismissal passed by the Respondent. With regard to the submission made by the learned Counsel for the Appellant, attacking the enquiry proceedings and the order of dismissal passed by the Respondent, a reference could be placed in some of the judgments relied on by the learned Counsel for the Respondent and in State of Uttar Pradesh Vs. Om Prakash Gupta, it has been observed as follows:

9. Reasonable opportunity contemplated by Section 240 of the Government of India Act, 1935 as under Article 311(2) of the Constitution primarily consist of: (i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told what the charges against him are and the allegations on which such charges are based; (ii) he must be given reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf and (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him -See Khem Chand v. Union of India 1958 SCR 1081.

10. All these requirements have been substantially complied with in the present case. It is true that an enquiry u/s 240 of the Government of India Act, must be conducted in accordance with the principles of natural justice. But those principles are not embodied principles. What principle of natural justice should be applied in a particular case depends on the facts and circumstances of that case. All that the courts have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice. In the present case so far as the first charge is concerned, the fact that the Respondent was not given full opportunity to cross-examine Hafiz Habib Beg could not have in the least affected the finding of the enquiry officer as it was primarily based on the admissions made by the respondent. The High Court was

not right in its conclusion that the report of the enquiry officer had not been made available to the Respondent before he was called upon to show cause against the proposed punishment. A summary of that report had been given to him when he asked for it for the purpose of submitting a memorial to the Government against the order made in 1944 dismissing him from service. It is not shown that that summary did not contain all the relevant facts and circumstances taken into consideration as well as the conclusions reached by the enquiry officer and the recommendations made by him. The entire records of the enquiry were before the courts in proceedings commenced by the Respondent in 1948 and quite clearly it would have included the report of the enquiry officer. Further it was open to the Respondent to ask for a copy of that report when he was asked in 1949 to show cause against the proposal to dismiss him. He did not do so nor did he object to the notice calling upon him to show cause why he should not be dismissed, on the ground that he had not been supplied with a copy of the report made by the enquiry officer. The learned judges of the High Court were wholly wrong in holding that there was no proof to show that Mr. Bishop had been appointed to enquire into the allegations. No such plea had been taken in the plaint. There is a presumption that official acts had been done according to law.

20. In *State of Haryana and Another Vs. Rattan Singh*, the Hon'ble Apex Court has held as follows:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the Respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic

tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the Respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, there-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal.

21. In 2001 (2) AWC 1125 (SC) it has been held as follows:

4. Mr Goel appearing for the Plaintiff-Respondent, on the other hand, contended that though there were as many as 11 charges but the gravamen of charge relates to defalcation and if that cannot be held to have been established beyond reasonable doubt, on the residue of charges ultimately which relates to irregularities and illegalities in the discharge of duties as a Cashier, an order of dismissal would be shocking the conscience and therefore the High Court was well within its jurisdiction to interfere with the order of dismissal in the second appeal. Mr Goel relies upon a later judgment of this Court in the case of Colour-Chem Limited Vs. A.L. Alaspurkar and Others, as well as the decision of U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, In U.P. SRTC case the Court after noticing the earlier judgment of B.C. Chaturvedi Vs. Union of India and others, which Mr Go swami relied upon came to hold that the High Court can interfere with the punishment inflicted upon the delinquent employee, if that penalty shocks the conscience of the Court and therefore it may not be correct that in no case on quantum of punishment the Court would not be justified in interfering with the quantum of punishment. We need not go into this question in the present set of facts and circumstances inasmuch as a Cashier of a bank, who has been found to have grossly derelicted his duties and to be negligent even by the High Court and as many as 5 charges relating to the same have been upheld by the High Court, it would not be possible for the High Court in second appeal to interfere with the quantum of punishment. Having examined the impugned judgment of the High Court we have no manner of doubt that the High Court grossly erred in law in interfering with the quantum of punishment on the application of the principle that the punishment is grossly disproportionate to the quantum of delinquency, obviously

referable to Section 11-A of the Industrial Disputes Act. In our opinion, those principles engrafted in Section 11-A of the Industrial Disputes Act cannot be engrafted into the disciplinary proceedings either in relation to a government servant or other employee whose service conditions are governed by a set of rules and not the provisions of the Industrial Disputes Act. That apart, in exercise of second appellate jurisdiction, it was not open for the High Court to appreciate the materials on the basis of which the enquiry officer arrived at his conclusion, and come to a different finding and on this score also the impugned judgment is vitiated. In the aforesaid premises, the impugned judgment of the High Court in second appeal cannot be sustained. We accordingly quash the same and the suit stands dismissed. This appeal is allowed.

22. In *Workmen of Balmadies Estates Vs. Management Balmadies Estate and Others*,), the Hon"ble Apex Court has held as follows:

10. It is fairly well settled now that in view of the wide power of the Lab our Court it can, in an appropriate case, consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a civil court could do when a lis is brought before it. The Evidence Act, 1872 (in short "the Evidence Act") is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.

....

12. As noted above what M Ws 1 and 2 had stated was to the effect that the confession was made by the two delinquents in their presence and also in the presence of others. There was no cross-examination with regard thereto. There was no complaint made by the delinquents even after the charge-sheet was filed that the confessions had been extracted from them and/or that they had been compelled to make such a statement by reason of any threat held out. Even when they cross-examined the witnesses, they did not even suggest that what had been stated by the witnesses are incorrect. The findings of the Lab our Court were perverse and can be termed to be based on misconception of law. The High Court, therefore, rightly observed that the evidence could not have been brushed aside by the Labour Court in the manner done. That being so, the appeal is without merit, deserves dismissal, which we direct. No costs.

23. A reading of the above judgments would show that in the departmental enquiry, the guilt of the delinquent need not be proved beyond reasonable doubt and what was required only a fair play in the departmental proceedings. In the

instant case, no dissatisfaction was recorded by the Appellant on the completion of enquiry. Hence, the scope of interference by the High Court in the dismissal order passed in the departmental proceedings, is limited. The Enquiry Officer, after dealing with the entire evidence and materials placed before him, came to the conclusion that the Appellant was guilty of the charges levelled against him and passed the order of dismissal in accordance with the said Rules, 1959. Once the findings of fact, based on appreciation of evidence are recorded, the High Court shall not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse or legally untenable. The lower appellate court, by deeply analysing all these aspects, set aside the judgment of the trial court and dismissed the suit. All the grounds raised by the learned Counsel for the Appellant are purely question of facts and I do not find any infirmity in the findings of the lower appellate court and hence, no interference is necessary in the judgment of the lower appellate court.

24. For the reasons stated above, the second appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.