
(1990) 05 MAD CK 0009
In the Madras High Court
Case No : Writ Petition No. 7846 of 1984

N. Subbiah	Vs	APPELLANT
Indian Bank		RESPONDENT

Date of Decision : 05-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 248, 468

Citation : (1990) 05 MAD CK 0009

Hon'ble Judges : S. Govindaswamy, J

Bench : Single Bench

Judgement

S. Govindaswamy, J.—The petitioner has filed the above writ petitioner to issue a writ of Certiorarified Mandamus to quash the

communication of the first respondent under Ref. Staff/DRC/84 dated March 8, 1984 and August 20, 1980 and to direct the first respondent to restore all benefits accrued to the petitioner in his service.

2. The petitioner applied to the first respondent Bank for appointment as sub-staff in the year 1971. The petitioner furnished the school record

sheet date June 9, 1967 issued by the then Head Master Iyyavu Gounder, Panchayat Union Higher Secondary School, Kunthanipalayam, Karur

Taluk, according to which the petitioner has studied upto VIII Standard and his date was specified as October 27, 1949. The first respondent

Bank later appointed the petitioner as Peon with effect from February 3, 1972. In the year 1976, the petitioner forwarded his application to

appear privately for Secondary School Leaving Examination, to the Director of Government Examinations enclosing his school record sheet. The

Director of Government Examinations called for a report from the Panchayat

Union Elementary School in respect of the school record sheet dated June 9, 1967 with Admission No. 109. In the meantime, the said Panchayat Union Higher Secondary School became Panchayat Union Elementary School during the year 1973. The then Head Master had also retired. Thereafter one Krishan submitted his report stating that the school record sheet in respect of was called for could not be correlated. Thereafter, the Director of Government Examinations directed the District Educational Officer, Karur to lodge a complaint to the police alleging that a false document has been furnished to the authorities. The District Educational Officer lodged a complaint enclosing the school record sheet. On the basis of the complaint, the police authorities registered a case and after investigation laid a charge sheet u/s 468 of the Indian Penal Code and the same was taken up on files as C.C. No. 916/78 by the Sub Divisional Judicial Magistrate Cheyyar. The Sub Divisional Judicial Magistrate, Cheyyar, dismissed the case holding that the police did not examine the then Head Master, Iyyavu Gounder the signatory to the school record sheet, that there was no evidence to prove that the school record sheet was false and that the charge u/s 468 of the Indian Penal Code had not been proved beyond reasonable doubt and consequently discharged the petitioner u/s 248(1) of the Criminal Procedure Code. During the pendency of the aforesaid proceedings, the first respondent placed the petitioner under suspension and subsequent to the discharge of the petitioner in the criminal proceedings, by order dated September 13, 1978 revoked the suspension. Thereafter the first respondent initiated disciplinary proceedings and framed a charge sheet dated August 20, 1980 stating that the petitioner was charged for having obtained an appointment in the bank by producing false certificate as to his age and qualification and as such the act of the petitioner would amount to "suggestio falsi" act prejudicial to the interest of the bank and gross misconduct as per Clause 19(5)(J) of the Bipartite Settlement dated October 13, 1966. But the Bank has not called upon the petitioner to submit his explanation to the memorandum of charges but deputed one Thiru P. Balagursumy, Officer Personnel Department, to conduct an enquiry into the above charge and that the would intimate the time, date and venue of enquiry and that the petitioner was called upon to be present for the enquiry. In the meantime, the petitioner

made representations dated February 4, 1984 and March 2, 1984 requesting the first respondent to pay full wages during the period of suspension

which was later revoked. In reply to the said representations, the first respondent by its letter date March 8, 1984 informed the petitioner that the

charge against the petitioner for which he was proceeded departmentally was that he produced false record sheet to the effect that his educational

qualification was VIII Standard and his date of birth was October 27, 1949 and secured employment on the strength of the false record sheet and

that there was no connection between the court case and the departmental enquiry proposed to be held and that it was not possible to drop the

department proceedings. In the above circumstances, the petitioner has filed this writ petition for the aforesaid relief.

3. Mr. N. S. Sivam learned counsel for the petitioner, contended that the petitioner was prosecuted for producing a false document, that the said

order of acquittal by the sub Divisional Magistrate became final, that the record sheet produced by the petitioner was accepted by the educational

authorities and while so, it cannot be said that it is a forged document. Having held by a competent court that the document, is not a forged

document, it is not open to the respondents to initiate disciplinary proceedings on identical charge. In support of his contention, learned counsel for

the petitioner cited a decision in Corporation of Nagpur v. Ramchandra G. Modak (AIR) 1948 SC. 626 Learned Counsel for the petitioner

further contended that the charge did not fall within the scope of Clause 19(5)(j) of the Bipartite Settlement and consequently the respondents have

no power, authority or jurisdiction to initiate disciplinary proceedings and as such as the impugned notices are vitiated. Learned counsel also

contended that the respondents cannot inquire into very same charge which is the subject matter of the proceedings before the competent criminal

court which had given a verdict in favour of the petitioner. It is also contended that so long as the educational authorities have accepted the school

certificate, the said certificate remains in law as a statutory document.

4. Repelling the arguments of learned counsel for the petitioner Mr. C. Venkantaraman, learned counsel for the respondents, contended that the

charge framed in the criminal proceedings and the charge framed in the domestic enquiry cannot be said to be identical and as such the first

respondent is competent to proceed with the charge framed against the petitioner. Learned counsel for the respondent further contended that, under Clause 19(3)(c) of the Bipartite Settlement if the delinquent employee was acquitted it shall be open to the management to proceed against him under the provisions set out in Clause 19.11 and 19.12 of the Bipartite Settlement relating to the discharge. In view of the said provision, the first respondent is competent to proceed with the enquiry inspite of the acquittal by a competent criminal court. In so far as the contention put forward by the learned counsel for the petitioner that the gravamen of charges did not fall within the Clause 19(5)(i) of the Bipartite Settlement, it is contended the the petitioner has secured employment on producing false certificate and that the act of he petitioner will amount an act prejudicial to the interest of the first respondent bank and consequently it would fall within the Clause 19(5)(j) of the Bipartite Settlement. Learned counsel further contended that only after obtaining permission from the school authorities the first respondent bank was able to procure certain materials and was able to form an opinion that the certificate produced by the petitioner cannot be genuine and us such the first respondent initiated proceedings, as a result of which there will be some delay in initiating proceedings.

5. Considering the aforesaid contention put forward in so far as the contention relating to the fact that the charges framed against the petitioner in the criminal proceedings as well as in the domestic enquiry are identical and as such the first respondent cannot proceed with the enquiry, is concerned, it may be relevant to point out that in the criminal, it may be relevant to point out that in the criminal proceedings the charge is whether the petitioner has prepared a false/forged document whereas in the disciplinary proceedings the charge is that the petitioner has secured appointment by producing false certificate as to his age and qualification. The charge framed under the criminal proceedings and under the domestic enquiry cannot be said to be identical. It is not the case that in the disciplinary proceedings the petitioner has prepared the forged document or false document and consequently it cannot be said that the charges in the criminal proceedings as well as in the disciplinary proceedings are identical. The decision cited in *Corporation of Nagpur v. Ramchandra G. Modak* (Supra) cannot be applicable for the reason that

the charges framed in the criminal proceedings as well as in the domestic enquiry are not identical. In the decision cited supra the Supreme Court has observed as follows :

The other question that remains is if the respondents are acquitted in the criminal case whether or not department enquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is the direction in any way fettered.

In view of the aforesaid decision of the Supreme Court it cannot be said that the first respondent is not entitled to proceed with as against the delinquent employee.

6. With the reference to the contention put forward by the learned counsel for the petitioner that the first respondent has no jurisdiction, authority or power to issue the impugned show cause notice for the reason that the charges did not fall within Clause 19(5)(j) of the Bipartite Settlement, it is clear that the petitioner has produced a certificate and on the basis of the said certificate, the petitioner secured employment and in case the certificate is proved to be false, the petitioner is not entitled to continue in the employment and as such the act on the part of the petitioner herein can be said to be prejudicial to the interest of the bank if the petitioner is allowed to continue on the basis of the certificate produced by him which is of doubtful nature. So the contention that the first respondent has no jurisdiction, authority or power to proceed with the disciplinary proceedings cannot be said to be sustainable.

7. With reference to the contention that a competent criminal court has given a verdict and that the educational authorities have also accepted the verdict and consequently the record sheet produced by the petitioner cannot be said to be not genuine, it is premature to decide at the stage of show cause notice whether the certificate produced by the petitioner is genuine. However, that does not stand in the way of the first respondent to

initiate disciplinary proceedings and it is for the petitioner to satisfy the authorities that the document is genuine and not a false document and that he has not secured appointment by producing false record. So long as there is no bar to initiate disciplinary proceedings, it is open to the first respondent to initiate disciplinary proceedings and to issue show cause notice in which the petitioner should be given adequate opportunity to establish and he is not guilty of the charges framed against him and to prove his innocence about the charge. Unless the petitioner is able to establish that the first respondent has no jurisdiction at all or otherwise motivated with mala fide intention this Court cannot interfere at the stage of show cause notice itself. The petitioner has not satisfied this Court that the first respondent has no jurisdiction at all to initiate disciplinary proceedings or is motivated with mala fide intention. This Court exercising jurisdiction under Article 226 of the Constitution of India cannot quash the impugned show cause notice, since the petitioner has adequate opportunity to establish that he is not guilty of the charge and that it is premature to come to a conclusion on the merits of the case. In these circumstances, there is no warrant for interference with the impugned show cause at this stage. The writ petition fails and is dismissed. No costs.