

(1995) 01 MAD CK 0008
In the Madras High Court
Case No : W.A. No. 2052 of 1992

P. Karuthumayan	Vs	APPELLANT
Regional Manager, State Bank of India and Another		RESPONDENT

Date of Decision : 12-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Shops and Establishments Act, 1947 — Section 41(2)

Citation : (1996) 1 LLJ 253 : (1995) 2 MLJ 440

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; R. Sree Krishnan and K.M. Srirangan, G.A., for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dt. October 21, 1992, passed by the learned Single Judge in W.P. No.

5199/1984. The learned Single Judge has allowed the writ petition. The Second respondent therein has come up in appeal. The first

respondent/writ petitioner sought for quashing the order dt. February 27, 1984, passed by the Appellate Authority under the Tamilnadu Shops and

Establishments Act in Appeal No. 12 of 1982. The Appellate Authority allowed the appeal and set aside the order dt. April 1, 1982, passed by

the 1st respondent, terminating the services of the appellant and directed the 1st respondent to reinstate the appellant.

2. The learned Single Judge came to the conclusion that the bank in question was exempted from the purview of the Tamilnadu Shops and

Establishments Act, 1947, and therefore, the appeal preferred before the Appellate Authority was not sustainable and that the matter has to be

adjudicated under the Industrial Disputes Act and it is not just and appropriate for this Court to go into the question about the sustainability of the

order, terminating the services of the appellant, as it is open to the bank to justify the order of termination before the Industrial Tribunal by

adducing evidence, and accordingly, the learned Single Judge has set aside the order of the Appellate Authority passed under the Tamil Nadu

Shops and Establishments Act and reserved liberty to the appellant to agitate the matter in accordance with law.

3. Before us it is contented by Mr. N.G.R. Prasad, Learned Counsel for the appellant that irrespective of the position of law, as to whether the

appeal preferred before the Appellate Authority, under the Tamil Nadu Shops and Establishments Act, was maintainable or not, even if an

industrial dispute were to be raised the order could not have been sustained, as the case on hand is one, in which, the order of termination of

service has been passed casting a stigma on the appellant, without affording any opportunity whatsoever and without holding any enquiry. Now

more than 12 years have elapsed and it would not at all be keeping in tune with the demand of justice, to direct the appellant to raise an industrial

dispute, which would take several years. Consequently more than two decades would be lost, before the cause of the appellant is adjudicated.

Under these circumstances, it is submitted that this court may go into the question, as the facts relevant to the issue, are undisputed, and determine,

whether the order in question terminating the services of the appellant is valid in law. It is submitted that even as per the order of appointment, the

appellant was entitled to be made permanent, and instead of making him permanent, his services were terminated and that the order of termination

is not a termination simpliciter and it amounts to dismissal on the ground stated in the order itself, which casts stigma on the appellant.

4. On the contrary, it is contended by the learned counsel appearing for the bank that the appellant was only a temporary employee, he was never

made permanent and his services were terminated as the management has lost confidence in him, because he obtained employment on furnishing a

forged discharge certificate and on an enquiry made by the bank, the Defence Department informed the bank that no such discharge certificate was

issued to the appellant and the discharge certificate produced by the appellant was a forged one. Therefore, the bank had no alternative but to

terminate the services of the appellant in as much as the bank would not have challenged the communication sent by the defence authorities, since

the appellant had served in the defence and obtained employment in the bank on that ground that he is a discharged defence personnel. It is also

further contended that the order of termination made in these circumstances, does amount to termination simpliciter on loss of confidence in the

employee. In addition, it is submitted that the question as to whether the order of termination is valid or not is a matter to be decided by the Labour

Court under the Industrial Disputes Act, and therefore, this Court need not take upon itself the responsibility of going into the question, whether the

order of termination is valid or not and, whether it is termination simpliciter or not and the matter may be left open to be decided by the appropriate

Labour Court under the Industrial Disputes Act

5. Alternatively it is submitted that even if this Court were to come to a conclusion that the order of termination is not justified in law, as it is a case

of loss of confidence, in the employee the appropriate compensation in lieu of reinstatement, may be ordered.

6. In the light of these contentions, the following points arise for consideration.

1. Whether it is a case in which exercise of discretionary jurisdiction under Article 226 of the Constitution of India is warranted;

2. If point No. 1, is answered in the affirmative, whether the order dt, April 1, 1982 terminating the services of the appellant, is valid and justified in

law;

3. If point No. 2, is answered in the negative, whether the reinstatement should be ordered or whether lump sum compensation in lieu of

reinstatement should be quantified?

7. Point No. 1.: The services of the appellant were terminated on April 1, 1982. On the date when the appellant filed an appeal as against the

order of termination, the legal position as to the applicability of the provisions of the Tamilnadu Shops and Establishments Act, to the bank in

question was not settled and it came to be settled only by the decision of the Supreme Court in Sri Ramayan Harijan Vs. State of West Bengal, .

In that case, the Supreme Court held that the nationalised banks were exempted from the purview of the Tamil Nadu Shops and Establishments

Act. Accordingly in view of the judgment of the Supreme Court referred to above,

the legal position came to be settled. By that time, the Appellate Authority also had decided the Appeal filed by the appellant. If only, the legal position had been settled on the date, when the order of termination was passed, probably there would not have been any justification for the appellant to approach the Appellate Authority under the Tamil Nadu Shops and Establishments Act. In the meanwhile, from the date of termination till the date of deciding the writ petition which was filed by the bank, more than 12 years from the date of termination had elapsed.

8. It is true that normally, the remedy for the appellant is to raise an industrial dispute under the provisions of the Industrial Disputes Act. The only question for consideration under the first point is as to whether we will be justified or it would accord with the principles of justice to direct a person like the appellant, to approach the Labour Court under the Industrial Disputes Act, after retaining the writ petition filed by the bank, for a period of ten years. If the facts were in dispute probably the lapse of considerable time would not have weighed much because, this Court in exercise of jurisdiction under Article 226 of the Constitution of India would not go into the disputed questions of fact. Therefore, we are of the view, that as the facts necessary for deciding the validity of the order dt. April 1, 1982, are not in dispute and as on today more than 12 years have elapsed, in the interest of justice and also to ensure that the relief, if any entitled to by the appellant, should have it at the earliest. We accordingly, answer the first point in the affirmative.

9. Point No. 2 : We do not consider it necessary to trace the history of the case prior to the order dt. June 8, 1981, because the very order itself states that the appellant had served for a long period prior to the order dt June 8, 1981, and had become eligible for permanency. It will be sufficient to extract the communication dt. June 8, 1981/ July 2, 1981, issued by the Branch Manager, State Bank of India, which reads thus:

Under instructions from the controlling authority, we have to advise that since you have served continuously for 240 days you have become eligible for permanent appointment in the Bank. In this connection, certain formalities will have to be completed which will take time and therefore it has been decided to appoint you as Temporary Watchman at our Kodaikanal Branch. Please therefore, call on us at this office to take

introductory letter and report to that branch immediately.

Thereafter, again on July 31, 1981, the appellant was informed that as per the instructions from the Regional Office letter R.M.I. 12-13432. he

should join duty at Kodaikanal Branch immediately on receipt of the letter as a temporary watchman. He was further advised that he should call on

the personnel Officer, Regional Office, Madurai for an interview within a period of one week from the date of receipt of the letter, failing which, he

would not be considered for PERMANENT APPOINTMENT. Accordingly, the petitioner appeared and he was taken on duty and was re-

appointed on August 8, 1981, at Kodaikanal Branch as watchman. When he was working as watchman, the Bank appears, to have enquired with

the Defence Department about the discharge certificate produced by the appellant and it had issued the following communication:

Madras Regiment Abhilekh Karyalaya, Records - The Madras Regiment, Post Bag No. 1, Wellington (Nilgiris), 643231.

January 16, 1992

2545984/Lib/SDC/SI/NE4

Personnel Officer,

Regional Office, State Bank of India,

Madurai, 625001 (Tamil Nadu).

Issue of discharge Certificate to No. 2545984 Ex Sepoy P. Karuthamayan.

Sir,

1. Further to this Office Letter No. 2545984/Lib/SDC/47/NE.4 dt December 9, 1991.

2. No. 2545984 Ex Sep P. Karuthamayan was enrolled in the Madras Regiment on March 26, 1987 (sic). He overstayed his leave from March

26, 1965: On his surrender on May 8, 1966, he was tried by Summary Court-Martial and dismissed from service with effect from June 30, 1966.

The individual was simultaneously issued with a dismissal certificate bearing serial Number 10742 under Records, the Madras Regiment Letter No.

2545984/25/NE.6 dt June 13, 1967.

3. Again the individual applied for a substitute discharge certificate vide his petition dated June 1, 1973 with the recommendation of Secretary, Ex.

Servicemen Association, Periyakulam Taluk, Madurai Dist., Hence a substitute

dismissal Certificate bearing No. 4522 Was issued to the individual under this office letter No. (2545984)/15/NE-8 dated June 19, 1973.

4. On verification of the discharge certificate received under your letter No. 04999 dt November 7, 1981, it is seen that the same has not been issued either by OC Depot coy, the Madras Regimental Centre or by this office. The stamp of OC Depot Coy and the signature on the discharge certificate have been found forged and not the original one. Further the discharge certificate has not been allotted any serial number.

5. The discharge certificate received under your letter No. 04999 dt November 7, 1981 is returned herewith for further action under Civil law at your end.

Sd. O.M.Chacko, Major Record Officer,
For Officer incharge Records".

On the basis of the above said communication, on April 1, 1982, the Bank straightaway issued an order terminating the services of the appellant, which reads thus:

STATE BANK OF INDIA.

Sri. P. Karuthamayan, Ammapatti Post, Via Andiapatti, Periakulam Taluk, Madurai District.

Mis. No. 66 dated April 1, 1982 by Registered Post & Ack. Due.

Dear Sir,

STAFF: MISCELLANEOUS : We have to advise you that the Military Discharge Certificate produced by you to the Bank had been declared as

forged by the Military Authorities concerned. As you have produced a forged certificate with a view to induce the Bank to take you in

temporary/Permanent service in the bank, it has been decided to terminate you from the service. Accordingly, you were orally informed on March

9, 1982. While we wanted to make cash payment of the Notice pay, we could not do so as you were not available therefor. We therefore enclose

a banker's cheque bearing No. D.C. 896488 of date for Rs. 659/80 representing one month's salary and allowance.

2. We also enclose a Banker's cheque bearing No. 896489 of date for Rs.659/80 being the retrenchment compensation payable to you for 2

years of completed service.

Sd. Branch Manager.

These facts are undisputed. Thus it is an undisputed fact that the service of the appellant were terminated on the specific ground that the appellant

has secured employment on furnishing a forged discharge certificate, thereby causing stigma on him. It is the contention of the learned counsel for

the bank that the aforesaid order amount to termination simpliciter, as the same has been issued on the ground of want of confidence in the

appellant, because he had resorted to forge the discharge certificate for the purpose of obtaining an employment. In such a person, the bank

cannot have confidence. In support of the contention that the aforesaid order of termination amounts to termination simpliciter, the learned counsel

for the bank has placed reliance on a decision reported in *The Tata Oil Mills Co., Ltd. Vs. Workmen and Another*, .There is no doubt that in that

case it was held that the order of termination was passed on the ground of loss of confidence and it amounted to termination simpliciter, but before

doing so, in that case, required opportunity was given to the employee concerned therein. The facts as stated in paragraph 2 of the said decision

would make this position clear:

The material facts leading to the termination of Mr. Banerjee's services lie within a very narrow compass. In November, 1959 Mr. Banerjee was

working in the Assam area and as such, had to work as a salesman at Dhubri, Bongaigoan, Rangia and Tejpur. The appellant expected that as its

salesman Mr. Banerjee should visit dealers in his area and carry on intelligent and intensive propaganda to popularise the sale of the appellant's

products. The appellant has a sale office in Calcutta and the Manager of the said office visits the areas within his jurisdiction to inspect the work of

salesman. Accordingly, Mr. Gupta who was then the manager of the Calcutta Office visited the areas assigned to Mr. Banerjee in the last week of

October. He found that Mr. Banerjee was not working satisfactorily as a salesman. In particular, he noticed that whereas Mr. Banerjee had

reported to the office that the Bongaigoan Stockists had 20 boxes of dried up and deshaped 501 Special Soap which could not be distributed in

the market, he had in fact not opened a single box and had not cared to satisfy himself that the soap had either dried up or had been deshaped. In

fact, Mr. Gupta found that the boxes were intact and he opened them and

discovered that five boxes contained soap which had dried up and had become deshaped, whereas the 15 other boxes were in good condition. Thereupon Mr. Gupta made a report to the Zonal Manager on November 2, 1959 adversely commenting on Mr. Banerjee's work. The said report was in due course forwarded to the Head Office in Bombay. The Head Office then instructed the Calcutta Sales Office by telephone to send for Mr. Banerjee and call for his explanation. Accordingly, Mr. Banerjee was sent for and his explanation taken. Mr. Gupta then made another report expressing his dissatisfaction with the explanation given by Mr. Banerjee. This report was sent on November 24, 1959. The Head Office accepted this report and on December 5, 1959 issued to Mr. Banerjee the order terminating his services.

Therefore, it is not possible to apply the ratio of the said decision to the case on hand in which, the bank, on receiving information from the military authorities, has straightaway proceeded to terminate the services of the petitioner/appellant on the ground as stated above i.e., obtaining employment on producing a forged discharge certificate.

10. The decision reported in Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, cannot also be

applied to the case on hand. In that decision also, an opportunity was given. However, the said decision was wrongly relied upon to point out that

in a situation like this, the proper course is to allow the aggrieved person to have an adjudication under the Industrial Disputes Act. We have

already pointed out that in the facts and circumstances of this case, directing the appellant to have recourse to adjudication under the Industrial

Disputes Act, is to deny the relief to him, as it would take another decade or so, as already more than a decade had elapsed.

11. In the The Workmen of Sudder Office, Cinnamara Vs. Management of Sudder Office and Another, the Supreme Court considered the case in

which charge sheet was served and explanation was obtained and during the pendency of the proceedings, termination was made on the basis of

the charges, by passing an order of termination simpliciter. Therefore, it was held that such a termination was a termination simpliciter; Such is not

the situation in the instant case, because the opportunity whatsoever was afforded to the appellant. Therefore, it is not possible to apply the ratio of

the said decision.

12. The contention of the learned counsel for the bank that the order dated April 1, 1982, amounts to termination simpliciter, cannot be accepted.

The order, as extracted above, clearly states the ground on which the termination is made. The ground stated there, it cannot be disputed that it

casts stigma on the appellant. Further it may also be pointed out that though the order appointing the appellant was temporary, but the facts stated

therein, as already pointed out, entitled the appellant for a permanent appointment. If that be so, it is not possible to hold that the impugned order is

an order of termination simpliciter, as the order in question amounts to dismissing the appellant from service and the same could not have been

passed without holding a due enquiry and without affording an opportunity to the appellant.

13. In Chandu Lal Vs. Management of Pan American World Airways Inc., has been held by the Supreme Court that the termination of service on

the ground of want of confidence in the employee would point out to adverse fact in his character and the standard of conduct expected of him,

and therefore, the contention that such a termination does not amount to causing a stigma, cannot be countenanced. In that case, after holding that

the order of termination was passed without affording an opportunity to the employee concerned, therefore, it was held to be bad in law. However

as the stand of the employer that it had lost confidence in the employee, was instead of reinstating and directing payment of arrears, a lump sum

amount of Rs. 2,00,000/-was directed to be paid by way of back wages as also in lieu of relief of reinstatement. The relevant portion of the

judgment having bearing on the above aspects are as follows.

It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not

warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his

character as the true meaning of the allegation is that the employee has failed to behave upto the expected standard of conduct which has given rise

to a situation involving in loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman, and therefore, the

stand taken by the management that termination for loss of confidence does not

amount to a stigma has to be repelled. In our opinion, it is not necessary to support our conclusion by reference to precedents of textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect.

Retrenchment"" is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore the order of termination is vitiated in law and cannot be sustained.

Ordinarily when the order of termination is quashed a declaration follows that workman continues to be in employment and is, therefore, reinstated in service with full back wages as was held by this Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd.

and Others, . This Court held in Jitendra Singh Rathor v. Shri Baidyanath Auyrved Bhavan Ltd., (1984-II-LLJ-10) that u/s 11A of the Act

advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to circumstances of the case. In Hindustan

Steels Ltd., Rourkela Vs. A.K. Roy and Others, this Court has held that the Labour Court has discretion to award compensation instead of

reinstatement if the circumstances of a particular case make reinstatement inexpedient or improper. In this case, it has been the stand of the

respondent that the management had lost confidence in the appellant and there has been some pleading about the importance of the role of

confidence in the business setup of the respondent. Without examining the tenability of the stand on loss of confidence as a defence to

reinstatement and accepting the allegations advanced by the respondent that there has been loss of confidence, we are of the view that while the

termination of service of the appellant is held to be bad, he may not be reinstated in service. On the other hand he should be adequately compensated.

The quantum of compensation has now to be ascertained. Ordinarily the appellant would have gone back into service with full back wages.

Admittedly he has been out of employment from March, 1974. If he had gone back into service, he would have been entitled to back wages of a

little more more than 11 years. In computing compensation this aspect has to be kept in view. If he was restored to service he would have been

assured of employment for a further term of years, Keeping this as also other relevant aspects in view, we quantify the compensation payable to

the appellant at Rs. 2 lakhs. In almost similar circumstances in respect of two employees working under the Lufthansa German Airlines,

compensation of Rs. 2 lakhs for each worker was fixed by this Court in Civil Appeal No. 650 of 1982 disposed of by us on April 9, 1985

reported in 1985 Lab IC 810. Counsel for the appellant has undertaken to file a statement showing the spread over of the compensation from the

date of the order of termination of service till the end of the present financial year, within a week from to day. After the statement is filed the same

be placed for further directions.

In the course of argument Dr. Anand Prakash wanted us to adjourn the hearing of this appeal on the ground that correctness of some of the

judgments of this Court relating to the true meaning of "retrenchment" has been referred to a larger bench for reconsideration. In the view we have

taken of the matter and the conclusion which we have reached being that it was not a case of retrenchment, there is no necessity of considering the

request of Dr. Anand Prakash for the respondent. Even if a case of retrenchment was made out, we are of the definite view that the question can

be taken to have been settled by a series of authorities of this court and until there is a reversal of the view taken, if at all, there is no warrant for

doubting the correctness of the legal position.

14. Therefore, we are of the view that the impugned order looked from any point of view, is not sustain able. Accordingly Point No. 2, is

answered in the negative.

15. Point No. 3 : As pointed out already, the alternative contention of the bank is that in the event of this Court were to quash the order terminating

the services of the appellant, instead of directing reinstatement, lumpsum compensation towards back wages as well as in lieu of re-in-statement

may be directed. The learned counsel appearing for the appellant submitted that though the appellant was drawing Rs. 659/- as monthly wages, at

the time when his services were terminated, in the event he were to become permanent, his wages would have been enhanced over Rs. 1,000/-

and therefore, if this Court were to direct payment of compensation in lieu of back wages and reinstatement, this aspect of the matter should also

be taken into account. We may point out here that even if he (appellant) were to raise an industrial dispute, as the bank has terminated the services

of the appellant, without holding any enquiry, and in the said dispute the bank were to substantiate the order or dismissal in such an event it cannot

relate back to date of dismissal and it would have to be treated as effective from the date of the order of the Labour Court and not from the date

when the order of dismissal came to be passed. This position is clear from the decision of the Supreme Court reported in *Desh Raj Gupta Vs.*

Industrial Tribunal IV, U.P., Lucknow and another, wherein, it has been held at page 122:

The second ground urged in support of the appeal appears to be wellfounded. The Learned counsel is right in relying on the observations in

Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , if the order of punishment passed by the management

is declared illegal and the punishment is upheld subsequently by a Labour Tribunal the date of dismissal cannot relate back to the date of the illegal

order of the employer. The appellant is therefore entitled to his salary from August 16, 1976 to July 30, 1980 and the entire amount should be paid

by the respondent-bank within a period of three months from to day. If the amount is not paid or offered to the appellant as directed, the

respondent bank will be liable to pay interest thereon at the rate of 12 percent per annum for the future period commencing on the date of expiry of

three months from to day till the same is realised.

If that be so, the bank would be required to pay wages from April 1, 1982 till the date, the Tribunal holds the termination as lawful. We have

already pointed out that the termination of services of the appellant was not at all legal and valid. Therefore, taking into consideration the fact that

the bank will be required to pay full wages from the date of termination till the date of the order that would be passed by the Tribunal or, at any

rate, till this date, for the purpose of computing the wages that would have been drawn by the appellant from April 1, 1982 till this date, it would

be about Rs. 80,000/-. In addition to this, the bank intends to avoid reinstatement. Further, the appellant will be entitled to serve for a further period of three years. Taking all these aspects into consideration, we fix a lumpsum of Rs. 1,25,000/- in lieu of wages and reinstatement which shall be paid within a period of three months from to day.

16. For the reasons stated above the Appeal is allowed and the order dated October 21, 1992 passed by the learned single Judge is set aside.

The Writ Petition No. 5199 of 1984 is allowed. The order dated April 1, 1982 passed by the bank terminating the services of the appellant is

quashed. In lieu of back wages and reinstatement, the bank is directed to pay a lumpsum of Rs. 1,25,000/- to the appellant within three months

from to day, with costs of Rs. 1,000/-.