

(2009) 06 MAD CK 0271
In the Madras High Court
Case No : Writ Petition No. 32174 of 2006

R. Bangaru

APPELLANT

Vs

The Engineer-in-Chief, Water Resources Organisation and
Chief Engineer (General), Public Works Department

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Citation : (2009) 06 MAD CK 0271

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Venkatraman, for the Appellant; P. Gurunathan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner has filed O.A. No. 7453 of 1997, seeking to challenge an order of the respondent, dated 8.8.1997. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 32174 of 2006.

2. On notice from the Tribunal, the respondent has filed a reply affidavit, dated 8.1.98. During the pendency of the O.A, the petitioner did not have the benefit of any interim order. By the impugned order, the petitioner was imposed with a punishment of stoppage of increment for 3 years with cumulative effect, which will also have the effect on his pension.

3. At the relevant time, the petitioner was working as a Junior Engineer at North Section Thanjavur I Sub Division. He was arrested by the Vigilance and Anti corruption Police, Thanjavur on 30.4.90 for demanding and accepting a bribe of Rs. 3000/- from one contractor R.M. Baskaran through the assistance of one Durairajan, who was an another contractor. On the complaint given by R.M. Baskaran, the petitioner and the another contractor Durairajan were arrested and the amounts were recovered from them. The petitioner's case was sent for an

Enquiry by the Commissioner for Disciplinary Proceedings, Chennai.

4. The Disciplinary Tribunal, by a memo dated 15.12.93 framed charges against the petitioner. The Tribunal, after considering the explanation of the petitioner and after considering the evidence of 7 witnesses for the department and 17 documents filed for the department as well as the 2 defence witnesses, including the petitioner and on perusing 9 material objects, came to the conclusion that the first part of the charge, namely that the petitioner demanded bribe was proved. In page 23 of the findings, the Tribunal held as follows:

It is available in the evidence of P.W.2, that the A.O., after a prolonged negotiations, reduced his demand to Rs. 3,000/- and directed PW2 to receive the cheques from Thiru Durai, an Ex-Contractor of PWD, after paying the bribe amount of Rs. 3,000/- to him. PW 2 agreed half-heartedly to act according to the direction of the A.O. Comparing the cheque amount, the demand seemed to be abnormal. The evidence of PW 2 revealed that the disproportionate demand was due to some personal motive which could not be brought to surface by PW 2. I could only infer the reasons for the abnormal demand of the A.O., was that he might have allowed PW 2 to undertake substandard work in the said execution of work or the A.O. might have thought of closing the contractorship of the PW 2 by indirect means or he might have made Thiru Durai, the Ex-Contractor to act as his tout. Anyhow the evidence of PW 2 have to be believed as there was no personal enmity between the two on record.

The demand of the A.O., is well established by the evidence of PW 3, the accompanying official witness (PW 3). When Pws 2 and 3 met the A.O., and sought his instructions regarding payment of bribe money, the A.O., had entertained them in a pleasing manner and instructed PW 2 to handover the bribe money to Thiru Durai and to get back his cheques. Had the A.O., been a fair officer, there was no need for him to entertain a settlement by himself at the office which according to him was an outside affairs between the two contractors viz., PW 2 and Ex-Contractor Thiru Durai as alleged by the A.O.

The evidence of PW 3, Thiru Balu disclosed that the acts and dialogue of the A.O., towards them at the time of their meeting at his office on 30.4.90, the date of trap, before the payment of bribe to Thiru Durai was in no way that he was interested in settling a dispute, that was alleged to have been taken place between PW 2 and Thiru Durai. Instead, it is disclosed more on personal benefits than a transaction in which the A.O., was not at all connected as alleged by him. Thus the demand of the A.O., is well established.

Taking the totality of circumstances into consideration, the first part of the charge relating to the demand of bribe of Rs. 3,000/- by the A.O., is established by the prosecution. Therefore, I hold the first part of the charge is proved against the Accused Officer.

5. Though Mr.S.Venkatraman, learned Counsel for the petitioner made elaborate submissions regarding the perversity in the findings of the Disciplinary Tribunal

and wanted this Court to come to a different conclusion on the proven charge No. 1, this Court is unable to agree with the said submission. In a departmental enquiry, the standard of proof required is only preponderance of probabilities as held by the Supreme Court in *Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another*, . It is necessary to refer to para 33 of the said judgment, which is as follows:

33. Before a departmental proceeding, the standard of proof is not that the misconduct must be proved beyond all reasonable doubt but the standard of proof is as to whether the test of preponderance of probability has been met. The approach of the Labour Court appeared to be that the standard of proof on the management was very high. When both the parties had adduced evidence, the Labour Court should have borne in mind that the onus of proof loses all its significance for all practical purpose.

6. Once it is held that if there is a proper enquiry in which legal evidence is let in, the scope for judicial review over the penalty imposed is very limited. This ratio has been laid down by the Supreme Court in a recent decision in *Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu*, . It is necessary to refer the following passages found in paras 20 and 21, which are as follows:

20. The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. (See *Maruti Udyog Ltd. v. Ram Lal*; *State of Bihar v. Amrendra Kumar Mishra*; *SBI v. Mahatma Mishra*; *State of Karnataka v. Ameerbi*; *State of M.P. v. Sanjay Kumar Pathak* and *Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Dev*.)

21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See *Sangfroid Remedies Ltd. v. Union of India*.)

7. In the light of the above, there is no case made out for interfering with the penalty imposed on the petitioner. Hence, the writ petition stands dismissed. No costs.