

(1990) 11 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 18312 of 1987

R. Govindaraj

APPELLANT

Vs

Government Tool Room Training Centre and another

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 59 FLR 234 : (1990) 3 KarLJ 394 : (1992) 1 LLJ 597

Hon'ble Judges : M.M. Mirdhe, J;M. Rama Jois, J

Bench : Division Bench

Judgement

Rama Jois, J.—In this writ petition, the petitioner who is an employee on the establishment of Government Tool Room Training Center, has prayed for quashing an order by which the penalty of reduction to the starting point of his pay scale had been imposed in a disciplinary proceeding held against him.

2. The facts of the case, in brief, are these : The petitioner was working as a Machinist, Gr. IV at Government Toll Room and Training Centre, Bangalore, in the year 1985. He was the President of the Government Tool Room and Training Centre Unit of Bangalore Mazdoor Sangh, a trade union, registered under the Trade Unions Act. It appears that, on July 16, 1985, one Hemanth Kumar, a workman of respondent No. 1, was taken to police station at 11.45 a.m., in connection with a complaint said to have been lodged against the said workman. All the workmen of the Tool Room got agitated about the taking of Hemanth Kumar to the police station. According to the petitioner, some time earlier also a false complaint had been lodged against Hemanth Kumar and he had been put to considerable harassment and torture in the police station and ultimately it was found that the complaint of theft lodged against him was false. It is in this background, according to the petitioner, the workers got agitated and, therefore, all the workers left the work spot and went to the police station and they returned to work only when Hemanth Kumar was released. For nearly two and half hours the workers had struck work. In the circumstances, disciplinary

proceedings were instituted against the petitioner by issuing an article of charge on September 15, 1985. The relevant portion of the allegations levelled against the petitioner reads :

"CHARGE-SHEET"

It has been reported against you as under :

On July 16, 1985, at 1,40 p.m. you along with Mr. G. Badrinath, Tool and Die Maker, Gr. IV, incited the workmen to strike work and walk out. You gathered the workmen in the corridor in front of the director's office and were addressing them to stop work and walk out. You walked into various departments and forced them to walk out and join the gathering and further led them to strike work and walk out of the Centre's premises. While you were in the act of instigating the workmen to strike work, Deputy General Manager (Adm.) came to you and enquired about what was happening. You along with Mr. G. Badrinath accused the management of having got arrested by the police Mr. N. C. Hemanth Kumar on false charges. Deputy General Manager (Adm.) explained that Mr. N. C. Hemanth Kumar was taken by the police only for interrogation as a witness in connection with the assault of one of our executives. Deputy General Manager (Adm.) also asked you to go back to your work spot along with the others. He even called you and Mr. G. Badrinath separately to his cabin and explained that the management had not got arrested anybody and that you are making mistake in jumping to a conclusion and also you were making mistake in inciting workmen to strike work. He advised you to go back to work along with the rest of the workmen. You refused and led the workmen out of the premises.

The above act of yours, if proved, amount to your committing the following misconducts under the Standing Orders applicable to you and the Centre."

After setting out the above incident, the charge-sheet proceeded to state that the conduct of the petitioner amounted to wilful insubordination and also various other misconducts falling under different standing orders as set out in the article of charges. An Inquiry officers was appointed to conduct the inquiry, who submitted his report on July 30, 1986, in which he held that the petitioner was guilty of the charge framed against him. The disciplinary authority agreed with the findings recorded by the inquiring authority and passed the following order :

"I have also gone through the findings of the Enquiry Officer and fully concur with the findings of the Enquiry Officer on each of the acts of misconduct proved against you. I have gone through your past service records to find if there are any extenuating or mitigating circumstances. I find from the records that there are no extenuating or mitigating circumstances. Each of the acts of misconduct proved against you are grave and serious in nature and warrant severe punishment. Though the management would be fully justified in imposing severe punishment for the acts of misconduct proved against you, taking a lenient view, your grade will be reduced from the Existing Grade IV to Grade V and you will paid basic pay of Rs. 490 in the old Scale and Rs. 960 in corresponding new scale

i.e., at the minimum of the scale in Grade V. Accordingly, your grade has been reduced from Grade VI to Grade V at a basic pay of Rs. 490 in the old scale and Rs. 960 in the corresponding new scale, i.e., at the minimum of the scale.

Since all the charges framed in the charge-sheet dated September 5, 1985, have been proved against you and you are found guilty of the said charges, you are deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for the said period. Hence the subsistence allowance paid for the period September 5, 1985, till date of reinstatement will be recovered from your salary with effect from September, 1987, in suitable instalments.

You are hereby reinstated into service with effect from September 1, 1987."

Aggrieved by the said order, the petitioner has presented this petition.

3. Sri S. B. Swethadri, learned counsel for the petitioner, urged the following two contentions :

(1) The finding recorded by the inquiring authority is violative of the rules of natural justice, for the reason that he had relied on the evidence recorded against the other delinquent employee, Badrinath, though the said evidence had not been adduced in the inquiry held against the petitioner.

(2) Though the management had chosen to frame several charges under different standing orders, in sum and substance the charge levelled against the petitioner was one and the same, namely, that he had resorted to an illegal strike and as in the present case the strike was not at all illegal as it did not contravene any provision of law, the charges themselves were not maintainable and in any event the findings recorded by the Enquiry Officer that the petitioner had resorted to an illegal strike is perverse.

In support of the first contention, the factual basis is found in para-2 of the writ petition. It reads :

"2. The management has examined eleven witnesses in the enquiry proceedings relating to the petitioner. The management has examined 17 witnesses in the enquiry proceedings relating to Sri G. Badrinath. The management has not examined the following witnesses in the enquiry proceedings against the petitioner whom they have examined in the proceedings against Sri G. Badrinath (1) Sri M. H. Prasad, (2) Sri V. Selvaraj, (3) Sri H. S. S. Murthy, (4) Sri N. C. Hemanth Kumar, (5) Sri K. G. Satyamurthy, (6) Sri M. K. Uttappa, (7) Sri C. N. Anand. The key witnesses in the enquiry are K. G. Satyamurthy - the person who gave a complaint to the police and who is an executive (Asst. Workshop Superintendent) in the respondent organisation. The management has not examined Sri N. C. Hemanth Kumar who was taken by the police to the police station on the basis of the complaint given by Sri K. G. Satyamurthy. They have also not produced the copy of the FIR filed in respect of the alleged assault of K. G. Satyamurthy, even though the petitioner called for the same. The non-

examination of Sri. K. G. Satyamurthy and N. C. Hemanth Kumar vitiates the entire proceedings as the incident on July 16, 1985 was due to the alleged arrest of N. C. Hemanth Kumar."

and a specific ground is set out in paragraph 10 of the petition. It reads :-

"10. The findings under point E are vitiated by the non-examination of Mr. Anand, Mr. Hemanth Kumar and Mr. K. G. Satyamurthy in the enquiry of the petitioner. The minds of the workers were exercised by the fact that Sri Hemanth Kumar was taken to police station, in the background, that, about 10 years back, he was severely harassed by the police, for no fault of his. The findings under point E is not based on any consideration of evidence adduced in the enquiry. It is also based on surmise. There is no discussion of any evidence in the conclusion arrived at while dealing with point E. Further, he refers to the evidence of Mr. Satyamurthy K.G. adduced in the enquiry of Sri G. Badarainath. At page 53, the Enquiry Officer refers to the evidence of Sri K. G. Satyamurthy as stating that in his complaint to the police he had named Mr. Hemanth Kumar as a person on whom he had doubt. Sri Satyamurthy K. G. is an Assistant Workshop Superintendent of the respondent organisation and it is in respect of his complaint to the police Mr. Hemanth Kumar was taken to the police station. Thus, it is clear that this sending of Hemanth Kumar to the police station was not in the capacity as a witness but as a probable accused in the case. Subsequently he was let off, does not alter the position. This fact itself disproves Mr. Anand's assertion that Sri Hemanth Kumar was taken to the police station as a witness. The entire discussion regarding point E is based on the evidence adduced in the enquiry of Mr. G. Badrinath and is not based on the evidence adduced in the enquiry against the petitioner. The entire finding is vitiated which in effect vitiates the entire enquiry."

In support of the above ground, the petitioner invited our attention to the relevant portions of the inquiry report. They read :

"As per exhibit M-4 the management decided to hold an enquiry since there was no explanation by the CSE.

The explanation of CSE is as per exhibit W-2. The CSE has denied the allegations against him on going through the charge-sheet. Mr. G. Badrinath, another employee, was also charged with similar charges along with this CSE. Incidentally, I conducted the enquiry of G. Badrinath also. As such my findings are derived from both the proceedings.

In support of the alleged incident as per the charge-sheet, exhibit M-3, the witnesses as shown in Appendix A were examined by the management and cross examined by the CSE. The CSE in defence examined the witnesses as shown in Appendix B and also examined himself as a witness and contented that his explanation, exhibit W-2, should be read along with exhibit S-12. After the closure of enquiry proceedings the management as well as CSE submitted their written arguments dated July 24, 1986, and July 25, 1986, respectively (exhibit

M-11 and exhibit M-13). As already stated above, the findings are based on the evidence led before me in both the enquiries. The written argument of CSE is similar in both the cases.

"Point E

1. The contention of CSE was that Mr. Hemanth Kumar was sent to the police station by the management with an intention to harass him, and also that the management has got arrested Mr. Hemanth Kumar 10 years back where he had undergone the torture by the police. Whereas the answer of Mr. Anand shows that Mr. Hemanth Kumar was only taken as a witness in the assault case of Mr. Satyamurthy and when the police have asked the management to send him, being a government body they cannot refuse to send him. As such they had sent Mr. Hemanth Kumar to the police station, this fact has been elicited in the evidence of defence witnesses itself. Moreover, Mr. Hemanth Kumar who deposed as the witness of the management in the enquiry of Mr. Badrinath stated that the police released him and asked him to send Mr. Govindaraj this CSE. The whole incident has to be centered with the taking away of Mr. Hemanth Kumar by the police. The question arises as to the intention of the management. It is observed that Mr. Satyamurthy who was assaulted, in his deposition as a management witness in the enquiry of Mr. Badrinath, stated that when he was being assaulted Mr. Hemanth Kumar passed by the spot of assault seeing him. The evidence show that though Mr. Hemanth Kumar saw Mr. Satyamurthy being assaulted by some people he did not go to his rescue or did not help Mr. Satyamurthy to take him to hospital or did not even go and enquire him. As such, it is seen that Mr. Satyamurthy in his complaint to the police had named Mr. Hemanth Kumar as a person on whom he had doubt. This shows the intention of the police in taking Mr. Hemanth Kumar to the police station to investigate the matter. I do not see any reason for the management for sending Mr. Hemanth Kumar to police station only with an intention to harass him. Nowhere, the CSE brought out that the management had any enmity against Mr. Hemanth Kumar which warranted to send him to the police station. As such it cannot be construed that there was any motive behind sending Mr. Hemanth Kumar to the police station or the management had an intention to harass him. The CSE failed to bring out and establish this counter he made against the management."

4. Learned counsel submitted that from the above portions of the inquiry report, it is clear that the Enquiry Officer, inter alia, had relied on the statements of K. G. Satyamurthy and N. C. Hemanth Kumar, though they were not among the witnesses who were examined in the enquiry held against the petitioner. Learned counsel submitted that on this short ground alone the inquiry proceedings and consequently the order of penalty imposed against the petitioner are liable to be quashed.

5. In support of the above contention, learned counsel relied on the judgment of the Supreme Court in Associated Cement Co. Ltd. Vs. The Workmen and Another, The relevant portion of it reads (at page 402) :

"If one enquiry had been held against Daulat Singh and Vishwa Nath, it would have been another matter, but if two separate enquiries were held against the two workmen, it would, we think, be very unfair to rely upon the evidence in the enquiry against Daulat Singh when the officers were dealing with the case of Vishwa Nath. The evidence given in Daulat Singh's enquiry was not recorded in Vishwa Nath's presence and Vishwa Nath had no opportunity to test the said evidence by cross-examination. Therefore, it is plain that the final conclusion of the enquiry officers is based on grounds which have introduced an element of unfairness in the whole enquiry. We are, therefore satisfied that the Tribunal was right in holding that the report made by the enquiry officers against Vishwa Nath cannot be accepted as a report after holding a proper enquiry in accordance with the principles of natural justice. That being our view, we must confirm the order passed by the Tribunal in respect of Vishwa Nath."

The above decision fully support the contention of the petitioner.

6. Learned counsel for the management, however, contended that, on the facts of this case, it was distinguishable from the judgment of the Supreme Court. Elaborating the submission, learned counsel stated as follows : In the present case, in respect of the same incident two inquiries were instituted, one against the petitioner and another against one Badrinath. In the case of the petitioner, Badrinath was permitted to defend him as a friend; whereas in the case of Badrinath, the petitioner was permitted to appear and defend him as a friend. Though it was true that seven witnesses, whose names are set out in para 2 of the petition, were examined in the inquiry against Badrinath and not in the inquiry against the petitioner, it was not as though the petitioner was unaware of the evidence given by the said persons, and, in fact, he had cross-examined them appearing for Badrinath.

7. We find it difficult to agree. As pointed out by the Supreme Court, it would have been an entirely different matter if the authorities had chosen to hold a joint enquiry against both the petitioner and Badrinath, as the incident which gave rise to a departmental inquiry was one and the same. But the management chose to hold two separate inquiries. Therefore, it is clear that the witnesses examined in one inquiry cannot be regarded as witnesses examined in another inquiry. Admittedly, Satyamurthy and Hemanth Kumar were examined as witnesses in the inquiry against Badrinath and they were not examined as witnesses in the inquiry held against the petitioner. If the petitioner happened to have been engaged as a friend to assist in the inquiry of Badrinath and he cross-examined the witness in his capacity as a legal assistant to Badrinath, it does not mean that the evidence recorded in the disciplinary inquiry against Badrinath automatically becomes evidence in the inquiry held against the petitioner. Therefore, in our opinion, the Enquiry Officer should have recorded a finding against the petitioner only on consideration of the evidence recorded in the inquiry held against him. But from the proceedings of the inquiry, it is clear that the Enquiry Officer was influenced by the evidence recorded in the case

Badrinath as he has expressly stated that his findings were based on the evidence led before him in both the inquiries. Therefore, in our opinion, there is no escape from the ratio of the decision of the Supreme Court in Associated Cement Companies Ltd.'s case. Consequently, the findings recorded in the inquiry are liable to be set aside on the ground that it violated the rules of natural justice.

8. As far as the second contention is concerned, in view of our finding on the first contention, we consider it unnecessary to go into the second contention, namely, that the charges themselves are untenable, as a lawful strike can never be constructed as unlawful and further in the present case the finding recorded by the Enquiry Officer that even though no rule or law was violated, still the strike was illegal was untenable. We do not express any opinion on the question, as to whether the violation of other standing orders, apart from Standing Order 23(2), can be regarded as charges independent from the charges levelled under Standing Order 22, or as to whether the management has made it appear that the petitioner is guilty of more than one misconduct by stating that the petitioner had committed misconducts under various standing orders, though the incident happened to be one and the same.

9. Now, the point for consideration is whether after quashing the impugned order the management should have the liberty of holding a de novo inquiry. It is settled principle of law that when this Court in exercise of its power under Article 226 of the Constitution quashes any inquiry proceedings or orders passed thereon on the ground that any rule regulating the disciplinary proceedings or a rule of natural justice had been violated, it is always competent for the management to hold a de novo inquiry commencing from the stage at which the illegality was committed. Learned counsel for the petitioner submitted that, on the facts of this case, it may be seen that the allegations levelled against the petitioner did not involve any moral turpitude or does not relate to any other serious type of misconduct of high-handed behaviour, but it was an emotional reaction to the taking of one of their workmen to the police station and, therefore, as the petitioner had suffered sufficiently, the holding of de novo inquiry from the stage at which the illegality was committed might not be justified. He submitted that the petitioner may be denied 50% of the wages withheld, as a result of the non-implementation of the impugned order and that itself would constitute sufficient penalty and the matter may be closed. In our opinion, the submission made by learned counsel is fair, but the matter should be considered by the management.

10. In the result, we make the following order :

(i) The writ petition is allowed.

(ii) The impugned order dated August 19, 1987 (Annexure-D), imposing the penalty of reduction to the minimum of the pay scale of the petitioner, is set aside.

(iii) The petitioner shall be entitled to all consequential benefits including the payment of arrears of salary, re-fixation of pay, etc., flowing from the quashing of the impugned order.

(iv) The petitioner shall, however, be not entitled to 50% of the arrears to which he becomes entitled as a result of the quashing of the impugned order, in the event of the management deciding not to hold de novo inquiry.

(v) There will be no order as to costs.