

(1999) 09 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 10596 of 1991

Rajamanickam S.

APPELLANT

Vs

Tamil Nadu Warehousing Corporation and Another

RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Tamil Nadu Warehousing Corporation General and Staff Regulations, 1965 —
Regulation 13(1)

Citation : (2000) 3 LLJ 1514

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—The writ petition has been filed for a writ of certiorari calling for the records relating to the proceedings No. 1623/83/K4, dated August 22, 1990 of the first respondent confirmed by the second respondent's proceedings in Rc. 20322/90/K4, dated December 6, 1990, and quash the same.

2. The case of the petitioner, as seen from the affidavit filed in support of the writ petition, is that the petitioner joined the services of the respondents/Corporation as Junior Assistant on September 8, 1977 and he was later promoted as Assistant (Deputy Warehouse Manager). According to the petitioner, he worked as Deputy Warehouse Manager in the Warehouse at various centres and finally he came to be transferred to Chennai and his service throughout his career was without blemish. While the petitioner was working as Deputy Warehouse Manager in Aranthangi, the case of the petitioner is that he fell into bad books of Warehouse Manager, one Muruganantham. On February 1, 1986, at the time of disbursement of the pay for the petitioner for the month of January 1986, there was a deduction of Rs. 25 in the pay of the petitioner towards professional tax and according to the petitioner, he demanded the receipt towards the said deduction. The petitioner submitted that the Warehouse Manager, instead of dealing with the petitioner politely, showed his superiority and intimidated the

petitioner, which resulted in exchange of words from both sides, and the petitioner claims that the Warehouse Manager created a record in magnifying the incident. The Warehouse Manager gave police complaint, which was later withdrawn and he also obtained a medical certificate to show that he was assaulted by the petitioner and with the assistance of the subordinates as well as a casual labourers he sent a telegram as well as written communication, dated February 1, 1986, to the head office of the alleged incident. The petitioner was served with the charge-memo on March 11, 1986 and as many as 15 charges were levelled against the petitioner. The petitioner thereafter was suspended from service on March 11, 1986 which was revoked suo motu subsequently by the respondents/ Corporation. The petitioner submitted his explanation to the charge-memo on September 5, 1986 and according to the petitioner nothing had happened thereafter. The petitioner states that on February 23, 1989, after nearly three years an enquiry officer was appointed to enquire into the charges levelled against the petitioner and on conclusion of the enquiry, the enquiry officer submitted his report on August 5, 1989. The respondents/Corporation issued a notice dated July 18, 1990 provisionally deciding to dismiss the petitioners from the service of the respondents/ Corporation and the petitioner was also furnished with the copy of the enquiry report. The petitioner gave his explanation pointing out that all the charges framed against him were foisted by the Warehouse Manager and his company and the first respondent, by order, dated August 22, 1990, passed an order dismissing the services of the petitioner under Regulation 13(1) of the Tamil Nadu Warehousing Corporation General and Staff Regulations, 1965, as amended. The petitioner preferred an appeal against the order of the first respondent before the second respondent and the second respondent, by his proceedings dated December 6, 1990, rejected the appeal. It is against both these orders the present writ petition has been filed on the ground that the incident that has taken place between the petitioner and the Warehouse Manager was only trivial in nature which was magnified in a greater proportion by the Warehouse Manager out of vindictiveness. It is also stated that the charge-memo also included certain incidents said to have taken place in the year 1985 and the earlier incidents were clubbed together along with the alleged incident on February 1, 1986 as if the petitioner has committed a series of irregularities. The petitioner states that there was lack of bona fides and there was delay even in the explanation in conducting the enquiry and the fact that there was delay in initiating action would indicate that first respondent has given up the further proceedings. It is also stated that the enquiry was conducted in violation of the principles of natural justice and report of the enquiry officer shows that the entire proceedings were conducted based on the statement of the witnesses given to the Vigilance Officer at the time of preliminary enquiry and the enquiry officer has also based his conclusion on the basis of the said statement. It is also stated that the order of dismissal is not warranted as there is a delay of nearly four years and the punishment is also disproportionate to the charges levelled against the petitioner.

3. The respondents have filed a common counter-affidavit. It is stated that it is not correct to state that the petitioner had unblemished record of service. It is stated that on February 1, 1986, the quarrel in the office of the Warehouse Manager arose in connection with the deduction of payment for professional tax and it is stated that the petitioner entered the Warehouse Manager's room and pushed him down the chair, threw the telephone instrument on him and kicked him with his foot, with chappals on his head, leg and body and even attempted to murder by strangulation. It is stated that the above acts of assault and intimidation were clearly proved in the enquiry and the police complaint was also lodged and 15 charges were framed against the petitioner and the petitioner was suspended on March 11, 1986 pending enquiry. It is also stated that due to political pressure, the police case in Crime No 43 of 1986 was withdrawn on the instruction that necessary departmental action would be taken against the petitioner. The suspension of the petitioner was also revoked on July 8, 1986 without any prejudice to the disciplinary action and after getting explanation from the petitioner, an enquiry was held and every opportunity was given to the petitioner to disprove the charges by cross-examining the witnesses and the enquiry officer, after making detailed enquiry at Aranthangi Warehouse where the incident of assault occurred, submitted his enquiry report on August 5, 1989. The charges framed against the petitioner were all proved and the petitioner was given a show-cause notice and ultimately, an order of dismissal was passed. It is stated that the incident cannot be regarded as trivial in nature. It is stated that out of 15 charges, 9 charges were proved and 6 charges were dropped. It is also stated that punishment of dismissal was awarded for the proved charges of assaulting the head of office. It is denied that the charges other than charge No 10 were framed due to insufficiency of the gravity of the tenth charge to award maximum punishment and it is stated that such an allegation was baseless. It is stated that the incident on February 1, 1986 itself would be sufficient to punish the petitioner with an order of dismissal. It is also stated that only due to the administrative reasons, there was a delay, but the petitioner was given ample opportunity to defend his case and it cannot be construed that the disciplinary proceedings were closed at any point of time. It is also stated that it took some time to complete the enquiry and considering the grave nature of the charges levelled against the petitioner, it is stated that the petitioner was nowhere prejudiced and the petitioner was given full opportunity to defend his case. It is stated that the enquiry officer has found that the charges were proved and the disciplinary authority also has accepted the enquiry report and the punishment awarded is proportionate to the misconduct on the part of the petitioner.

4. Sri S. Venkataraman, learned counsel for the petitioner, in his fairness, has not seriously disputed that the finding of the enquiry officer is based on evidence, However, learned counsel for the petitioner submitted that the incident had taken place in the year 1986 and the petitioner gave his sufficient explanation in 1986 and the respondents have not taken any action and the enquiry officer was also appointed only in 1989 and the fact that the petitioner's order of suspension was

revoked and he was transferred also clearly shows that the explanation given by the petitioner was accepted. Learned counsel also submitted that the delay of nearly three years would vitiate the enquiry proceedings and the petitioner was prejudiced and for the use of harsh words, the punishment of dismissal is not warranted. Learned counsel also submitted that the past records were taken into account but the respondents have not given notice for taking past records. Learned counsel in this connection relied on the following decisions:

- (i) Andrews v. District Educational Officer, Bangalore 1967 I LLJ 378 (Mys) .
- (ii) E.S. Athithyaraman Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras, .
- iii) Rama Kant Misra Vs. The State of Uttar Pradesh and Others, ,
- (iv) Virudhachalam Co-op. Urban Bank Ltd. Vs. Labour Court and Another,
- (v) Syed Khader Mohiuddin Vs. The Chairman, Tamil Nadu Public Service Commission and Another,
- (vi) B.C. Chaturvedi Vs. Union of India and others, .
- (vii) M. Rajamanickam Vs. Bharat Heavy Electricals Ltd. and Another, .
- (viii) S. Murugadhas Vs. State Bank of India and Another, .
- (ix) Unreported decision of this Court in W.P. No. 6056 of 1988.
- (x) Sri Bharati Mills v. S.S. Mohan, 1991 II LLJ 565.
- (xi) A. Malaichamy Vs. Director of Health Services and Family Planning, Madras and Another, .
- (xii) The Management of Eswaran and Sons Engineers (P) Ltd. Vs. III Addl. Labour Court, Madras and another, .

5. Learned counsel for the respondents on the other hand, submitted that it is not correct to State that the respondents have dropped the proceedings and the charge-memo was issued on March 11, 1986 and the explanation was obtained from the petitioner on September 5, 1986 The evidence was recorded in the year 1987. Further explanation was called on May 30, 1989 and the petitioner has nowhere stated that because of the delay, he was prejudiced and the petitioner attended the enquiry and every opportunity was given to the petitioner and suspension was also revoked, which clearly shows that no prejudice was caused to the petitioner. The second show-cause notice was issued in the year 1990 and after getting the explanation, the order of dismissal was passed. Learned counsel for the respondents therefore submitted that considering the grave nature of the offence, the order of dismissal is justified and the criminal proceedings were dropped only due to the political pressure exerted to withdraw the criminal case. Learned counsel submitted that the findings of the enquiry officer are based on evidence and the delay has not prejudiced the petitioner in anyway and the

punishment is quite justified. It is also stated that there was no motive and there was no intention to wreak vengeance on the petitioner and the decisions relied on by the learned counsel for the petitioner are not applicable to the facts of the case. Learned counsel for the respondents also relied on a decision of this Court in the case of K. Jayaraman Vs. Superintendent of Police, Erode and Another, wherein this Court has held that the delay itself is not a ground to quash the proceedings unless it is shown that, after the completion of the proceedings it has turned out to be a factor which has deprived the right of defence.

6. Before considering the arguments advanced by the learned counsel for the parties and deal with the case laws cited by them, it is necessary to state that 15 charges were framed against the petitioner while he was working as Deputy Warehouse Manager, Aranthangi Warehouse, under Regulation 14(2) of the Tamil Nadu Warehousing Corporation General and Staff Regulations, 1965, for his insubordination toward the superiors and involvement in criminal activities. Out of 15 charges, charge Nos. 1,3,4,5,6,8,9,10 and 15 were proved and charge Nos. 2,7,11,12,13 and 14 were not pressed. All the charges proved against the petitioner are supported by materials on record. The disciplinary authority has found that the proved charges other than charge No. 10 would warrant the maximum; penalty and charge No. 10 has changed the entire complexion and charge No. 10 is a grave charge to the effect that the petitioner used filthy language and assaulted the Warehouse Manager, pushed him down from the chair, threw the telephone instrument on him, kicked him with his foot with chappals on his head, leg and body and even attempted to murder him by strangulation. The enquiry officer found that on the basis of the materials and the evidence of number of witnesses, charge No. 10 was proved. It is also seen that the petitioner brought some political pressure to withdraw the criminal case initiated against him. The enquiry officer has found that the petitioner has assaulted the Warehouse Manager and assaulting the head of an office is highly a serious charge. After considering the explanation given by the petitioner, the order of dismissal was passed. As already observed by me, learned counsel for the petitioner has not seriously disputed the position that the findings of the enquiry officer are based on materials on record. The submission was that there was a delay and hence the proceedings should be quashed.

7. Now, let me consider the case laws cited by the learned counsel for the parties.

(i) Iny Andrews v. District Educational Officer, Bangalore, (supra), the Mysore High Court held that when the disciplinary proceedings were terminated, it is not in the competence of the disciplinary authority to exhume those charges and to make them the subject-matter of another disciplinary proceedings. The Mysore High Court held as under in 1976 I LLJ 378 :

"It may be permissible for a disciplinary authority to discontinue the disciplinary proceeding and start another in respect of the same matter, if there be a defect or other analogous reason for the discontinuance of one proceeding and for the commencement of another. But where the circumstances in which the first

disciplinary proceeding was discontinued support no other inference than that the discontinuance was the outcome of the acceptance of the explanation offered by the petitioner, it is not within the competence of the disciplinary authority to exhume these charges and to make them the subject-matter of another disciplinary proceeding."

This decision of the Mysore High Court has no application to the facts of the case, as the disciplinary proceedings never came to an end after the submission of the petitioner's explanation on September 5, 1986.

(ii) Learned counsel for the petitioner also relied on a decision of this Court in *Athithyaraman v. Commissioner, H.R. & C.E. Department*, (supra), wherein, pending disciplinary proceedings, the delinquent was promoted to a higher post and actual enquiry was also not held and the final order of reversion was passed after lapse of long period and this Court has held that the lapse of seven years without any acceptable explanation, may lead to a conclusion that the entire proceedings were dropped. This Court held as under:

".... .that the failure to hold actual enquiry, the orders regarding delinquent's promotion and long lapse of period in passing final order, were circumstances beyond which reasonable inference could be drawn that delinquent's explanation was accepted and proceedings were dropped. The order of reversion, in the circumstances, could not be sustained."

I hold that this decision is also not applicable, as the proceedings were kept alive by the respondents after the submission of the petitioner's explanation and the evidence was re- corded by the Vigilance Officer subsequently in the year 1987 and the explanation was also called for and the enquiry was also held. Though there was a delay of three years from the date of the incident, the respondents have given proper explanation for the delay and hence, the decision is also not applicable to the facts of the case.

(iii) The decision of the Supreme Court in *Rama Kant Misra v. State of Uttar Pradesh and Ors.*, (supra) has no application, as it was a case of mere use of abusive language. The instant case is not a case of mere filmy language, but also a case of assault on the Warehouse Manager and he was pushed down from the chair by the petitioner, the telephone instrument was thrown upon him, he was kicked with foot, chappals, etc. Therefore, the said decision of the Supreme Court has no application to the facts of the case.

(iv) The decision of the Court in the case of *Virudhachalan Co-operative Urban Bank Ltd. v. Presiding Officer, Labour Court, Cuddalore*, and Anr., (supra) is also a case of use of abusive or indecerous language by a worker and it is also not applicable to the facts of the case. So also, the decision of a Bench of this Court in *S.K. Mohyuddin v. Chairman, Tamil Nadu Public Service Commission and Anr.*, (supra) which is a case of use of intemperate language.

(v) The decision of the Supreme Court in the case of *B. C. Chaturvediv. Union of*

India and Ors., (supra), supports the case of the respondents, wherein, the Supreme Court has held that the delay in initiating disciplinary proceedings, by itself, would not be fatal in cases where the charges are grave and the adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. The Supreme Court in the above case also held that this Court has a power to modify the punishment when it shocks the conscience of this Court.

(vi) This Court in *M. Rajamanickam v. Bharat Heavy Electricals Ltd. and Anr.* (supra), has held that punishment of removal is violative of Article 14 of the Constitution of India while similarly placed subordinate has been let off with increment stoppage and this Court has power to interfere with the order of dismissal.

(vii) A Bench of this Court in the case of *S. Murugadhas v. State Bank of India and Anr.*, (supra), has held that where the order of dismissal shocks the conscience of this Court, this Court has power to modify the punishment by directing reinstatement of the employee in service with continuity of service but without back-wages.

In my view, the above decisions are not applicable to the facts of the case, as the petitioner was charged with grave charges and the charges were also proved. The delay would not render the punishment imposed as disproportionate to charges levelled against the petitioner.

8. Learned counsel for the petitioner also relied upon an unreported decision of D.RAJU, J. (as his Lordship then was) in W.P. No 6056 of 1988, which was affirmed by a Bench of this Court in the case of *Sri Bharati Mills v. S. S. Mohan* (supra), wherein this Court has held that where an employer takes into account the past objectionable conduct of employee and imposed extreme penalty of termination of service but the employee was not put into notice of such intention of employer and where the objectionable past conduct was not made a part of charge-memo, the principles of natural justice would be violated and the order of dismissal was liable to be set aside. In my view, the said decision has no application to the facts of the case. The order of disciplinary authority does not indicate anywhere that he took into account same past misconduct of the petitioner before framing the charges. On the other hand, the charges that were levelled against the petitioner was not only with reference to the past misconduct, but also the incident of assault and the enquiry was held on those charges and on the basis of the report of the enquiry officer, the disciplinary authority has found that the charges were also proved. Hence, it is not a case where the disciplinary authority has taken into consideration certain past misconduct without putting on notice to the petitioner the past misconduct before passing an order of dismissal. Hence, the decision of the learned single Judge in W.P. No. 6056 of 1988 which was affirmed by a Division Bench of this Court has no application to the facts of the case. Learned counsel for the petitioner relied upon a decision of this Court in *Management of Easwaran Ltd. v.*

Third Additional Labour Court and Anr. (supra), where the past record of service was taken into account by the management only for the purpose of imposing the extreme penalty of dismissal and the order of punishment would be vitiated because no notice was given to the worker before taking into account the past record of service and it would prejudice the worker. As already held by me, this decision has no application as the past record of the petitioner was taken into account after notice to the petitioner.

9. The only point remains to be considered is whether there was any delay and the delay has vitiated the entire proceedings. As already held by me, there are no materials to show that the respondents have terminated the disciplinary proceedings already initiated. After framing of the charges and after getting the explanation from the petitioner, the vigilance Officer conducted the enquiry, collected the statements of the witnesses and the enquiry officer was also appointed and the petitioner was given full and ample opportunity to cross-examine those witnesses and naturally it took some time. The fact that the respondents have been pursuing the matter even after dropping of the criminal proceedings shows that the proceedings were not terminated by the respondents at any point of time. That apart the petitioner has also not established that the prejudice was caused by the delay by proving that he was prevented from leading any evidence or examining any witnesses on his side and he was not able to put forward his defence effectively because of the alleged delay. This Court in the case of K. Jayaraman v. Superintendent of Police, Erode and Anr., (supra) has held that the delay by itself is not a ground to quash the charges unless it is shown that after the completion of the proceedings, it has turned out to be a factor which has deprived the right of defence. This Court has held that no greater emphasis could be laid on the delay and what is important is to find out whether in a particular case based on the oral and documentary evidence adduced, the finding of guilt had been arrived at and unless the delinquent was able to establish that he was unable to defend himself because of the delay, the delay by itself would not be a ground to quash the proceedings. This decision was rendered by a Division Bench of this Court and I am bound by the ratio of the Division Bench. Learned counsel of the petitioner also relied on a decision of this Court in A. Malaichamy v. Director of Health Services and Family Planning and Anr., (supra) and in that case, after the commencement of the enquiry, no progress was made for a period of five years and on the facts and circumstances of the case, this Court has held that disciplinary proceedings should be quashed. This decision has also no application to the facts of the case, as seen earlier that the respondents have not kept quiet, but proceeded further with the collection of materials after getting explanation from the petitioner. As already noticed, the Supreme Court in Chaturvedi case (supra), has also held that the delay by itself is not a sufficient ground to quash the charges. I therefore hold that the respondents have properly explained the delay and hence, the submission of the learned counsel for the petitioner, on this aspect, is not well-founded and hence, the same is rejected.

10. In the result, the writ petition fails and the same is dismissed. No costs.