

(2014) 07 TP CK 0022
In the Tripura High Court
Case No : Writ Petition (Civil) No. 479 of 2005
Sandhya Das VsThe State of Tripura

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 408

Citation : (2014) LabIC 4035

Hon'ble Judges : Deepak Gupta, C.J.;S. Talapatra, J

Bench : Division Bench

Advocate : B. Das, Sr. Advocate and D. Chakraborty, Advocate for the Appellant;
A.K. Bhowmik and A. Banik, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.

1. By means of this writ petition the petitioners, who are the widow and sons of Late Sukumar Ranjan Das, have challenged the orders whereby penalty of termination from service was imposed upon Late Sukumar Ranjan Das on 15.01.1988 and also the appellate order, dated 08.12.1988, whereby the appeal filed by Late Sukumar Ranjan Das was dismissed. Consequential relief has been sought that all financial benefits be paid to the petitioners. At the outset, we may notice that Mr. A.K. Bhowmik, learned senior counsel appearing for the respondents, has raised a preliminary submission that this petition is not maintainable and is barred by the principles of res judicata because an earlier writ petition being Civil Rule No. 320 of 1988 filed by Sukumar Ranjan Das was dismissed by a learned single Judge of Agartala Bench of the Gauhati High Court. He, therefore, submits that the petition itself is barred by the principles of res judicata and no second petition can be filed. On the other hand Mr. B. Das, learned senior counsel appearing for the petitioners, contends that the cause of action in respect of the two writ petitions is different inasmuch as the present writ petition was filed after the order of acquittal was passed. He also submits that technicalities should not be allowed to come in the way of imparting justice. Mr. Das further submits that disciplinary proceedings and criminal proceedings in respect of identical charges cannot be permitted to be carried out simultaneously

and if a person has been acquitted in the criminal case then disciplinary proceedings must be decided in his favour. He lastly submits that the appellate order is not a reasoned order and, therefore, should have been set aside.

2. At the outset, we may mention that Late Sukumar Ranjan Das was serving as Clerk-cum-Cashier in Netaji Subhas Vidyaniketan, Agartala a 100% government aided school. He was placed under suspension and disciplinary proceedings were initiated against him for misappropriation of funds. It appears that Late Sukumar Ranjan Das filed Title Suit No. 98 of 1987 challenging the legality of the disciplinary proceedings. He also filed a petition for grant of interim relief restraining the respondents from continuing with the disciplinary proceedings but no order was passed in his favour. Therefore, the disciplinary proceedings carried on and finally the inquiry officer came to the conclusion that Late Sukumar Ranjan Das had misappropriated the funds and, thereafter, the disciplinary authority imposed punishment of termination of service. The appeal filed by the petitioner was dismissed as mentioned hereinabove. Thereafter, Late Sukumar Ranjan Das filed a petition under Article 226 of the Constitution of India which was numbered as Civil Rule 320 of 1988. By means of this petition he challenged the order of his suspension dated 23.02.1987, the memo of proceedings dated 01.06.1987, the order of termination dated 15.01.1988 and the order of the appellate authority dated 28.11.1988. The last two orders are the same orders which are challenged in this writ petition.

3. The learned single Judge by a detailed and elaborate judgment came to the conclusion that there was no merit in the petition. With regard to the contention of the petitioner that criminal proceedings and departmental proceedings could not be carried out simultaneously, the learned single Judge held as follows:

"9. On the other hand, it appears that the departmental proceeding was completed by 15.01.1988. In the criminal case which was filed on 25.02.1987 charge was framed on 11.07.1991 and the judgment of that criminal case holding the petitioner guilty was passed on 31.08.1993. It is an admitted fact that order of punishment in the departmental proceeding was passed on 15.01.1988 and the appellate authority also disposed of the appeal by its order dated 28.11.1988 (Annexure-1). From this fact, it is clear that the department proceeding was over before the charge was framed in the criminal case. So, there was no scope of interference with the course of justice in the criminal case that was pending before the court."

Thereafter, the learned single Judge relied upon two judgments of the Apex Court and finally held as follows:

"13. In the present case, it is true that charge in the departmental proceeding as well as in the criminal case was substantially the same. But from the above quoted passage, it would appear that pendency of the court's proceeding does not bar the taking of disciplinary action. Where the civil court rejected the prayer for temporary injunction of the petitioner, if he was really aggrieved could move

the higher court, but he did not do so. Moreover, the departmental proceeding was over before the charge was framed in the criminal case.

14. No other point has been argued by Mr. Chakraborty, the learned counsel for the petitioner.

15. For the reasons stated above, I see no merit in this writ petition which is accordingly dismissed with no costs."

This judgment has attained finality and was never challenged by Sri Sukumar Ranjan Das. He accepted this judgment to be correct. In the meantime, criminal proceedings were continued against Sri Sukumar Ranjan Das and he was convicted by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in Case No. C.R. 60 of 1987 under Section 408, I.P.C. and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 25,000/-, in default of payment of fine he was to undergo further simple imprisonment for 2 years.

4. Sri Sukumar Ranjan Das filed an appeal challenging his conviction and sentence imposed upon him. During pendency of the appeal he died and the appeal was prosecuted by his legal heirs. The appellate Court acquitted Sri Sukumar Ranjan Das on the following grounds:

"The angle on which the Id. court below has seen the conduct of the appellant seems to me to be not the correct approach. Invariably there was shortage of fund and other possibilities of error, mistake and proper accounting not being excluded, a sole presumption of misappropriation cannot be taken. The conduct of the appellant thereby does not lead a man of reasonable prudence to hold such a shortage was only mis-appropriation. Ample doubt cast in the mind of the Court whether such shortage followed because of misappropriation only or for any other extraneous reasons which could have been detected had the accounts were audited or verified and authenticated by any Accounts Experts.

Unless such doubt is removed, this Court is not in a position to see the shortage as misappropriation. Shortage of fund shall not necessary be mis-appropriation and therefore the benefit of doubt must be given to the convict-appellant.

Therefore, disagreeing with views of the Id. court below this Court is of firm opinion that a case of misappropriation is not well established and the appellant is entitled to the benefit of doubt."

It is thus obvious that though the appeal was allowed, Sukumar Ranjan Das, who had by then died, was only given benefit of doubt. Thereafter, the heirs of Sukumar Ranjan Das filed the present writ petition.

5. We are clearly of the view that this writ petition is not maintainable and is barred in view of the decision in Civil Rule 320 of 1988 which has attained finality. A judgment may be right or wrong but once it attains finality, it cannot be challenged in collateral proceedings. A judgment of a learned single Judge of

the High Court can only be challenged before the Division Bench or before the Apex Court. The judgment in Civil Rule 320 of 1988 was delivered on 13.06.1996 when Sukumar Ranjan Das was alive. He did not challenge the said judgment and accepted the same to be correct. The points raised before us are substantially the same and, therefore, we cannot interfere in the matter.

6. Reliance placed by Sri B. Das, learned senior advocate, on the judgment of the Apex Court in K. Rudrappa Vs. Shivappa, is totally misplaced. In that case, the Apex Court held that technical objections should not come in the way of doing full and complete justice between the parties. These observations of the Apex Court have to be read in the context in which they were made. In the case before the Apex Court, there was delay in filing the application for setting aside the abatement of the appeal. Though an application was filed for setting aside abatement but no prayer was made for condonation of delay. The District Court rejected the application on the ground that there was no application for condonation of delay. There is a lot of difference between the facts of that case and in the present case. In the case before the Apex Court, steps had been taken but only because an application for condonation of delay had not been filed the application was rejected on the ground that there was no prayer for condonation of delay. The Court held that such technical objections should not be permitted. The facts of the present case stand on a totally different footing. Here a party approached the High Court and the matter was decided on merits against the party. That judgment has attained finality. Now, the legal heirs of Late Sukumar Ranjan Das cannot urge that the earlier judgment should be nullified by allowing their writ petition. This would make a complete mockery of the law.

7. We may also add that when the earlier writ petition was decided, Sukumar Ranjan Das had not been convicted. His removal from service was not based on the conviction in the criminal case but based on evidence laid in the disciplinary proceedings.

8. Even on merits, we are not at all in agreement with Mr. Das. There is no hard and fast rule that in all cases disciplinary proceedings cannot be carried out when criminal proceedings are pending. This depends on the facts of each case.

In R.P. Kapur Vs. Union of India (UOI) and Another, a constitution Bench of the Apex Court held as follows:

"If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal disciplinary proceedings may follow, where the acquittal is other than honourable."

This judgment is of 5 Judge Bench and it clearly mentions that even if a person is acquitted in criminal proceedings, disciplinary proceedings may be carried out where the acquittal is other than honourable. In the present case, Sukumar Ranjan Das was not acquitted on the ground that there was no case made out against him but on the ground that the prosecution had failed to prove its case

beyond reasonable doubt. Sukumar Ranjan Das, after his death, was given the benefit of doubt by the Appellate Court.

9. In *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, a Bench of three Judges of the Apex Court held as follows:

"6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry 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 inquiry and 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 inquiry is not taken away nor is its direction (discretion) in any way fettered."

10. Thereafter, a Bench of two Judges in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, held that where the criminal case and departmental proceedings are based on identical set of facts and where the recovery in the departmental proceedings was to be proved on the basis of the statements of the police officers and the "Panch (seizure)" witnesses, the acquittal in the criminal case would mean that the person should get benefit of such acquittal in departmental proceedings. It would be pertinent to mention that in Paul Anthony's case, the evidence led before the criminal Court and in the disciplinary proceedings was identical.

11. A three Judge Bench of the Apex Court in *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, held that the Labour Court after examining the judgment of a judicial magistrate was justified in coming to the conclusion that the order of the Criminal Court had no bearing on the proceedings before the Labour Court. Thereafter, in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, the Apex Court held that acquittal of an employee by the Judicial Magistrate did not ipso facto absolve him from disciplinary action and merely because a person was acquitted in a criminal case, the order dismissing him from service could not be quashed and set aside.

12. Mr. Das has placed reliance on the judgment of the Apex Court in *G.M. Tank Vs. State of Gujarat and Another*, In *G.M. Tank's* case, the departmental proceedings and criminal proceedings are based on the same facts and the witnesses were also identical. The same witnesses were examined in the disciplinary proceedings as well as in the criminal case. The Court held that the case was of no evidence and once in a criminal case the appellant had been acquitted, disciplinary proceedings must end in his favour.

13. Each case has to be decided on its own facts, as held by the Apex Court. In

the present case, the sole question was whether the deceased Sukumar Ranjan Das had misappropriated the funds of the school. He had virtually in his reply admitted that he was bound to repay some of the amount. Even if criminal intention may not be there, a person cannot retain the money of the employer and his services can be terminated for negligence of duty and misconduct as provided by the rules. The same set of facts and evidence may lead to two different proceedings i.e., disciplinary proceedings and criminal proceedings. In disciplinary proceedings, only misconduct has to be proved whereas in criminal proceedings criminal intention also has to be proved beyond reasonable doubt. In disciplinary proceedings the termination order can be based on preponderance of evidence. In the present case, there is sufficient material to hold that the order of termination which was passed even before the charge was framed in criminal proceedings was a legal and valid one and, therefore, at this stage, more than two decades after the same is passed, the same cannot be set aside especially when the earlier petition filed by Sukumar Ranjan Das has already been dismissed. Therefore, we find no merit in the petition which is accordingly rejected.