

(1984) 12 KL CK 0014
In the High Court Of Kerala

Saran	Vs	APPELLANT
Cochin Refineries Ltd.		RESPONDENT

Date of Decision : 11-12-1984

Acts Referred:

Citation : (1986) 2 LLJ 257

Hon'ble Judges : Bhaskaran Nambiar, J;Balakrishna Menon, J

Bench : Division Bench

Judgement

Balakrishna Menon, J.—In this appeal by the plaintiff, the only question urged by the learned Counsel for the appellant is that the termination of the plaintiffs services from the 1st defendant Company, based on the findings of the 2nd defendant, at a domestic enquiry, without affording the plaintiff an opportunity to have the services of a legal practitioner of his choice for his defence is vitiated and therefore the plaintiff is entitled to the relief prayed for in the plaint.

2. The plaintiff was appointed as a Mechanical Superintendent in the 1st defendant Company and he entered service on 17th April, 1967. The terms of the contract of appointment are contained in Ext. A1 offer made by the 1st defendant Company and accepted by the plaintiff. As per Ext. A1 the plaintiff is to be on probation for one year during which period the appointment is terminable without notice and after confirmation with one month's notice on either side. Both sides agree that the petitioner is not a workman entitled to the benefits of the Industrial Disputes Act. It is also agreed that there are no rules or regulations relating to the conditions of service of persons like the plaintiff in the 1st defendant Company. His appointment and conditions of service are purely contractual and are governed by the terms of Ext. A1 offer for appointment accepted by the plaintiff.

3. Ext. B23, dated 1st October, 1971 is a memo of charges issued to the plaintiff by the Managing Director of the 1st defendant-Company. Ext. B23 was accompanied by a statement of facts on the basis of which charges were framed against the plaintiff that (1) he had created false documents to alter his date of

birth as originally entered in his application presented to the Company seeking employment and (2) he had sold his private car to a contractor usually engaged by the 1st defendant-Company at an exorbitant price and rendered himself under an obligation to the contractor to grant him favours at the cost of the Company. The 1st defendant nominated the 2nd defendant the Commissioner of Departmental Enquiries, Government of India, Central Vigilance Commission, New Delhi, to conduct ii domestic enquiry into the charges framed against the plaintiff, and one T.P. Jacob, who was at the relevant time an Inspector of Police in the C.B.I, as Presenting Officer on behalf of the Company. Neither the Enquiry Officer nor the Presenting Officer was on the pay rolls of the Company. They were independent personnel whose services were secured by the 1st defendant-Company to hold a domestic enquiry against the plaintiff. The plaintiff was allowed to be represented by Sri Padmakumar, a Senior Officer in the service of the 1st defendant-Company. The plaintiffs request for permission to avail of the services of a legal practitioner for his defence was rejected. Sri Padmakumai appeared on behalf of the plaintiff at the domestic enquiry. Witnesses were examined on behalf of the Management and cross examined on behalf of the plaintiff. The plaintiff had also examined defence witnesses. Documents were marked at the domestic enquiry. The 2nd defendant Enquiry Officer came to the finding that the plaintiff was guilty of both the charges levelled against him. Accepting the finding of the Enquiry Officer, the 1st defendant-Company terminated the service of the plaintiff after affording him a further opportunity to show cause why the punishment proposed should not be imposed on him. The present suit is filed by the plaintiff for a declaration that his services were unlawfully terminated by the 1st defendant and for damages that the Court may fix for such unlawful termination.

4. The suit is contested by the 1st defendant-Company. The defence is that in Ext. B2 Application submitted by the plaintiff offering his services to the Company, he had shown his date of birth as 26th February, 1917, The same was the date of birth that he had mentioned in the proforma filled up at the time of his joining the 1st defendant-Company. He had later scored off the date of birth as originally entered and had entered the date 12th April, 1919 in the column relating to date of birth. He had thus tampered with and had altered his date of birth in the records maintained by the 1st defendant-Company. He had also taking advantage of his position as an officer in the service of the Company sold his private car at a high price to a contractor of the Company for favours to he bestowed on him at the expense of the Company. Both these charges were found proved by the Enquiry Officer an independent agency whose services were requested for and obtained by the 1st defendant-Company to ensure that the enquiry is impartial. It was after giving the plaintiff a further opportunity lo show cause that the punishment of termination of service was imposed on him accepting the findings at the domestic enquiry.

5. The lower court found that the domestic enquiry was proper and it is not vitiated for any of the reasons urged by the plaintiff. The relationship between

the 1st defendant Company and the plaintiff is that of Master and Servant. There were no rules or regulations governing the service conditions of the plaintiff and the termination of his service on acceptance of the finding at the domestic enquiry is perfectly legal and nothing has been made out to declare the termination of service of the plaintiff as unlawful. The suit was accordingly dismissed.

6. As earlier stated the only point urged before us by the learned Counsel for the appellant is that the domestic enquiry held by the 2nd defendant against the plaintiff is vitiated for the reason of the rejection of his prayer to permit him to engage a lawyer for his defence. Counsel for the appellant relies on the decision of the Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, in support of his proposition that an employee against whom disciplinary proceedings are taken by the Management is entitled to defend himself at the domestic enquiry by availing of the services of a legal practitioner of his choice. The facts of the case before the Supreme Court as disclosed in paragraph 3 of the judgment, show that the management namely the Board of Trustees, Port of Bombay was represented at the domestic enquiry by its Legal Adviser and a Junior Assistant Legal Adviser. Both these persons were trained in law and were on the pay-rolls of the employer. The request of the delinquent employee for permission to avail of the services of a legal practitioner was declined and it is in that context the Supreme Court stated at page 6 of 1983 ILJ 1

In our view we have reached a stage in our onward march to (airplay in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated,

In the present case the domestic enquiry was conducted by an independent agency namely the 2nd defendant whose services were obtained to ensure that the enquiry is impartial. The Presenting Officer is also not a person on the pay-rolls of the 1st defendant-Company, He was at the relevant time an Inspector of Police in the C.B.I, There is no complaint against either of these officers. We are not prepared to accept the plaintiffs case that for the reason of his experience in assisting prosecutions, the C.B.I. Inspector must be deemed to be a person legally trained. The plaintiff had the services of a Senior Officer of the Company for his defence. He had fully participated at the enquiry and also had his witnesses examined.

7. There are no Rules or Regulations governing the conditions of service of the plaintiff. The relationship between the parties is one of master and servant, governed by the terms of the contract between the parties. Domestic enquiry was held by an independent authority. The Presenting Officer was not a lawyer, nor was he on the pay-rolls of the employer. The plaintiff had the services of a

Senior Officer of the Company for his defence. The Enquiry Officer is under no obligation to accede to the plaintiffs request for permission to engage a lawyer, and the refusal of permission in the present case does not amount to a violation of the principles of natural justice.

8. In *R. v. Secretary of State for the Home Department and Ors. ex parte Tarrant and Anr.* and *R. v. Wormwood Scrubs Prison Board of Visitors, ex parte Anderson and Ors.* 1984(1) All E.R. 799 a question arose whether convicted prisoners charged with grave offences against prison discipline, were entitled to legal representation before the Board of Visitors enquiring into their conduct. Kerr Lord Justice stated at page 824:

I therefore turn to the second question whether there is an absolute bar to the grant of legal representation or whether there is a discretion in boards of visitors to grant such requests. As it seems to me, under our law, including the principles of natural justice, there cannot be any answer to this question other than that boards of visitors have a discretion to grant requests for legal representation in appropriate cases. This must be so for at least two reasons. First, since there is no statutory provision to the contrary, Boards of visitors are masters of their own procedures and are entitled to decide for themselves whether or not to grant such requests. In the same way as any other tribunal or body inquiring into any charges against anyone, they have an unfettered right to decide whom they will hear on behalf of the persons charged.

We are fairly clear in our minds that in the absence of rules it is in the discretion of the Enquiry Officer to permit legal representation at a domestic enquiry unless the delinquent officer is pitted against a legally trained person engaged by the management as Presenting Officer. In the present case both the Management and the plaintiff were represented by persons not legally trained, the charges to be enquired into were simple and what was required to be ascertained at the enquiry was only as to whether the plaintiff had tampered with the entry relating to his date of birth in the records of the Company and whether he had sold his private car to a Company contractor at such a price as is reasonable to infer that he was obliged to the contractor to be benefitted at the expense of the Company. There were no questions of law much less any complicated question of law to be decided at the domestic enquiry.

We confirm the judgment and decree of the court below and dismiss the appeal. There will be no order as to costs.