

(2011) 06 MAD CK 0525

In the Madras High Court

Case No : Writ Petition No. 28972 of 2007 and M.P. No. 1 of 2007

S.S. Kulandaisamy

APPELLANT

Vs

Assistant Chief Manager (Hotel) and The Regional Manager
(Central) The Tamil Nadu Tourism Development Corporation
Ltd.

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 06 MAD CK 0525

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Ramachandran, for the Appellant; A. Vijayakumar, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The Petitioner is working in the Hotel Tamil Nadu Nadu, Thanjavur under the control of the second Respondent since 2001, in charge of Bar Section. He was appointed in the post of Room Boy-cum-waiter. Additionally, he was given in charge of Bar Section. There is a Bill Clerk-cum-Cashier apart from Store Keeper.

2. It is stated that the Petitioner was asked to work as Bill Clerk-cum-Cashier along with his duty as Room Boy-cum-Waiter. The second Respondent issued an order of suspension against the Petitioner on 13.12.2004, informing that grave charges were contemplated against him. Thereafter, in the proceedings dated 11.1.2005, the second Respondent issued charge sheet against the Petitioner containing five charges alleging (i) that the Petitioner has misappropriated a sum of Rs. 943/- by issuing actual bill for Rs. 1395/- by making a carbon entry of Rs. 452/- during the period of sale between 5.6.2004 and 30.7.2004; (ii) that he sold adulterated drinks; (iii) that he tampered records; (iv) that he omitted to make entry in the register and thus caused loss to the Corporation; and (v) that

he committed misuse of powers.

3. The Petitioner was directed to give explanation within 15 days and the Petitioner sent a letter on 25.1.2005, to the second Respondent to furnish copy of the complaint with the bills, based on which charges were framed. The Petitioner was given a copy of the complaint and also the customer bills and thereafter, he submitted his explanation on 17.3.2005, denying the charges. In respect charges, it is his case that the first charge is based on a forged photo copy and other charges are based on presumption.

4. The Senior Manager, Tamil Nadu Tourism Development Corporation, Krishnagiri was appointed as a Enquiry Officer and the enquiry was fixed on 8.7.2005 at Hotel Tamil Nadu, Thanjavur, in which the Petitioner attended. He was furnished with the enquiry report along with memo dated 8.10.2005 and the Enquiry Officer found all the charges proved. The further explanation submitted by the Petitioner on 27.10.2005 and the second Respondent passed final order on 31.3.2006, imposing punishment of stoppage of increments for four years with cumulative effect.

5. It was, against the order of second Respondent, the Petitioner filed an appeal on 27.4.2006 before the first Respondent. The first Respondent, modified the punishment into one of stoppage of increments for two years with cumulative effect on 10.7.2007. It is, against the said order, the present writ petition has been filed on the ground that the Petitioner was holding the post of Room Boy-cum-Waiter and no responsibility of making entries and cash receipts was attached and he was only looking after the sale on oral instructions, in respect of which proceedings were initiated on the basis of anonymous letter relying on the photo copy of the customer bill and the copy of bill was not furnished to the Petitioner. It is stated that all the charges are based on two points viz., the Petitioner has not made proper entry and the Petitioner has sold adulterated stock. It is stated that in the disciplinary proceedings that the photo copies of receipts were relied upon, which can be fabricated and the entire proceedings are mala fide and in any event, the punishment is disproportionate to the charges.

6. In the counter affidavit filed by the Respondents, it is stated that the Petitioner was appointed as Room Boy-cum-Waiter in the Hotel Tamil Nadu and there was a complaint of malpractice in billing and misappropriation of cash in the Bar was received and enquiry was initiated and charges were framed against the Petitioner and the Petitioner's request for perusal of complaint was also allowed on 9.3.2005, which was acknowledged by him and thereafter, the Petitioner submitted his explanation on 17.3.2005 and on 8.4.2005, not being satisfied with the explanation of the Petitioner, the Enquiry Officer was appointed, who conducted the enquiry on 24.6.2005 and the Petitioner was given full opportunity to participate in the enquiry. It is stated that the Enquiry Officer found him guilty and based on the enquiry report, the Petitioner was called for further explanation on 18.10.2005, which was submitted by him on 27.10.2005 and thereafter, on 31.3.2006, the second Respondent imposed the punishment of postponement of

increments for four years with cumulative effect. It is stated that the Petitioner was ordered to be reinstated and on appeal, the punishment was reduced into one of stoppage of increments for two years. It is also stated that there was no violation of statutory provisions or the principles of natural justice. It is denied that the Petitioner was not given any instructions to maintain accounts and register and the Petitioner, though he was appointed as Room Boy-cum-Waiter, having worked for quite number of years, he cannot plead ignorance after committing wrong. It is stated that the Petitioner also admitted that he was in charge of duty in the Bar for several years and that he was instrumental for the increase in revenue from the Bar at Hotel Tamil Nadu and he cannot plead ignorance. It is stated that the charges are relating to misappropriation of a sum of Rs. 953/- making improper entries and having sold adulterated stock and the charges were framed after a detailed enquiry.

7. On the facts and circumstances of the case, on a reference to the impugned order of the second Respondent as well as the appellate authority dated 10.7.2007, it is clear that the Petitioner has been given full opportunity in the enquiry. While deciding about the departmental proceedings and the punishment imposed, it is not for this Court to reappreciate the evidence except in cases where there is violation of the principles of natural justice or the order is perverse or patently illegal. The departmental proceedings are not expected to be done by adhering to the strict principles of evidence. The standard of proof is preponderance of evidence and the finding should not be perverse or unreasonable or it should not be based on conjectures and surmises, as it was held by the Supreme Court in *Union of India v. Gyan Chand Chattar* (2009) 12 SCC 78. The relevant portion of the judgment is as follows:

35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

8. On the facts of the present case, the second Respondent while passing the original order, has recorded the reasons which cannot be said to be perverse. It is only the decision making process and not the decision which can be interfered with under Article 226 of the Constitution of India by this Court, as it was held by the Supreme Court in *Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other*, . Under Article 226 of the Constitution of India, this Court cannot sit in appeal over the decision as appellate authority and reappreciate the evidence. The relevant portion of the judgment is as follows:

6. Under these circumstances, the question arises whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

9. Inasmuch as there is substantial compliance of the principles of natural justice, on the facts and circumstances of the present case, there is absolutely no reason for this Court to interfere with the impugned order, especially when the charges alleged against the Petitioner were misappropriation of funds and fabrication of records. The contention of the learned Counsel for the petitioner based on the judgment of the Supreme Court in State of Uttaranchal and Others Vs. Kharak Singh, , that the enquiry was only an empty formality, is not acceptable on the facts of the present case.

In the enquiry, the management has been represented by its presenting officer and the Petitioner himself has participated. Therefore, it cannot be said that the procedure contemplated for disciplinary enquiry has not been followed by the Respondents. Accordingly, the writ petition fails and the same is dismissed.

No costs. Connected miscellaneous petition is closed.