

(2002) 02 KAR CK 0061
In the Karnataka High Court
Case No : Writ Appeal No. 7534 of 2001

The Mysore Paper Mills Limited, Bhadravathi

APPELLANT

Vs

G. Shekar alias Gyana Shekharan

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4-A)

Citation : (2002) 93 FLR 387 : (2002) ILR (Kar) 1069 : (2002) 2 KarLJ 469 :
(2002) 2 KCCR 1121 : (2002) 2 LLJ 235

Hon'ble Judges : N.K. Jain, C.J.; N. Kumar, J

Bench : Division Bench

Advocate : M.R.C. Ravi, for the Appellant; Sheela Krishna, for the Respondent

Judgement

N.K. Jain, C.J.—This writ appeal is filed against the order dated 19-10-2001 passed by this Court in W.P. No. 13169 of 2001 wherein the learned Single Judge while setting aside the grant of 50% back wages, ordered that the workman is entitled for wages from the date of award i.e., 27-12-2000 till the date of reinstatement and enhanced the litigation costs from Rs. 3,000/- to Rs. 10,000/-.

2. It is alleged by the appellant-Management that respondent-workman was charge-sheeted for certain misconduct under Clause XIV(14) and (47) of the Standing Orders. On enquiry he was found guilty of assaulting his superior official and therefore an order of dismissal was issued to the workman. The workman challenged the dismissal u/s 10(4-A) of the Industrial Disputes Act. The Labour Court after recording evidence allowed the application, setting aside the order of dismissal and directed reinstatement of the workman with continuity of service and 50% back wages and costs of Rs. 3,000/-. The same was challenged by the appellant-Management. The learned Single Judge relied on the decision of this Court in L. Shankaregouda Vs. Karnataka Power Transmission Corporation Limited and Another, , wherein, on the basis of the decision of the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , it was held that "once the "B" Report submitted by the Police is accepted by the

Magistrate, the Management has no power or jurisdiction to initiate any proceedings by way of departmental proceedings or by way of criminal proceedings on the very same set of facts". The learned Single Judge held that "in view of the above two decisions, the finding of the Labour Court in the light of the acquittal has to be confirmed".

3. The learned Counsel for the appellant-Management submits that merely on the basis of acquittal in a criminal case the award cannot be set aside, and to that extent the order of the learned Single Judge is bad in law. He further submits that departmental disciplinary proceedings and criminal case are two separate proceedings and both can go on simultaneously and therefore, the order of the learned Single Judge on the point that once the workman is acquitted in criminal case on that ground, award has to be vitiated, is erroneous. He further relied on principles of law laid down by the Supreme Court in the case of *Nelson Motis Vs. Union of India* and another, wherein the larger Bench had decided on the point, whether disciplinary proceedings could be continued in the face of acquittal of the appellant in the criminal case and held the plea has no substance whatsoever and does not merit a detailed consideration. It further observed that the nature and scope of criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings.

4. On the other hand, learned Counsel for the respondent-caveat or submits that the Labour Court has independently come to the conclusion and the direction of reinstatement of workman is not given only on the basis of acquittal in criminal case is not there.

5. We have heard the learned Counsel for the appellant as well as the learned Counsel for the Caveator and perused the material placed on record and also the case-law on the point.

6. So far as the legal position is concerned it is well-settled that criminal proceedings as well as departmental proceedings can be initiated and can go on simultaneously as the nature and the scope of criminal proceedings are very different from those of departmental proceedings.

7. The question to be determined is whether acquittal of an employee in the criminal case on the same charges in the departmental disciplinary proceedings will automatically conclude the departmental proceedings. The criminal proceedings are different from that of departmental proceedings and there is no bar to initiate criminal case and conduct departmental proceedings simultaneously, and therefore, to our mind, an order of acquittal in criminal case cannot ipso facto conclude the departmental proceedings. This legal position has not been disputed by either Counsel for the parties. However, each case depends on the facts and circumstances of its own.

8. In the instant case, the Labour Court on appreciation of materials placed on record, independently came to the conclusion that the misconduct has not been

proved. Once, the finding was arrived that the misconduct has not been proved, the same can be taken note of. The learned Single Judge on going through the material has set aside the award of 50% back wages with continuity of service, which needs no interference and the learned Counsel for the appellant-Management frankly conceded. However, the main contention of the appellant-Management that the observation of the learned Single Judge that the respondent-workman has been acquitted in the criminal case and on the basis of that acquittal the departmental proceedings would conclude, is not sustain-able in view of the decision in *Nelson Metis, supra*, passed by the three Judges. So, the decision relied on in *L. Shankaregouda, supra*, is not applicable and helpful and the decision in *Capt. M. Paul Anothony, supra*, is also not helpful to the facts of the given case.

9. It is pertinent to note that the learned Single Judge in *L. Shankaregouda's* case, *supra*, has distinguished the decision in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.,*, and observed that in that case the question of staying of further proceedings departmentally during the pendency of the criminal proceeding was there. The learned Single Judge, relied on the decision in *Capt M. Paid Anthony's* case, *supra*, wherein the criminal case as also the departmental proceedings were based on identical set to facts, namely "the raid conducted at the appellant" residence and recovery of incriminating articles therefrom. The same witnesses were examined in the criminal case but the Magistrate Court, on a consideration of the entire evidence came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant and he was acquitted. Therefore, it would be unjust and unfair and rather oppressive to allow the findings recorded at the ex parts departmental proceedings to stand. It was held that after acquittal order, dismissal order if passed is unsustainable in law. In that case it has come on record that after acquittal the appellant-Management proceeded with the department enquiry. The observation of the learned Single Judge on the basis of *Capt. M. Paul Anthony's* case, *supra*, that once the "B1 Report submitted by the Police is accepted by the Magistrate, the Management has no power or jurisdiction to initiate any proceedings by way of departmental proceedings or by way of criminal proceedings on the very same set of facts. Even the approval of decision in *L. Shankaregouda's* case, *supra*, will not help in view of the decision in *Nelson Motis* case, in the facts of the given case. Therefore, the decision of the learned Single Judge in the case on hand that the finding of the Labour Court has to be confirmed is not helpful in view of the *Nelson Motis* case, as stated above. But, in the case on hand as stated, the Labour Court after appreciation of the materials, independently came to the conclusion that the misconduct has not been proved. In view of this the order of the learned Single Judge confirming reinstatement needs no interference.

10. As discussed above, the observation to the extent that the acquittal in criminal case will automatically conclude the departmental proceedings is not correct and sustainable. It is seen that once the award of 50% back wages is set

aside by the learned Single Judge and the same has been approved by us, we find no reasons to maintain the order of enhancement of litigation costs from Rs. 3,000/- to 10,000/- and the order of learned Single Judge is modified to that extent by maintaining costs of Rs. 3,000/-only.

11. The order of reinstatement with continuity of service is maintained and the respondent-workman is entitled for wages from the date of the award i.e., 27-12-2000 till the date of reinstatement with costs of Rs. 3,000/- as per the award.

12. With the above observations the writ appeal is disposed accordingly.