

(2007) 12 MAD CK 0027
In the Madras High Court
Case No : Writ Petition No. 27591 of 2003

V. Marimuthu

APPELLANT

Vs

R. Ramachandran, Branch Manager, Syndicate Bank and
Others

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 2 MLJ 717

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : A.E. Chelliah and C. Vasanthakumari Chelliah, for the Appellant; V. Karthick, for T.S. Gopalan and Co. (R1 to R3), for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The petitioner has come forward with the present writ petition for certiorarified mandamus calling for the records

pertaining to the initiation of disciplinary proceedings against him dated 25.2.2002 of the third respondent, enquiry proceedings of the second

respondent, the proceedings of the third respondent touching the dismissal of the petitioner from service in Proceedings dated 29.5.2003 and the

proceedings of the 4th respondent dated 26.7.2003 confirming the order of the dismissal passed by the third respondent and conveyed to the writ

petitioner vide letter dated 30.7.2003 of the Chief Manager quash the same and direct the respondents to reinstate the petitioners in service with all

backwages/ service benefits due to him from 8.11.2001 the date of suspension.

2. The case of the petitioner in nutshell is as follows:

(a) He was a bank Manager, who was dismissed from service on 26.7.2003.

While he was serving as a Manager of Syndicate Bank Branch in

Velipalayam Nagapattinam, on a complaint from an account holder, the Venankanni Church that for debiting a sum of Rs. 3.69 lakhs in its account

for two cheques on different dates, which have been not issued by them, he was placed under suspension. He had no role to play as the cheque

book was available with the account holder who is incharge and the head of the Church and the cheque book was also handed over to them by the

Manager Krishnamurthy in person in their place, as there is a collection branch of the Bank in the Church itself called as ""Extension Service

Counter"".

(b) In the complaint given by the Bank to the Police it is stated that one Vinayagamurthy encashed two cheques dated 20.8.2001 and 30.8.2001

for Rs. 1,23 lakhs and Rs. 2.46 lakhs respectively and according to the Church, they did not issue those cheques to the said person. After the

receipt of the complaint from the Church, the cheque leaves were verified in the bank, but they were missing. On enquiry, it came to light that the

said Vinayagamurthy was having a milk depot opposite to the Bank and that he told him that he would get loan for his business and further

Vinayagamurthy has stated that the church used to make payments then and there to the petitioner and for avoiding income tax problem, he would

get them in the name of Vinayagamurthy and after encashing the cheques, the amounts would be given to him and the said Vinayagamurthy would

receive an amount as Commission. The petitioner was in the passing Section and he used to pass the cheque. The complaint further stated that it is

not known whether the employees in the church were involved.

(c) The petitioner got anticipatory bail from the Honourable High Court. But the department proceedings were initiated against the petitioner. The

department added other minor charges also, which are nothing to do with the main charge that was based on the complaint. In the departmental

proceedings, the extreme penalty of dismissal was passed. The Manager Krishnamurthy who is the relevant witness has not been examined, in

spite of the request made by the petitioner. The vital documents, which would prove that the petitioner was innocent and the charges that has been

levelled against him were not furnished. The appellate authority confirmed the order of dismissal without application of mind. Hence the petitioner

has come forward with the present writ petition challenging the order of dismissal passed by the third respondent as confirmed by the 4th respondent in his order dated 26.7.2003.

3. Counter affidavit was filed on behalf of the respondents 1 to 4 and 6 which set outs the following facts:

(a) The Syndicate bank is a nationalised bank having branches through out India including one at Nagapattinam with an extension counter in the

premises of Shrine Valankannai Basilica, Venlankanni. On 29.9.2001, Shrine Velankanni Basilica which had a SB account in the extension centre

made a complaint in that in the statement of account received by them, there are two entries debiting their account and in respect of those two

entries no cheque was issued. It was stated that on 20.8.2001 a sum of Rs. 1.23 lakhs was shown as withdrawn and further a sum of Rs. 2.46

lakhs was withdrawn on 30.8.2001. According to the Church they had not issued any cheque for these two amounts. When an investigation was

made, the following revelations came to the surface:

19.7.2001 A cheque book containing 100 leaves with numbers 578601 to 57870 was issued to Shrine Velankanni Basilica.

14.8.01 One A.Vinayagamurthy opened an account in Indian Bank, Nagapattinam.

20.8.01 Cheque No. 578695 for Rs. 1.25 lakhs was received in clearing from Indian Bank, Nagapattinam favouring A.Vinayagamurthy.

30.8.01 Cheque No. 578671 for Rs. 2.46 lakhs was received in clearing through Indian Bank, Nagapattinam favouring A.Vinayagamurthy.

Enquiries with Indian Bank revealed that the proceeds of the two cheques were credited to SB Account NO.6697 which was in the name of one

A.Vinayagamurthy.

21.8.01 Vinayagamurthy had withdrawn from Indian Bank Rs. 1.23 lakhs

01.09.01 Vinayagamurthy had withdrawn from Indian Bank Rs. 2.46 lakhs.

21.9.2001 The Church made an oral complaint by telephone about the unauthorised withdrawal of Rs. 3.69 lakhs. The two paid cheques were

alone missing from the bundle of cheques relating to the two relevant dates.

The debit entries in the personal ledger of Shrine Valankannai Basilica were made under the password of G.Sundar and authenticated by ARM

(V.Marimuthu, the petitioner).

5.11.01 Vinayagamurthy gave a letter to the Vigilance Officer stating that it was Marimuthu who gave the two cheques requesting him to deposit to

this SB Account with Indian Bank and after withdrawing the amounts, he agreed to give him a commission of 3%.

Vinayagamurthy also implicated G.Sundar

As the Respondent Bank could not produce the two cheques, the Bank was obliged to pay the sum of Rs. 3.69 lakhs to Shrine Velankanni

Basilica.

(b) A close study of the above events would show that admittedly the two cheques of the Church were fraudulently used for unauthorised

withdrawal of Rs. 3.69 lakhs and it could not have been possible without the connivance or knowledge of the employees of the Bank. When the

involvement of the employees of the Bank was examined, the role of the petitioner, Marimuthu and G.Sundar, Clerk became more apparent in the

light of the revelation made by Vinayagamurthy through whom the amount was withdrawn. When the involvement of the petitioner came to light on

23.10.2001, he was placed under suspension pending enquiry.

(c) On 25.2.2002 a charge sheet was issued to him, listing out the charges with regard to the above transaction and three other charges. On

21.3.2002 the petitioner gave a reply denying the charges. Thereafter, an enquiry was held from 7.5.2002 to 22.1.2003. On 29.3.2003, the

enquiry officer gave his report holding that as the 6th respondent had accompanied the temporary attender for delivery of the chequebook to the

Church authorities, he should have insisted for acknowledgement for delivery of the cheque book, but nonetheless as the petitioner being the

Section Officer has not got the acknowledgement from the customer, to that extent, his negligence was proved and that admittedly the two cheques

were missing for which the respondent was responsible and to that extent, gross negligence on the part of the petitioner was proved. The enquiry

officer found that one charge was proved and two other remaining charges were not proved.

(d) On considering the report of the enquiry officer, the disciplinary authority did not agree with certain reasoning of the Enquiry Officer and gave

his own reasons for holding that the charges in all respects were conclusively proved. The disciplinary authority furnished a copy of the report to

the petitioner and also his reasons for differing with the conclusions of the enquiry officer on certain aspects and called upon him to make his comments. On 12.5.2003, the petitioner gave a reply and after considering the various submissions made by the petitioner, the Disciplinary authority came to the conclusion that having regard to the gravity of the charges, the petitioner deserved the punishment of dismissal and ordered for his dismissal. The petitioner's appeal was also rejected by the appellate authority. Since the order of dismissal is justified and valid in law, the same is not liable to be interfered. The further allegation that disciplinary action was taken against the petitioner in order to save another officer, the 6th respondent herein is not correct. The reference to non-examination of the 6th respondent is totally irrelevant. Thus, the counter affidavit sought for dismissal of the writ petition.

4. Mr. A.E. Chelliah, learned Senior Counsel appearing for the petitioner contended as follows:

(a) After filing of the FIR no charge sheet has been filed but the department hurriedly conducted the enquiry and slapped the punishment of dismissal. Thus without waiting for the criminal prosecution, the departmental proceedings were hurriedly commenced and concluded which is totally erroneous.

(b) The 6th respondent, who handed over the cheque book to the church authorities at their place and the church authority who has received the cheque book and handled the same were never examined in the enquiry. Even the efforts taken by the petitioner was also turned down. This has been done only to save the 6th respondent and also the person who is an authority in the church.

(c) The conclusion of the inquiry authority that the charges stands proved to the extent explained above will make it clear that others also are there and only when they are also put to enquiry, the truth would come out. While so, the authority ought not to have inflicted the severe punishment of dismissal.

(d) The relevant documents were not furnished saying that they are privileged. Hence, it is violation of principles of natural justice.

(e) The bank without waiting for the amounts to be recovered from the first accused in the FIR hurriedly re-credited for reimbursement of the

amount to the Church on 18.3.2002 and commenced the disciplinary proceedings against the petitioner and conclude the same, which is arbitrary

and tainted with malafide. Having hurriedly reimbursed the amount to the Church, the Bank cannot charge the petitioner alleging loss caused to the bank.

(f) In any event the punishment imposed is severe and excessive and are liable to be set aside. Mr.A.R.Chelliah, learned Senior Counsel on the

above points has elaborately made his submissions.

5. On the other hand Mr.V. arthick representing Mr.T.S.Gopalan & Co., representing the respondents contended that

(a) there is nothing wrong in initiating, conducting and completing the departmental proceedings pending the criminal proceedings alleged against

the petitioner. Simultaneous proceedings both under criminal law and departmental proceedings is not prohibited.

(b) In respect of the statement given by Vinayagamurthy implicating the petitioner and other staff member of the bank, the involvement of the

petitioner in the transaction was more pronounced and therefore the non-examination of the 6th respondent is totally irrelevant.

(c) Since the finding of the enquiry officer could not be accepted by the disciplinary authority, the disciplinary authority in order to give an

opportunity to the petitioner issued a show cause notice about the guilt of the petitioner and called upon the petitioner to make his comments. After

receiving a reply from the petitioner and after considering the various submissions made by the petitioner, the disciplinary authority came to the

conclusion that the charges against the petitioner were proved and the petitioner deserves the punishment of dismissal and ordered for dismissal.

The appellate authority also confirmed the said order. While so, the petitioner cannot rely on some of the observations of the enquiry authority or

the report of the enquiry authority.

(d) Whatever relevant documents that should be furnished to the petitioner have been furnished to the petitioner and the enquiry was commenced,

conducted and concluded and the same cannot be said to be arbitrary or tainted with malafide.

(e) It is not permissible for the petitioner to invite this Court to sit in appeal over the findings of the Disciplinary authority, re-appreciate evidence

and come to the conclusion different from that of the disciplinary authority. The scope of judicial review in cases relating to dismissal of an

employee is only to examine the decision making process and not re-appraisal of evidence.

(f) When the bank was not in a position to produce the two cheques purported to have been issued by the Church the Bank had no option than to

pay the amount to the Church. Therefore, the conduct of the bank in paying the amount to the Church cannot be found fault with.

6. Regarding the first submission of the learned Senior Counsel that before a charge sheet could be filed, the departmental proceedings, has been

hurriedly conducted and the punishment was slapped on the petitioner, there is no prohibition for initiation of the departmental proceedings pending

criminal proceedings. Furthermore, the departmental proceedings need not wait till a final verdict in the criminal proceedings. Thus the criminal

proceedings and departmental proceedings can simultaneously be proceeded with. This view finds favour in the recent judgment of the Honourable

Apex Court, which is reported in *Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others*, wherein Their Lordships, while

considering several judgements regarding the issue, have held that the Departmental proceeding need not wait till the criminal proceedings are over.

Hence I am unable to accept the submission of the learned Senior Counsel in that respect.

7. Regarding the second contention of the learned Senior counsel appearing for the petitioner that the 6th respondent who handed over the cheque

book to the Church authorities at their place was never examined in the departmental proceedings, in spite of the efforts taken by the petitioner to

summon the 6th respondent is concerned, it has been explained in the counter affidavit that the departmental proceedings have been initiated

against the petitioner and the other employees of the Bank in the light of revelation made by Vinayagamurthy through whom the amount was

withdrawn. It is not the case of the petitioner that the said Vinayagamurthy who has encashed the amount had made some revelation against the 6th

respondent. Hence the non-examination of the 6th respondent has not prejudiced the petitioner in any manner. The charges against the petitioner

has been independently considered by the authorities and it has been found against the petitioner.

8. The next submission of the learned Senior Counsel appearing for the petitioner is that enquiry authority concluded that the charges stand proved

to the extent explained above will make it clear that others also there and only when they are also put to enquiry, the truth would not come out.

Even assuming that the 6th respondent also involved in the episode, it is not going to alter the charges against the petitioner. The petitioner may not

be absolved of the liability merely because some other employees of the Bank involved in the said episode. Hence the conclusion of the enquiry

authority even if it is taken that others also involved in the matter in issue the same has not prejudiced the petitioner.

9. The next submission of the learned Senior Counsel appearing for the petitioner that the relevant documents were not furnished and hence it is

violation of principles of natural justice is concerned, the relevant documents have been furnished to the petitioner and the enquiry was commenced

and concluded. While so, the argument of the learned Senior Counsel in this respect is rejected.

10. The next submission of the learned Senior Counsel appearing for the petitioner is that before the departmental proceedings could be

completed, the bank hurriedly reimbursed the amount to the Church. The counter affidavit will reveal that when the Bank was not in a position to

produce the two cheques purported to have been issued by the Church, the Bank had no option than to pay the amount to the church. The said

reasoning appears to be more reasonable. The conduct of the bank in paying the amount to the church before the departmental proceedings and

the criminal proceedings could end cannot be a ground to interfere with the order of dismissal that has been passed against the petitioner.

11. Regarding the next contention of the learned Senior Counsel appearing for the petitioner that the finding that has been rendered by the

disciplinary authority and the order in appeal are perverse and based on no evidence, the order of the original authority and the appellate authority

will amply prove that each and every contentions raised by the petitioner has been met with and the orders have been passed by them. The

disciplinary authorities and the appellate authorities being fact finding authority have exclusive power to consider the evidence. While exercising the

power of judicial review under Article 226 of the Constitution of India, the High court normally cannot substitute its own conclusion unless or

otherwise the conclusion that has been arrived at by the disciplinary authority or on appeal by the appellate authority is perverse. The order passed

by the disciplinary authority and by the appellate authority in appeal considered all aspects before inflicting the punishment on the petitioner.

12. Regarding the next contention of the learned Counsel that considering the charges against the petitioner, the punishment imposed on him is

disproportionate, the disciplinary authority and the appellate authority considered the gravity of the charges against the petitioner and inflicted the

punishment of dismissal. The High Court exercising the power under Article 226 of the Constitution of India can interfere with such punishment

imposed by the disciplinary authority or the appellate authority only if it is disproportionate to the charges levelled against the delinquent, if cogent

reasons are not adduced and if it is shocking to the conscience. But considering the gravity of the charges against the petitioner, I am not inclined to

interfere with the finding of the disciplinary authority or by the appellate authority in this regard.

13. The next submission of the learned Senior counsel appearing for the petitioner is that the criminal court at the first instance convicted the

petitioner, but later on appeal, the said judgment has been set aside and order of acquittal has been passed by this Court. Hence it has to be

concluded that the petitioner has not involved in any charges as alleged by the respondents. A mere acquittal in a criminal case may not be a

ground to hold that the finding rendered in the departmental proceedings has to be set aside. The Apex Court in *W.S. Insulators Of India Ltd,*

Madras v. Mohamed Moosa and Anr. 1979 1 LLN 155 has held as follows:

15. The three decisions cited by the learned Counsel for the petitioner actually deal with the disputes arising under the Industrial Disputes Act and

they have clearly laid down that the subsequent acquittal by the criminal court has no effect on the order of dismissal based on the findings

rendered at the domestic enquiry after considering the evidence on record and without reference to any criminal proceedings. I have to hold that

the Tribunal is not justified in dealing with the order passed by the management after fair and proper domestic enquiry on the basis of the

subsequent acquittal by the criminal court.

16. I am also of the view that the Tribunal is not right in entirely relying upon the

criminal Court's judgment and coming to the conclusion that the charge levelled against the petitioner has not been made out. The Tribunal having held that the domestic enquiry has been fair and proper, it has no jurisdiction to sit as as if it were an appellate court. Only where it finds that the domestic enquiry has not been fair and proper and the concerned workman did not have an effective opportunity to defend himself, the Tribunal can interfere with the finding rendered at the domestic enquiry and consider the evidence on record with a view to find out whether the charge levelled against the petitioner has been made out. In this case, merely on the basis of the finding rendered by the criminal court, he has set aside the order of dismissal which is based on the finding rendered at the domestic enquiry. That is not possible for respondent to do.

14. The standard of proof required in recording a finding of conviction or acquittal in a criminal case and in the departmental proceedings are entirely different and distinct. In Civil Appeal No. 7488 of 2004, Commissioner Of Police, New Delhi v. Narender Singh the Apex Court has clearly held thus:

14. It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose. (See Kamaladevi Agarwal Vs. State of West Bengal and Others, .

15. It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.

15. Learned Senior Counsel appearing for the petitioner has drawn my attention to the judgment reported in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, . In the above said decision, paras 11 and 12 can be usefully extracted as follows:

11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral

standards. In view of what has been stated in the *Wednesbury's* case (supra) that the Court would not go into the correctness of the choice made

by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited

to the deficiency in decision-making process and not the decision.

12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate authority shocks the conscience of the

Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate

punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would

be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

16. The other decision that has been cited by the learned Senior counsel appearing for the petitioner is reported in AIR 1963 404 SC (State Of

Orissa And Anr. v. V. Mulidhar Jena). Even in the said Full Bench decision, the Apex Court has said that in proceedings under Articles 226 and

227, the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry. Further it has been held that

re-appreciation of evidence would be outside the jurisdiction of the High court, while exercising power under Article 226 and 227 of the

Constitution of India. Thus it has been held that unless or otherwise the impugned findings recorded by the Tribunal are supported by any evidence,

the High Court would be justified in setting aside the said finding.

17. Considering the above facts and circumstances of the case, I am not inclined to interfere with the finding arrived at by the disciplinary authority

as confirmed by the appellate authority in inflicting the punishment of dismissal against the petitioner. There is no illegality or irrationality or

impropriety in procedure or the orders passed by the authorities. For the foregoing reasons, I am inclined to hold that there is no ground to

interfere in the orders passed by the authorities referred to above.

18. In the result, the writ petition stands dismissed. No costs.