
(2003) 11 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 6205 of 2000 and W.P.M.P. No. 20225 of 2001

V. Shanmugam

APPELLANT

Vs

National Textile Corporation

RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 11 MAD CK 0054

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : Kamatchi Sundaresan, for the Appellant; R. Parthiban, for Vijay Narayan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner challenges the order of the respondent dated 22.3.2000 bearing ref. No. Pers/2000-03/022

imposing a penalty of reduction to a lower stage in the time scale of pay by one increment for a period of two years without cumulative effect.

2. The petitioner was at the relevant point of time working as the Factory Manager in the Spinning and Weaving Mills of the respondent. He was

issued with the charge sheet dated 15.12.1998 along with the imputation of misconduct. The charges related to the period between 9.3.1998 and

27.4.1999 when he was working in Krishnaveni Textiles, Coimbatore. The sum and substance of the charge was that there was breakage in

Winding Machine and particularly the breakage was high in Winding Machine No. 5 and since he failed to exercise proper control on process

parameters, such a high level of breakage in the yarn products occurred. It was therefore, alleged that the petitioner committed the misconduct of

neglect of work and negligence in the performance of duty and thereby acted in a manner prejudicial to the interest of the Corporation, apart from failure to maintain devotion to duty. The petitioner submitted his explanation dated 23.12.1998. Not being satisfied with the explanation of the petitioner an Enquiry Officer was appointed and in the enquiry, the petitioner was allowed to make his statement and he was also cross-examined at length by the Presenting Officer. The Enquiry Officer submitted his report dated 15.2.2000 holding that the charges levelled against the petitioner were conclusively proved. Though the initiation of the disciplinary proceedings as against the petitioner was by following the procedure prescribed for the imposition of a major penalty, ultimately by the order impugned in the writ petition, the petitioner was imposed with the minor penalty of reduction in lower stage of pay. It was also restored on and after 1.4.2003. It is stated that the petitioner has subsequently gone on voluntary retirement scheme and he is no longer in the service of the respondent.

3. Mr. Kamatchi Sundaresan, the learned counsel appearing for the petitioner mainly contended that there was a serious defect in the conduct of the enquiry in which without relying upon any materials in support of the charges levelled against the petitioner, the petitioner was cross-examined by the Presenting Officer which caused serious prejudice to the petitioner. According to the learned counsel, apart from such a serious defect, in the matter of holding of the enquiry, since the petitioner was not even furnished with the copy of the findings of the Enquiry Officer before imposition of the punishment that itself would vitiate the order of punishment. Further according to the learned counsel, the misconduct not having been established fully as against the petitioner, the imposition of punishment was not warranted.

4. As against the above submissions Mr. Parthiban, the learned counsel appearing for the respondent would contend that even though the issuance of the charge-sheet might have been with a view to proceed against the petitioner for imposition of the major penalty, since the ultimate order of punishment was a minor one, it would be sufficient, if the relevant rule for the imposition of the minor punishment is satisfied to sustain the order impugned in the writ petition. The learned counsel would also take exception to the statement of the petitioner made in para 7 of his affidavit filed in

support of the writ petition in stating that the Presenting Officer did not cross-examine the petitioner in the enquiry and that no witness was

examined on the side of the respondent. Inasmuch as the enquiry proceedings would reveal that one other person was also examined on the side of

the management and the entire questioning of the petitioner was done only by the Presenting Officer.

5. Having heard the learned counsel for the parties and on a perusal of the charge-sheet, explanation and proceedings of the enquiry and the

ultimate order of punishment, I am of the view that none of the contentions put forth on behalf of the petitioner merits acceptance. In the first place,

it will have to be borne in mind that the petitioner was at the relevant point of time working as the Factory Manager. Therefore, in the light of the

nature of the allegations levelled against him it will have to be analyzed from a different perspective. A perusal of the charge-sheet would disclose

that the petitioner, as a Factory Manager, failed in his duty in the matter of production of a particular kind of yarn by maintaining its standard, which

has resulted in the manufacture of inferior quality of the product which came to be ultimately supplied to the customers and that it has further

resulted in accumulation of defective quality yarn in the mills which has affected the liquidity position of the mills. The sum and substance of the

allegation was as Factory Manager, the petitioner failed to exercise proper control on process parameters. The resultant position was that due to

his negligence in the performance of onerous duties imposed on the petitioner, serious prejudice caused to the interest of the respondent

corporation as its reputation was mainly affected before its customers.

6. In the explanation of the petitioner I should say that the petitioner has tacitly admitted about the inferior quality in the matter of production

alleged against him during the relevant period. In the whole explanation, the petitioner only attempted to throw the entire blame on the defective

machinery of the mills. It also shows that the petitioner was fully aware of the problems that existed in the manufacturing operations in the mills.

Nevertheless, without taking corrective measures, the petitioner as a Factory Manager proceeded with the production of the relevant kind of yarn

unmindful of its quality which has resulted in the accumulation of defective quality yarn in the respondent mills. Even on a repeated reading of the

explanation of the petitioner, I was not able to find any satisfactory reply countering the allegation about the accumulation of defective quality yarn

in the mills which according to the respondent, affected the liquidity position. Therefore, even going by the explanation of the petitioner, it can be

found that the allegation of manufacture of inferior quality of yarn during the relevant period was not in dispute. Nevertheless, an enquiry was

ordered and the petitioner was allowed to make his statement and he was also cross-examined in detail about the nature of defects in the product

manufactured and the areas, where the petitioner failed to exercise proper check, were also high lighted. One other person by name Thiru Sunder

Rao, who was stated to be the ASM, was also examined.

7. Ultimately, the Enquiry Officer gave his findings that the charges levelled against the petitioner was conclusively proved. In the order impugned,

though a reference was made to the report of the Enquiry Officer, the Disciplinary Authority on a perusal of the charges levelled against the

petitioner and his reply along with the report of the Enquiry Officer and also after considering his past records, took a lenient view when he

imposed the minor penalty of reduction to the lower stage of the time scale of pay by one increment for a period of two years and that too without

cumulative effect. As far as the imposition of the minor penalty is concerned, Rule 27 gets attracted.

8. Under Rule 27 of National Textile Corporation (Tamil Nadu & Pondicherry) Limited Employees Conduct, Discipline and Appeal Rules, what

all required was to inform in writing of the imputation of misconduct against the delinquent with an opportunity to submit his written statement of

defence. Thereafter, it is open for the Disciplinary Authority to pass the order of punishment by keeping the record of proceedings containing a

statement of imputation of misconduct and the statement of defence. In the case on hand, Rule 27 has been duly complied with by the respondent

when it chose to impose the minor punishment on the petitioner. As I have already held even going by the petitioner's explanation, the charges

levelled against the petitioner were fully established and therefore, when Rule 27 was duly complied with by imposing a minor penalty on the

petitioner, there is no scope to hold that the order was vitiated on the ground of violation of principles of natural justice.

9. Mr. Kamatchi Sundaresan, the learned counsel for the petitioner however contended that when the initiation was for imposing a major penalty and the procedure contemplated for imposing major penalty was followed, as a matter of rule, the petitioner ought to have been furnished with the copy of the Enquiry Officer's report before passing the ultimate order of punishment with a minor penalty. I am not able to accept the said contention made on behalf of the petitioner. Though reliance was placed upon the judgment of His Lordship Mr. Justice E. Padmanabhan in W.P. No. 776 of 2000 dated 27.2.2003, I find that the said judgment was clearly distinguishable, in view of the nature of charge framed against the delinquent therein, who was the Manager (Tech-Mech) of a Cement Factory in respect of a fire accident which broke out in the Cement Factory, resulting in heavy damage to the internal parts of Electro Static Precipitator. There, the delinquent was charged along with certain other staff members and it was largely the case of a vicarious responsibility which was sought to be imposed on that delinquent, where the learned Judge reached a conclusion that even if the ultimate punishment, was a minor one, in the light of the Rule governing the service condition, the concerned delinquent should have been issued with a copy of the report before the ultimate order of even a minor penalty was to be imposed. Therefore, I am not able to apply the said judgment to the facts of the case on hand.

10. On the other hand, the judgment relied upon by the learned counsel for the respondent reported in 1973 I L.L.J. SC 435 (Shadi Lal Gupta - vs. - State of Punjab) is more apposite. That was also a case where while the initiation of the proceedings was for a major penalty, ultimately a minor penalty came to be imposed. Dealing with that, the Hon'ble Supreme Court has held in paragraphs 8 and 12 which reads as under:-

8. Rule 7 of these rules deals with cases where the major punishment of dismissal, removal or reduction in rank are proposed to be imposed and sub-rule (6) of that rule specifically provides that in such a case after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the accused officer shall be supplied with a copy of the report of the enquiring authority and be called upon to show cause against the particular penalty proposed to be inflicted on him. The words ""without prejudice to the provisions of rule 7"" occurring at the beginning

of Rule 8 are sought to be taken advantage of to contend that even in the case of minor punishments referred to in that rule, of censure, withholding

of increments and recovery from pay, an opportunity should be given to show cause against the punishment proposed to be imposed. Those words

do not fit in the context and cannot mean that in a case of minor punishment not only the provisions of Rule 8 but also the provisions of Rule 7

should be followed. The rules must be interpreted in their proper setting and if so interpreted, those words would not bear the interpretation sought

to be placed on them. The provisions of Rule 7 are necessitated by the provisions of Art. 311(2) of the Constitution. As far as other punishments

are concerned, the only right which a Government servant is entitled to is that the action proposed should be in accordance with the rules made

under the proviso to Art. 309. That rule, Rule 8, does not contemplate anything more than an adequate opportunity of making a representation.

We are, therefore, unable to accept this contention.

12. We thus come to the conclusion that there was no failure in this case to follow the relevant rules, which, as we have already indicated, only

require that the officer concerned should have an opportunity of making a representation in respect of the charges made against him. This leaves

the question of whether any principles of natural justice have been violated in this case.

Therefore, applying the principles set out by the Hon"ble Supreme Court in the above referred to judgment it will have to be held that no prejudice

was caused to the petitioner when he was ultimately imposed with a minor penalty, though initiation of proceedings was for a major penalty.

11. In view of the said position, I also do not find any substance in the contention of the petitioner by relying upon the decision of the Hon"ble

Supreme Court reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . There is therefore, no merits in this writ petition.

The writ petition fails and the same is dismissed. The stay petition in C.M.P. No. 9279 of 2000 itself was dismissed on 11.3.2002. Hence, the

petition in C.M.P. No. 20225 of 2001 to vacate the stay is closed as unnecessary.