

(1991) 04 KAR CK 0030
In the Karnataka High Court
Case No : W.P. No. 14763 of 1989

V.S. Ayangar

APPELLANT

Vs

The Karnataka Handloom Development Corporation Ltd.,
Bangalore

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Karnataka Handloom Development Corporation Limited (Staff) Regulations, 1979 — Regulation 76(4)

Citation : (1991) 2 KarLJ 436

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

The point for consideration in this writ petition is-"Whether a co-employee can represent on behalf of a delinquent/official in Disciplinary Proceedings for more than two enquiries in the absence of any specific regulation which covered under service condition of employer and employees of particular department or undertaking.

The facts herein are that the petitioner is the employee of the respondent. Disciplinary proceedings were initiated against him. He wanted to take the assistance of a co-employee to defend him in the said enquiry proceedings. In support of his request to take the assistance of a co-employee, he made use of Article 76(4) of the Karnataka Handloom Development Corporation Ltd. (Staff Regulation) 1970, which reads as follows:

"(iv) The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the inquiry Authority). The employee may present his case with the assistance of any other employee of the Corporation approved by the disciplinary authority, but may not engage a legal practitioner for the purpose.

(v) The Inquiry Authority shall in the course of inquiry consider such documentary evidence as may be material in regard to the charges. The

employee shall be entitled to cross-examine witnesses examined in support of the charge and to give evidence in person and to examine witnesses in this behalf. The person presenting the case in support of the charges shall be entitled to cross-examine the employee and the witnesses examined in his defence. If the Inquiry Authority declines to examine any witness on the ground that the evidence is not relevant or material, it shall record its reason in writing."

But the department issued memos at Annexures-D and E, refusing the petitioner's request to engage the services of a particular employee for defending on the ground that the said employee shall not take the assistance of a co-employees as he has already participated in almost 17 enquiries. Annexures-D and E are extracted herein:

Annexure-D "With a view to expeditiously dispose of the enquiries, it has been decided that each office bearer of the union shall be allowed to represent in not more than two cases of enquiries at a time in a year.

This order come into immediate effect.

for Karnataka Handloom

Development Corporation Limited

Annexure-E

Office Order "In continuation of the office order dated 20-7-1989, it has been decided that any employee of the Corporation who choose to represent delinquent employees in the domestic enquiry shall be allowed to represent in not more than two cases of enquiries at a time in a year.

This order come into immediate effect.

For Karnataka Handloom Development Corporation Limited."

2) Aggrieved by the same, petitioner has preferred this writ petition. In the mean while he has sought for interim order. First it was granted and then it was vacated by its order dated 29-1-1990. The said interim order reads as follows:

"The grievance of the petitioner in these two cases is one relating to refusal for permission to engage a co-employee to represent them in a disciplinary enquiry. The respondent-1 contends that the approval was not granted in respect of the said employee in as much as he is appearing in as many as 17 enquiries and therefore it is not possible to complete the enquiry expeditiously as the employee concerned will be held up in one or the other enquiry. The respondent-1 Corporation has jurisdiction over the entire State. The learned counsel for the petitioner however, contended that there is no mutuality in so far as this rule is concerned and in so far as the respondents are concerned, it is open to them to chose any employee to represent them in so far as the petitioners are concerned. Such restriction could not be imposed. It is submitted that there is no restriction at all in chosing of the assistance of an employee and whoever the petitioner

choices must be approved.

The relevant Rule reads thus:

"(iv) The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiry Authority) The employee may present his case with the assistance of any other employee of the Corporation approved by the disciplinary authority, but may not engage a legal practitioner for the purpose."

This rule gives a discretion to the employer in approving the co-employee to be engaged for defending the former in disciplinary proceedings. The petitioners are seeking to engage the services of a co-employee, who is representing other employees in 17 other matters. If the Disciplinary Authority refused permission, it cannot be said that the same is unreasonable.

However, the learned counsel for the petitioners submitted that when the petitioner has chosen his co-employee to defend his case and if he is not allowed to represent him, it would lead to the position of depriving of the proper defence in the course of disciplinary enquiry itself. But I fail to understand this contention urged on behalf of the petitioners because there may be other competent persons available in the Corporation. When a particular difficulty is expressed by the respondents in allowing that particular employee to assist the petitioners the attitude of the petitioners in being adamant in having the assistance only a particular employee is not at all reasonable.

In fact the respondents have even offered to allow the petitioners to have the services of an Advocate if they want to defend them in the enquiry. Hence, I do not find any substance in the contentions urged by the petitioners. The interim order granted on 24-8-1989 is hereby vacated."

In between enquiry proceedings were completed and the enquiry officer submitted his report to the Disciplinary Authority to take action.

3) Attack of the petitioner to the memos issued at Annexures-D and E are as follows:

(1)When Regulation 76(4) permits an employee/delinquent official to make use of the services of a co-employee authorises the Management to nominate once of its employee as a presenting officer in its behalf. There is no justification for the Management to refuse the request of the delinquent official to make use of the services of a co-employee to defend on his behalf in the enquiry proceedings.

(2) In the absence of any restriction in Rule 76(4) or other rules a co-employee shall not participate in more than two enquiry proceedings, it is incorrect for the Management to say that the delinquent/official shall not take the assistance of a particular employee merely because he has appeared more than two enquiries.

(3) When there is no restriction for the Management to appoint its employee to

present its case even in more than two enquiries, it is quite incorrect and discriminatory in nature to restrict the participation of a co-employee on behalf of a delinquent/official in an enquiry only to two enquiries in a year.

(4) Memos at Annexures-D and E are without an authority of law viz., the same have been issued in the absence of any amendment to Regulation 76(4) of the Rules.

4) The object of holding a domestic enquiry is to see the truth or otherwise of the charges levelled against, decided and determined. The same can be decided only when a delinquent/official is given sufficient opportunity to represent his case.

For these reasons Sri K. Subba Rao, learned counsel for the petitioner submits that Annexures-D and E are quite arbitrary and without an authority of law. Accordingly, the same deserves to be quashed. Further any to be submitted by the enquiry officer in the absence of effective participation of the delinquent/official as illegal and inoperative.

As an answer to these contentions Sri M. Subba Rao for the Management submits that- (1) Law does not permit a co-employee to appear on behalf of the delinquent/official in more than two enquiries;

(2) If an official is permitted to appear on behalf of a delinquent/official for more than two enquiries in a year, the entire work that the department has entrusted to such an employee will come to a stand-still. So also the conduct of enquiry will not be effective. On the otherhand, it may result in dragging on the proceedings;

(3) In the present case the official whom the petitioner wanted to appear on his behalf has already appeared in 17 enquiries. Hence, the Management thought it fit not to allow the said official to be the co-employee to represent the case of the delinquent/official in the interest of the Institution and also in the interest of enquiry proceedings.-

4) Restriction imposed according to Sri M. Subba Rao, that the co-employee shall not participate in more than two enquiries neither oppressive nor arbitrary but it is more reasonable. According to him, under similar circumstances this Court did not deprecate the action of the Management. According to him the said view came to be up-held by the Supreme Court. According to him it is incorrect to state that memos at Annexures-D and E are issued separately. To him, they are part and parcel of Regulation 76(4). For these reasons Sri M. Subba Rao submits that the writ petition be dismissed.

5) After hearing both sides, I am of the view that approach of the Management, however laudable it is, but cannot be accepted as correct, particularly when it amounts to denial of an opportunity to delinquent/official to make a proper and effective representation in enquiry proceedings particularly when the result of the proceedings in the absence of proper and effective representation may have far reaching adverse effect on the service conditions of delinquent/official. Further,

both the advocates relied upon Rule 76(4). A reading of the said Regulation makes it clear that employer has been permitted to engage its own official to present its case. As far as the number of enquiries are concerned, the rule is quite silent. When that is so, it is too much to infer that such an opportunity has been impliedly denied to the delinquent/official. Secondly, memos at Annexures-D and F are administrative in nature. Any action of an officer whether it is a Disciplinary Authority or appellate authority, particularly when rules are existing in respect of the particular issue shall always be in conformity with such Regulation. Any alteration or change to the said Rule shall be only by prior amendment to such a Regulation or Rule. In the instant case, there is nothing to show that Annexures-D and E preceded to amendment to Regulation 76(4). Hence, it has to be said that Annexures-D and E are without an authority of law.

6) The next point to be considered is whether the stand of the Management that if an official is permitted to appear on behalf of the delinquent/official in more than two enquiries, the progress of enquiry will suffer or otherwise. No doubt an employee has to discharge his duties entrusted to him. At the same time when Regulation enables a delinquent/official to make use of a particular co-employee to defend him, Management cannot refuse services of such co-employee. After all, the very object of holding domestic enquiry is to see justice is done after complying with the principles of natural justice. No person shall be condemned, un-heard. It is the choice and desire of an employee to take the services of any co-employee as long as the Rules and Regulations permit. It is not for the Management to say that a delinquent/official shall not take the services of a co-employee because the said co-employee has already appeared in other proceedings. Such a proposition does not stand to reason. If a Management finds that a particular employee has become more than a lawyer than an employee in offering his services to a delinquent/official in more than two enquiries, it is for the Management to take preventive action against such person, but it cannot deprive or deny the right of a delinquent/official to make use of the services of a particular co-employee. As otherwise, such a restriction will be quite oppressive and arbitrary in nature thus taking away the right given to delinquent/official to defend his case more effectively and in proper manner. Further inconvenience to the Management or any obstacles in the smooth progress of the enquiry proceedings not a ground for the Management to refuse a request of the delinquent/official to make use of the services of a co-employee as has been held in the case of *Santhanam v Union of India and Another* reported in 1969(1) Kar. L.J. page 591. Where this Court had to deal with an issue whether a delinquent/official of State of Karnataka can take the services of an employee who is working at Calcutta. There the stand of the Management was such a request cannot be allowed as it leads to untold hardship and in-convenience to the Management so also to enquiry proceedings. The relevant rule which dealt about engaging a legal practitioner etc., was Rule 14 (8) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 which reads as follows:

"A Government Servant may take the assistance of any other Government

servant to present the case on his behalf, but may not engage a legal Practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal Practitioner, or the Disciplinary Authority having regard to the circumstances of the case so permits."

Incorporating the scope of said Rule including other contentions raised by both sides, this Court passed an order:

"In this connection the petitioner's counsel invites our attention to two decisions of Supreme Court one in Mysore Electricity Board v B.W.C. & S. Mills (1) other in London Rubber Co., v Durer (2) The relevant observation in the decision reported at page 1128 is as follows:

"The learned Attorney General has submitted that if a question between the Board and a consumer is to be referred for arbitration, then in cases, where the Board itself supplies electric energy there may be thousands of consumers each of whom may raise a dispute and call for arbitration. In that event, there will be thousands of arbitrators and the legislature could never have contemplated such a situation. This is really an argument based on in-convenience, and we do not think that in-convenience, is a decisive factor in interpreting a statute...."

Therefore, the plea of inconvenience referred to above, and put forward by the respondents cannot be taken into consideration in interpreting the clauses of Rule 14(8). The observation of the Supreme Court in the other decision is as hereunder:

"Indeed, it is the duty of the Court to give full effect to the language used by the legislature. It has no power either to give that language a wider or narrower meaning than the literal one, unless the other provisions of the Act compel it to give such other meaning." Applying the principles underlying this observation of the Supreme Court, we find that the terms of the Rule are clear and the petitioner has a right to seek the assistance of any other Government servant.

Sri B.S. Keshava Iyengar, the learned Government Pleader has put forward another apprehension that it may become open to a Government Servant against whom disciplinary action is taken to protract the disciplinary proceedings or make every attempt to scuttle the same by resorting to questionable methods. It is submitted that in such cases atleast the Disciplinary Authority should have the right to refuse the assistance sought for by the Government servant concerned. It is not possible for us to state under what circumstances a Government servant like the petitioner can justifiably be refused the permission for assistance, he seeks. In any event it is beyond doubt that if the Government servant who seeks the assistance before the Disciplinary Authority does so mala fide, he cannot certainly set any relief from this Court in exercise of its powers under Article 226 of the Constitution of India.

Confining our attention to the facts of this case, there is no allegation that the assistance sought for by the petitioner is not bona fide. He has the right to seek

assistance under Rule 14 (8) of the Rules. We do not find any justifiable reason given by the Disciplinary Authority to refuse the assistance sought for by the petitioner. In these circumstances we issue a writ of certiorari quashing the order dated 19-2-1969 passed by the second respondent and referred to in Annexure-A. The writ petition is allowed, but in the circumstances of the case we direct each party to bear its own costs.

7) Apart from this when the Management has a right to make use of the services of its employee to present its case for more than two enquiries, to restrict similar benefits to the delinquent/official is quite illegal, arbitrary, un-reasonable and discriminatory in nature, thus violating Article 14 of the Constitution of India.

8) The present thinking is more in favour of compliance of principles of natural justice which includes making use of the services of a legal practitioner or those co-employee who are well versed in legal matters. As otherwise, the very purpose of enquiry will be a farce and one sided.

9) Lastly it has to be said that after all engaging a legal practitioner or a co-employee to defend a delinquent/official is purely a question of confidence between a delinquent/official on the one hand and a legal practitioner or a co-employee on the other hand. When such being the case, Management cannot compel a delinquent/official not to make use of the services of either legal practitioner or a co-employee in whom the litigant has imposed full faith and confidence. As long as rules are silent about such a restriction, it is not proper to deny an opportunity to engage a co-employee. Hence, for the reasons given above, it has to be said that the view taken by the Management refusing the petitioner's request to make use of the services of a particular co-employee has to be held as illegal. Interim order that was made earlier in this writ petition has to be said that the same was posted at interlocutory stage, that too in the absence of sufficient material produced. On facts, observation made by the Hon'ble Supreme Court of India relied by the Management has no application, as facts differ. It was submitted by Sri M. Subba Rao that because of the adamant attitude of the delinquent/official in not appearing in the proceedings, enquiry officer had to proceed with the enquiry and to submit his report to the Disciplinary Authority. He submits that in view of the same, now nothing can be done. At best the petitioner can appear before Disciplinary Authority and submit his explanation to the Disciplinary Authority who will consider such an explanation and pass appropriate orders. I am unable to accept the contentions of Sri M. Subba Rao. Because when it is said that at the threshold itself petitioner was deprived of a right to make use of the services of a co-employee to defend his case more properly and effectively, any enquiry that subsequently conducted in the absence of delinquent/official has to be held as no enquiry in the eye of law. Any report submitted by the enquiry officer in the absence of participation of the petitioner in the enquiry proceedings has to be held as illegal and against the principles of natural justice.

Hence, orders at Annexures-D and E and order of the enquiry officer Annexure-F

quashed. Writ petition is allowed. Management is directed to hold enquiry afresh granting the petitioner's request to engage a co-employee by name Sri Prasanna Kumar or any other co-employee if the petitioner desires to make use of and proceed with enquiry in accordance with law. It is further directed both the parties shall co-operate with the enquiry officer to see the enquiry proceedings are completed within four months from the date of this order.