

(2005) 07 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 9159 of 2005

Y.N. Krishna Murthy

APPELLANT

Vs

Karnataka Silk Industries Corporation Limited

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Citation : (2005) 107 FLR 131 : (2005) ILR (Kar) 3389 : (2005) 5 KarLJ 48 : (2005) 4 KCCR 329 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : V.S. Naik and Manjula N. Kulkarni, for the Appellant; Kasturi A/s. appearing for Sreeranga Associates and Aravind Kumar, ACGSC, for the Respondent

Judgement

R. Gururajan, J.—Petitioner Krishna Murthy is knocking the doors of this Court for justice for the third time in this petition on the following facts.

2. Petitioner has joined the services of the respondent Corporation. He was placed on probation. His services stood discharged in terms of the proceedings dated 31.3.1994. An unsuccessful petition was filed by the petitioner in W.P. No. 9752 of 1994. Petition stood dismissed. A writ appeal was filed by the petitioner in W.A. No. 1991 of 1994. There was difference of opinion between the two learned judges of this Court. Matter was however referred to a third learned Judge. Learned third Judge agreed with the views of the Hon'ble Chief Justice, as he then was. It was in those circumstances that the said writ appeal came to be disposed of in terms of the directions contained in the judgment of the Hon'ble Chief Justice. The said order is dated 1.10.1996 at Annexure-A.

3. Petitioner, pursuant to the order of the Division Bench, was taken back to duty on 6-11-1996. He was posted to work at Devathamarket Showroom. Thereafter a show cause notice was issued on 8-11-1996. Reply thereto was submitted on 18-12-1996. The respondent issued an order of discharge on 23-8-1997. A statutory appeal was filed and it was rejected. Petitioner for the second time filed

a writ petition in W.P. No. 8147 of 1998. This Court allowed and ordered reinstatement with full back wages and continuity of service. Annexure-E is the order.

4. Thereafter, according to the petitioner, his benefits were not settled despite orders of this Court. He was asked to work in the Head Office and he was assigned duties as Assistant Sales Officer in the Internal Audit Department. When things stood thus, according to the petitioner, a show cause notice was again issued on 14-2-2005 making same or similar allegations as in the earlier proceeding. Annexure-F is the notice. Petitioner is challenging the same in this petition on various grounds.

5. Notice was issued. Respondent entered appearance. A detailed statement of objection was filed. In the objection statement, respondent would support its action in the matter. Respondent refers to the Lokayukta proceedings against the company. Respondent says that the earlier order of this Court does not take away the right of disciplinary proceedings granted to an employer. Respondent says they were fully justified in issuing the show cause notice despite two orders of this Court.

6. Heard Sri Naik, learned Counsel for the petitioner. He would argue that in the normal circumstances he would not have filed such a writ petition. He says that the present show cause notice refers to certain omissions and commissions on the part of the petitioner alleged to have been committed in 1992-93. He says that these very charges were subjected to judicial scrutiny in the earlier proceedings. The proceedings reached the Division Bench of this Court. Petitioner was successful. The Division Bench no doubt granted liberty, and, that liberty, according to the petitioner, was exercised on an earlier occasion. The said liberty was unsuccessfully exercised in W.P. No. 8147 of 1998 in terms of the order dated 6.10.2001. Learned Counsel says that this Court in the second petition did not reserve any liberty to the respondent and that therefore the respondent is wrong in continuing the proceedings. Learned Counsel complains that repeated issuance of notice on the same cause of action despite Court orders would be nothing but an act of victimisation in terms of the submission made by the Learned Counsel.

7. Per contra, Sri Kasturi, Learned Senior Counsel would support the action of the respondent in the matter. He would say that liberty granted by the Division Bench would provide the right of a proceeding and that liberty is referable to the present notice. Even otherwise, he would refer to the earlier order to say that this Court has not taken away liberty reserved by the Division Bench. Counsel would say that the petitioner is premature and that the petitioner can come after final proceedings.

8. After hearing, I have carefully perused the material on record.

9. This is a case of chequered history of litigation after litigation. Petitioner was a probationer. Very same charges which are being levelled against the petitioner

now were levelled against him in the earlier proceedings. He was discharged by the respondent. That was challenged unsuccessfully before the learned Single Judge of this Court in W.P. No. 9752 of 1994. On appeal, two learned Judges of this Court differed in their views and ultimately matter reached the Learned third Judge. The learned third Judge agreed with the views of the Hon''ble Chief Justice, and, in those circumstances, the appeal stood disposed of in terms of the directions contained in the order of the Hon''ble Chief Justice. The Hon''ble Chief Justice in his order dated 12.9.1996 would direct as under:

"22. Consequent upon the setting aside of the order impugned, the appellant is held entitled to his reinstatement and all other consequential benefits. This judgment would, however, not prevent the respondents, if so advised, to pass fresh appropriate orders for his removal, but only after the compliance of principles of natural justice. The respondents shall also be entitled to terminate the services of the appellant even retrospectively, on the basis of the allegations, as noted by them and proved after the compliance of the petitioners of natural justice. If the respondents decide to initiate action for discharge of the appellant within a period of one month from today and a notice in that behalf is issued, they will not be under obligation to pay to the appellant, the arrears of salary from the date of his dismissal vide Annexure "G", till the date of his reinstatement, consequent upon this judgment. In that event, the appellant shall be entitled to reinstatement forthwith and future salaries till the conclusion of the proceedings against him, if initiated by the respondents. If, after initiation of the proceedings and after allowing the appellant an opportunity to show cause, the allegations of misconduct are not proved and the proceedings dropped, the appellant in that eventuality, shall be entitled to the payment of the aforesaid arrears along with interest at the rate of 18% per annum. No order as to costs".

10. From the above order, it is clear that liberty of one month's time was granted to the parties for the purpose of settlement of benefits. Thereafter, in terms of the Division Bench order, respondent exercised the liberty by way of issuing an order dated 23.9.1997. That was challenged in W.P. No. 8147 of 1998. This Court by a detailed order ruled in paras-17, 18 and 19 reading as under:

"17. Having noticed the stigmatic order and having noticed the non-holding of an enquiry, I have no option but to set aside the impugned order dated 23-8-1997 passed by the Corporation. Before concluding I must also point out that these very allegations / averments were the subject matter of a scrutiny by the three learned Judges of this Court. Two learned Judges of this Court have categorically ruled that the order as a whole would show that it is stigmatic in character. It was in these circumstances the matter was remitted back for redoing in accordance with the principles of natural justice. The management has issued a notice and obtained an explanation from the petitioner, but did not hold any enquiry and passed the same or similar order except changing a few sentences and few English words in the order. I must also point out at this stage that in the penultimate paragraph in the impugned order the Corporation says that "I have

applied my mind to all aspects of this case and find no reasons to differ with the order of discharge already passed on 31.3.1994. "The order which is held to be bad in law by this Court is once again reintroduced by the authority, which in my opinion runs counter to the direction of this Court. It is needless for me to point out that the orders of the Court are passed not for either disobeying or diluting and the orders are passed for implementing the same. Any deviation of an order of this Court, in my opinion is nothing but an attempt to circumvent the order passed by the Division Bench. I express my displeasure in the matter.

18. I must also point out that the appeal filed is also rejected. The communication of the appeal to the petitioner is only a two line sentence, but the respondents have produced the Board proceedings. In the board proceedings I see a remark to each one of the grounds raised by the petitioner. But at the same time the Board also has failed in its duty to notice the salient feature of a necessity of an enquiry on the facts of this case in terms of a direction of this Court. In fact in the penultimate paragraph the board itself notices that the punishment inflicted is proportionate to the short comings/ misconduct of the appellant and action of the management is purely based on documentary evidences and his poor performance in discharging of duties. It is absolutely not known to me as to why the Board has approved the punishment order without any enquiry. Suffice it to say that the Board has equally not applied its mind to the facts of the case and therefore it requires my interference at this state.

18. The Counsel for the management submits that the matter may be remanded to the Board for reconsideration. In the normal circumstances that request could have been accepted but in this case, I am convinced that a serious legal error is committed in the original order and no useful purpose is served in remitting the matter to the Board. In these circumstances, taking into consideration, the factual aspect of the matter, the earlier direction of this Court and its legal effect on the order and the case laws on the subject, I deem it proper to allow this petition in its entirety and set aside the impugned order. Petitioner is entitled for reinstatement with full backwages and continuity of service and consequential benefits in accordance with law subject of course a deduction with regard to the amount already paid to the petitioner if any.

19. I also deem it proper to award cost on the peculiar facts of this case quantified at Rs. 5000/- being payable to the petitioner on account of failure to follow the Division Bench direction by the respondent. In the result, this petition is allowed. Impugned orders are set aside. Petitioner is entitled for costs of Rs. 5,000/ payable within four weeks from today by the respondent".

After the orders of this Court, it appears, there were some proceedings and those proceedings ended in favour of the petitioner.

11. Now on 14-2-2005, the Managing Director of the respondent Corporation has once again reopened the same issue in terms of liberty given by the Division Bench. This show cause notice is challenged by the petitioner.

12. It is no doubt true that an employer has every right to initiate disciplinary proceedings against an erring workmen / employee and there cannot be two opinions on this. Discipline has to be maintained and discipline has to be respected. It is also clear that no workman/ employee must go scot free in the event of any misconduct on his/her part. Guilty employees are to be punished in the larger interest of the Company. But, "when and how" is the question. In the case on hand, allegations of misconduct was made against the petitioner on two earlier occasions. On the first occasion, the Division Bench set aside the order with liberty. That liberty was not immediately exercised. After one year proceedings were initiated and a discharge order was passed taking advantage of liberty granted by this Court. That liberty again was not considered to be inconsonance with the order of this Court passed by the Division Bench in Writ Petition No. 8147 of 1998 filed by the petitioner. This Court in the said judgment expressed its displeasure for the way in which matters were handled by the respondent in its order. That order has become final. In the second proceedings, i.e. W.P. No. 4187 of 1998 no specific liberty was sought for by the respondent. The order is silent. This order is dated 6.10.2001. Respondent has not chosen to take action immediately. Instead, it has waited for four long years. Subsequently, after 9 years from the order of the liberty order in W.A. No. 1991 of 1994, and nearly after four years from the second order in Writ Petition No. 8147 of 1998, present proceedings are re-opened by way of show cause notice at Annexure-F.

13. Right of an employer to initiate proceedings against a workman is always to be respected and acted upon. But that right cannot be made use of as a hanging sword on an employee. Departmental/Disciplinary Enquiry should not hang on the head of employees all the time and that is not in the interest of any one including the respondent herein. Courts have recognised that delayed proceedings are fatal and are not to be encouraged. Delayed proceedings are not in the interest of any body except wasting time, money and energy. Parties would be handicapped on account of delayed action in such matters. In the case on hand there is nothing on record to show that the petitioner did delay the proceedings. On the other hand, the management for the reasons best known to it has kept quite even after the order of the learned Single Judge for four long years. Now, once again they have reopened the very same issue. Repeated reopening an issue in such matters would speak of unreasonableness on the part of respondent. If the employer is so serious about the discipline and the proceedings, they could have initiated the proceedings immediately after the second order. Nothing prevented them in the matter. Facts of the case give an impression is given to the Court that the Departmental / Disciplinary Proceedings are always kept as a threatening weapon on the petitioner in terms of the material available on record. Conduct and delay on the part of the respondent would compel me to interfere so that the petitioner is free from threat emanating from the so-called proceedings.

14. Courts have considered the delay factor in several judgments. In The State of Madhya Pradesh Vs. Bani Singh and another, , the Supreme Court has

considered the delay and latches in para-4 of its decision reading as under:

"The appeal against the order dated 16-12-1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and latches and should have allowed the enquiry to go on to decide to agree with this contention of the learned Counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the year 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know of it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal".

In B.C. Chaturvedi Vs. Union of India and others, , also the Supreme Court has considered the delay aspect and has chosen to observe that the delay by itself is not fatal and if the delay is on account of an employee, then the employer cannot be penalised.

This Court in Sri Gurushantappa v. Keb and Anr. W.P. 5733 of 1987 has noticed an identical question of delay. My learned Brother holds in para-6 of his order reading as under:

"Charge memo by the Controller and Specially Empowered Authority is dated 28-8-1985. By the said charge memo, the enquiry officer intends to hold an enquiry of an incident which had taken place between 10-8-1973 to 13-6-1975 when he was working as Stores Officer, Regional Stores, Gulbarga. The allegation against the petitioner is that he failed to check the accounts as envisaged under Rule 61 of the KEB Accounts Manual Vol. I. In my view, this inordinate delay in initiating the enquiry proceedings against the petitioner would certainly cause hardship to the petitioner for the reason that the petitioner may not be in a position to recall as to what had transpired between 10-8-1973 and 13-6-1975 and further he may not be in a position to have all the co-workers who had worked with him during that period as his witnesses at the time of the enquiry proceedings. This will definitely hamper his defence before the enquiry officer. Time and again, the Courts have ruled that the enquiry proceedings should be initiated at the earliest. Here is a case where the enquiry proceedings are initiated after a decade. In my view, the delay in initiating the enquiry proceedings against the petitioner on an allegation that certain things took place between 10-7-1973 and 13-6-1975 may not be proper".

I have recently considered the delay question in W.P. No. 5288 of 2003 in terms of my order dated 9-6-2005. All these judgments would support the petitioner in

the matter of delayed action.

15. In the circumstances, I have no hesitation to hold that the present show cause notice is required to be interfered with on account of delay and laches and the respondents are directed not to proceed further on the basis of the said notice. I must also say that even if liberty is available to the petitioner, delay is fatal in the case on hand.

16. Normally, Courts would not interfere with the show cause notice. There are cases and cases. If a party is liable to make out a case that the power to issue show cause notice is either misused or abused by way of delay, the Court has to render justice by issuing appropriate direction to arrest delayed proceedings. This is one such rare case where the Court has to interfere to arrest unreasonable delayed action on the part of the respondent.

17. Before concluding, I also deem it proper to observe that "Danda" is not the only method to maintain discipline. There are several methods available to correct an erring workmen. Management can, even without resorting to "Danda", adopt any other method in the matter. Repeated threat of "Danda" would only create bitterness among the employer and employees. Employees form part of the establishment. Employer and employees are two eyes of an establishment. Unless both eyes work in a right direction, Body industry would suffer. Therefore, what I want to emphasize is that the employer need not always use "Danda" as the only weapon to correct the employees.

18. In the facts and circumstances of this case, I accept this petition. A direction is issued to the respondent not to proceed further in terms of the show cause notice impugned in this petition.

19. In the normal circumstances, I would not have imposed costs. The present facts would compel me to express my displeasure for the way in which petitioner is treated. The facts would further compel me to award costs to the petitioner to meet his legal expenses taking into consideration his status in the Company. Respondent is ordered to makeover a sum of Rs. 10,000/- to the petitioner as costs. Ordered accordingly.