

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NOS.10729 OF 2011, 18900 AND 23040 OF 2015

DATED:01-9-2015

W.P. No.10729 of 2011

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Between:

The Managing Director
A.P. State Handloom Weavers Weavers Cooperative Society Ltd.,
3-5-770, Weavers Bhavan
Narayanaguda,
Hyderabad
and another ... Petitioners

And

Ch. Prasad Rao
and another ... Respondents

COUNSEL FOR THE PETITIONERS: Mr. Rajkumar Rudra

COUNSEL FOR RESPONDENT NO.1: Mr. M. Pitchaiah

COUNSEL FOR RESPONDENT NO.2: -

THE COURT MADE THE FOLLOWING:

COMMON ORDER:

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The subject matter of all these three writ petitions is common. W.P. No.10729 of 2011 is filed by the Managing Director of the Andhra Pradesh State Handloom

Weavers Cooperative Society Limited (for short, 'the Society'), aggrieved by Award dt.26.11.2010, in I.D. No.33 of 1997, on the file of the Presiding Officer, Labour Court-I, Hyderabad. W.P. No.23040 of 2015 is filed by respondent No.1 in W.P. No.10729 of 2011 for modification of Award dt.26.11.2010 in I.D. No.33 of 1997. W.P. No.18900 of 2015 is filed by the same respondent for a mandamus to declare the inaction of the respondents in paying back wages under Award dt.26.11.2010 in I.D. No.33 of 1997.

For convenience, the parties are referred to as they are arrayed in W.P. No.10729 of 2011.

2. As the issue before the Court is very limited, previous background of the case is unnecessary. It will suffice to note that respondent No.1 (Assistant manager) along with three others were dismissed from service on the ground that the verification of stocks in the showroom belonging to the Society and run by respondent No.1 along with three others, showed shortage of stocks worth Rs.4,02,973/-. On a preliminary enquiry report dt.14.11.1991, a charge memo was issued with five charges. The charge memo reads as under:

Charge No.1: *That he has caused deficit in stocks to the extent of Rs.4,02,973.10 at Vijayawada Sales Emporium No.2 and misappropriated the funds of the Apex Society along with other staff of the Sales emporium, thereby committed gross misconduct under special Bye-Law No.45(XI).*

Charge No.2: *That he has disobeyed the lawful and reasonable orders of the Managing Director of the Apex Society by absenting himself from duty during stock verification.*

Charge No.3: *That he has acted prejudicially to the interest of the Apex society by giving relief letter on 31.8.1990 addressed to the Divisional Marketing Officer, Vijayawada under copy to Sri Rambabu, Asst. Salesman whose leave application is dt.1.9.1990.*

Charge No.4: *That due to his organized action, the Apex Society sustained huge loss.*

Charge No.5: *That he has misused the powers entrusted to the post of the Asst. Manager, Vijayawada S.E. No.2 by keeping huge stocks."*

Respondent No.1 submitted his explanation on 14.1.1992. Not satisfied with the same, the disciplinary authority appointed an enquiry officer for conducting domestic enquiry against all the four employees. On 11.8.1992, the enquiry officer has submitted his report holding the charges against the employees as proved. A show cause notice was issued on 12.1.1993. Respondent No.1 submitted his explanation on 13.2.1993. The disciplinary authority by order dt.18.9.1994 has imposed the punishment of dismissal on respondent No.1. The appeal filed by respondent No.1 was dismissed by the appellate authority. Respondent No.1 has raised Industrial Dispute No.33 of 1997 before the Labour Court. By Award dt.27.7.2000, the Labour Court while holding that the domestic enquiry was held by an incompetent person and that therefore enquiry was invalid, reduced the punishment imposed upon respondent No.1 to the penalty of postponement of five annual increments with cumulative effect and denial of back wages. Assailing the said Award, the petitioners have filed W.P.

No.26585 of 2000 and respondent No.1 has filed W.P. No.1700 of 2001. During the pendency of the writ petitions, respondent No.1 has retired from service on 30.9.2009. By order dt.23.4.2010 this Court disposed of both the writ petitions remanding the matter to the Labour Court for fresh consideration.

3. After remand, the Labour Court by its Award dt.26.11.2010, set aside the order of punishment imposed on respondent No.1 and declared that respondent No.1 is entitled to reinstatement with continuity of service and 75% of back wages, minus the wages paid under Section 17-B of the Industrial Disputes Act, 1947. Feeling aggrieved by the said Award, the petitioners have filed W.P. No.10729 of 2011 and respondent No.1 has filed W.P. Nos.18900 and 23040 of 2015 for the afore-stated reliefs.

4. At the hearing, Mr. Raj Kumar Rudra, learned counsel for the petitioners, submitted that the Labour Court having rendered a categorical finding that the evidence of M.W.1 coupled with Ex.M.1, i.e., the letter dt.28.11.1990 sent by the Divisional Office to the Managing Director of the Society show that there was shortage of stock deficit of Rs.4,02,973/- and respondent No.1 along with three others being in charge of the showroom, all of them jointly are guilty as alleged under Charge No.1, committed a serious error in exonerating respondent No.1 only on the ground that the criminal court has acquitted him and this Court in Criminal Appeal No.975 of 1994 has confirmed the said judgment.

5. Mr. M. Pitchaiah, learned counsel for respondent No.1, submitted that the Labour Court has fallen into a serious error in rendering the finding about the deficit stock and its misappropriation against respondent No.1 in the absence of proper evidence, ignoring the findings of the Criminal Court rendered after full-fledged trial.

6. I have carefully considered the submissions of the learned counsel for the parties. The law on the scope of departmental proceedings vis-à-vis criminal proceedings is very well crystallized. While in criminal proceedings, proof beyond reasonable doubt is a sine qua non, in departmental proceedings preponderance of probabilities is sufficient to hold an employee guilty. However, on the issue whether the judgment of the criminal court binds the disciplinary authority/appellate authority, no rigid principle has been laid down by the Courts.

7. In *M. Paul Anthony v. Bharat Gold Mines Ltd.*,^[1] the Supreme Court has taken note of the fact that the criminal case as also the departmental proceedings are based on identical set of facts and the witnesses were common in both the departmental as well as criminal proceedings. Taking into consideration the fact that the criminal court had acquitted the accused, the Supreme Court held that it would be unjust, unfair and rather oppressive to allow the findings recorded at the *ex parte* departmental proceedings, to stand.

8. In *G.M. Tank v. State of Gujarat*^[2] the scope of departmental and criminal proceedings is identical and the witnesses examined in both the cases were common. On the said set of facts, the Supreme Court held as under:

"This is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer and other departmental witnesses were examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

9. The above judgments would show that while no hard and fast rule was laid down by the Courts that in every case where an employee was acquitted in criminal case, he is entitled to be exonerated in departmental proceedings, however, where the scope of both the proceedings is identical, evidence is also similar in both the cases, if the criminal Court on appreciation of evidence honourably acquits the employee, the employer is not justified in holding him guilty ignoring the judgment of the criminal court.

10. In the instant case, it is not in dispute that respondent No.1 was acquitted of the charge under Section 409 of the Indian Penal Code. It is also not in dispute that the said charge is based on the same complaint which is the subject matter of the disciplinary proceedings. The prosecution has examined P.Ws.1 to 5 of whom P.W.1 is the Divisional Marketing Officer and P.W.2 is the Assistant Marketing Officer. They have also filed Exs.P.1 to P.10, which include Ex.P.8, stock statement and Ex.P.9, summary statement, on which the signatures of A.3 and A.4 were taken. The case was very strongly pursued by the prosecution. On a careful analysis of the evidence, the trial Court has held as under:

"After hearing the arguments of both sides and after passing through the exhibits marked, it is observed by me as reported in the decision of 1981 A.I.R. Supreme Court at page No.1646 to prove the offence u/s.409 I.P.C. the prosecution should prove first the factum of entrustment of goods or any articles to the accused then the factum of misappropriation of the amount. The evidence of prosecution does not disclose any entrustment to any of the accused. There is no record to show which property is handed over to them by which person. There is no clear evidence placed by the prosecution for entrustment of any goods to A.1 to A.4. Though P.W.1 has said about the ledgers and statements and he has not said anything about the importance of postings and the figures in the ledgers and how they are arrived and who made the entries therein. Admittedly, he has inspected the APCO Show room on 6.11.90 and A.1 to A.4 were present. But Ex.P.8 seems to be prepared on 31.10.90 and A.1 and A.2 not signed on it, though it is said that A.3 and A.4 signed on it, there is no date under their signatures. Similarly Ex.P.9 also seems to be prepared on 31.10.90 and when it is compared there is no date put by anybody for which it is said that A.4 is only signed. P.W.2 deposed in his cross examination that at the time of verification he has not verified the bill book. It is not elicited by this witness by the

prosecution when entrustment is made to the accused by whom and what amount and how much articles and it is also not elicited by the prosecution witnesses how much amount is misappropriated by the each accused and at what time. There are no answers to the above questions with regard to entrustment of articles to the accused and misappropriation by the accused.

Under the above circumstances, I feel the prosecution has miserably failed to prove the case u/s.409 I.P.C. against any of the accused and the decision cited by the learned counsel for A.2, clearly guides the lower court with regard to finding in 409 I.P.C. matters. So, I feel the prosecution miserably failed to prove the case against the accused and the accused are entitled for the benefit of doubt.

In the result, I find A.1 to A.4 are not guilty for the offence u/s.409 I.P.C. and acquit them u/s.243(1) Cr.P.C.”

This judgment was confirmed by this Court in Criminal Appeal No.975 of 1994.

11. In contrast to the evidence adduced before the criminal court, the department has examined only a Senior Assistant as M.W.1, and marked Ex.M.1, which was marked as Ex.P.1 in the criminal case, and Ex.M.10, reconciliation report, which was marked as Ex.P.8 in the criminal case, and not much material as filed before the Criminal Court, was filed. Even the Labour Court without properly appreciating the evidence on record, jumped to the conclusion that the petitioner and other employees were jointly guilty. Interestingly, though the judgment of the criminal court in C.C. No.516 of 1994 was marked as Ex.W.1, the Labour Court has not referred to the contents thereof in rendering those findings. However, the Labour Court has relied upon the judgment of this Court in Criminal Appeal No.975 of 1994 in holding that charge No.1 was not proved against the petitioner.

12. Though this Court is not satisfied with the approach of the Labour Court, as the end result of the industrial dispute is in consonance with the findings recorded by the criminal court after full-fledged trial, and applying the ratio in *M. Paul Anthony* (1 supra), I am of the opinion that respondent No.1, who was acquitted in the criminal case after full dressed trial, and the acquittal having been confirmed by this Court in Criminal Appeal No.975 of 1994, is not liable to be punished in departmental proceedings based on far lesser evidence adduced before the Labour Court than that place before the criminal court.

13. In the above facts and circumstances of the case, W.P. No.10729 of 2011 is dismissed. As I feel that award of 75% of wages on the facts of the case was reasonable, the award of the Labour Court does not call for interference at the instance of respondent No.1 too. Hence, W.P. No.23040 of 2015 is also dismissed.

As regards W.P. No.18900 of 2015, the respondents are directed to pay the retirement benefits to respondent No.1 (petitioner – employee) in terms of Award in I.D. No.33 of 1997 within one month from the date of receipt of this order and the writ petition shall stand disposed of accordingly.

As a sequel to disposal of the writ petitions, W.P.M.P. No.29793 of 2015 in W.P. No.23040 of 2015; and W.P.M.P. No.24434 of 2015 in W.P. No.18900 of 2015 shall

stand disposed of as
infructuous.

C.V. NAGARJUNA REDDY, J

01-9-2015
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[\[1\]](#) (1999) 3 SCC 679

[\[2\]](#) (2006) 5 SCC 446