

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.02.2017

DELIVERED ON: 03.03.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.16718 of 2003 & W.P.M.P. 624 of 2008

The Management of
Tamil Nadu State Transport
Corporation (Villupuram Division-II) Ltd.
represented by its Managing Director
Rangapuram, Vellore - 632 009 Petitioner

Vs.

1. The Presiding Officer
Labour Court
Vellore

2. M.Vijayakumar
15 N.S.K. Street
Puzhal
Chennai - 600 060

Respondents

Prayer: Petition filed under Article 226 of the Constitution seeking for a Writ, more particularly writ of certiorari calling for the records on the file of the 1st respondent herein and to quash the impugned award dated 29.06.2001 made in I.D.No.148 of 1994.

For petitioner Mr.K.Kulandaivelu
for M/s. King and Patridge

R1 Labour Court

For R2 Mr.P.Subramani

ORDER

This writ petition has been filed challenging the award dated 29.06.2001 passed by the first respondent-Labour Court, Vellore, in I.D.No.148 of 1994.

2 The writ petitioner is a State-owned Transport Corporation. They have challenged the award dated 29.06.2001 passed by the 1st respondent-Labour Court (for brevity "the Labour Court") in I.D.No.148/1994 in and by which the second respondent-workman (for brevity "the workman") was to be given reinstatement with continuity of service, back wages and all other attendant benefits. The writ petition was admitted on 19.6.2003. Pending the writ petition, in W.P.M.P. 20903 of 2003 seeking interim stay of the operation of the award, the following interim order was passed:-

"(i) the petitioner deposits entire arrears of wages within four weeks from today to the credit of I.D.No.148 of 1994 on the file of the first respondent. On such deposit, the second respondent is permitted to withdraw 50% of the amount deposited and the first respondent shall reinvest the balance 50% in a fixed deposit in a nationalised bank for a minimum period of three years, renewable thereafter; and the second respondent is also permitted to withdraw the interest accrue thereon every three months periodically;

(ii) The petitioner shall continue to pay the last drawn wage on or before 5th of every month to the second respondent, provided the second respondent files an affidavit of non-employment before this Court.

In default of either of above condition, the interim stay granted shall stand vacated automatically."

3 It is stated by the petitioner that in order to avoid the payment of monthly wages as per section 17-B of the Industrial Disputes Act, 1947 (for brevity "the ID Act") which may be ordered by the Court, they themselves reinstated the workman even before filing of the writ petition. It is stated in para 7 of the affidavit that the workman was reinstated in service by an order dated 24.06.2002. The writ petition itself came to be filed only on 16.6.2003, whereas, the award was passed by the Labour Court on 29.6.2001. In any event, when the interim order was passed by this Court, this fact was not noted and no petition was also filed by the petitioner-Management for verifying that portion of the order.

4 On notice from this court, the workman entered appearance through his counsel who filed a vakalat on his behalf on 21.08.2003. When the Miscellaneous Petition came up before

this Court on 08.09.2003, the said application was closed in view of the earlier conditional order passed by this Court. It was thereafter, the workman filed a petition in W.P.M.P.624 of 2008 for fixing an early date for hearing of the dispute.

5 In that affidavit filed in the year 2008, the workman had given his age as 48 years and by now, he would have almost reached 58 years which is the age of superannuation in the petitioner-Transport Corporation. It is regrettable that a dismissal made against the workman as early as 27.05.1991 could not be resolved even after the lapse of 25 years.

6 Thereafter, the matter was referred to the Lok Adalat for the resolution of the dispute by order dated 12.3.2010. However, by order dated 29.07.2010, the matter was returned to this Court as no solution was found. On notice, the Labour Court has sent the original records connected with I.D.No.148 of 1994 for perusal by this Court.

7 It is seen from the records that the workman joined as a Conductor in the petitioner-Management in the year 1986 (Staff No.8900). At that time, the petitioner-Management was known as Pattukkottai Alagiri Transport Corporation (PATC) having headquarters at Vellore. The workman was arrested by the Inspector of Police (L&O), Redhills Circle on 30.12.1989. On remand made by the Judicial Magistrate-II, Ponneri, he was kept in custody in Puzhal prison till 12.1.1990. The Inspector of Police sent a report on 30.12.1989 to the petitioner Management. The news of his arrest was also published in the Daily Thanthi newspaper dated 31.12.1989. It was alleged that, he, along with one Dhanalakshmi murdered one Rajendran. He was placed under suspension by order dated 02.01.1990.

8 The petitioner Management issued a charge memo dated 20.11.1990 to the workman. There were three charges framed against him and they are as follows:-

"a. While he was employed as a conductor in this corporation on 23.12.1989 along with one Mrs.Dhanalakshmi you murdered her husband Rajendran and you were arrested by the Redhills Circle Police and remanded to custody by JM-II, Ponneri and kept in the prison from 30.12.1989 to 12.1.1990.

b. While being a employee of this corporation creating a grave injury to the society and creating bad name for the corporation, you have committed a serious crime.

c. The much publicised incident in newspapers has brought disrepute to the corporation."

9 It was stated in the charge sheet that the charges were referable to the misconduct listed under certified Standing Order 24 (XLIII), which reads as follows:

"Any act or omission which could reasonably be found to constitute a misconduct"

For persons involved in any criminal case and getting convicted, the relevant misconduct is listed under the certified Standing Order 24 (XXX).

"Conviction by a criminal court of an offence involving moral turpitude and punishable with imprisonment."

Since at the time of framing charge sheet, the criminal trial was not over and no punishment of imprisonment was made, the petitioner Management framed the charge sheet invoking the residuary clause of the Standing Order which contains an omnibus provision to rope in all types of misconducts which are not already enumerated under Certified Standing Order No.24.

10 The workman sent a reply dated 01.12.1990 denying the charges. He stated that he is, in no way, connected with the incident. He also stated that the police have alleged that he committed the murder on 23.12.1989 while on duty whereas on 23.12.1989 and 24.12.1989 he was on leave and that he joined duty afterwards on 25.12.1989 in route no.T30 and had also remitted that day's collection. The news which appeared in the newspaper was contrary to the truth. Insofar as the criminal incident, the matter is pending trial before a judicial forum.

11 Notwithstanding his reply and even pending the criminal trial, an enquiry officer by name A.Venkatesan was appointed. He fixed the enquiry dates as 31.12.1990 and 22.1.1991. The workman did not attend the enquiry and he stated that he has not been paid his subsistence allowance. Thereafter, on 15.4.1991, the petitioner Management paid him one year subsistence allowance. Further, the enquiry was fixed on 22.4.1991. On that day also, the workman did not appear and he informed the Enquiry Officer that he was having chicken pox and could not appear because of the same. The Enquiry Officer did not accept the reason for adjournment on the ground that the request was not supported by medical certificate. He set the workman *ex parte* and examined the Ponneri Branch Manager N.J.Srinivasan as MW1. Through him, 9 documents were marked as Exs.M1 to M9.

12 The Enquiry Officer gave his enquiry report dated 26.04.1991 and found that the workman was guilty of first and

third charges. This was on the basis of letter sent by the Inspector of Police, Redhills Circle and also newspaper clipping of the *Daily Thanthi*. Insofar as the second charge, the Enquiry Officer gave the following findings:-

"Whether the conductor has committed a grave crime as per the second charge is concerned the management did not submit any basis for the same. It is only seen that the police have arrested the conductor and put him in jail as he was connected with the incident. Whether this employee had done that act is concerned could not be proved in this enquiry. Hence it cannot be taken that he had committed the aforesaid misconduct. On the basis of the letter sent by the Inspector of Police marked as Ex.M2, it cannot be taken that he has committed the said serious crime. In view of the above reasons, I hold that the second charge has not been proved in proper manner.

While I hold Vijayakumar, Conductor (8900) is guilty of first and third charges, in respect of second charge, he is not guilty of the same."

13 The petitioner Management accepted the findings of the enquiry officer and issued a second notice dated 30.4.1991 to the workman calling upon him to show cause as to why he should not be dismissed from service. The workman sent a reply dated 7.5.1991. However, the petitioner Management, by order dated 27.05.1991 dismissed the workman. In that order, in para 2, they have stated as follows:-

"The enquiry officer's report and other documents were again examined. The findings of the enquiry officer that the conductor had committed the misconduct is accepted. The proved charges are liable to draw severe punishment. Further, it is not clear whether the incident took place in a situation beyond control."

14 It is surprising that the petitioner Management, in their communications, kept on saying that the workman had committed a grave misconduct while the finding of the Enquiry Officer was that the workman had committed the crime which was not proved by evidence and that he is not holding him guilty of that charge. If the charge of committing the murder is not proved in the enquiry, then, what was left was only the paper publication regarding the arrest of the workman and the report of the Inspector that he was arrested and kept in jail for the period indicated therein.

15 In the meanwhile, the criminal case against the workman was sent for Sessions trial by the Judicial Magistrate-II,

Ponneri in PRC No.9/1990. It was taken on file by the District Sessions Judge, Chengleput as S.C. No. 107/1990. The Sessions Judge, after trial, by judgment dated 09.03.1992, acquitted the workman of all the charges, including the charges framed under Sections 302, 34 and 201 IPC.

16 The workman preferred an appeal against his dismissal to the Appellate Authority and the same was dismissed. Thereafter, he raised an industrial dispute before the Labour Officer, Vellore under section 2-A of the ID Act by petition dated 15.06.1993. On notice from the Conciliation Officer, the petitioner Management sent a remark. It was contended by them that the domestic enquiry conducted by them has nothing to do with the criminal trial and for the proved charges, the workman was dismissed. Thereafter, unable to bring about a settlement, the Labour Officer gave his failure report dated 12.10.1993. On the strength of the failure report, the workman filed a claim statement dated 27.12.1993. In the meanwhile, as the name of the petitioner Management had undergone a change, it was amended and came to be known as Tamil Nadu State Transport Corporation Limited. The Labour Court took up the dispute as I.D.No.148 of 1994 and issued notice to the petitioner Management. They filed the counter statement dated nil (12/1994). Insofar as the workman's acquittal by the criminal court, in para 11 of the counter, it was stated as follows:-

"The respondent states that the petitioner sent the copy of the judgment of his criminal case for his consideration. From the judgment it learnt that the petitioner was acquitted only on the basis of benefits of doubt. He was not acquitted on the basis of honourable acquittal. The petitioner's behaviour in the society caused bad name to the respondent Corporation. The respondent rightly dismissed the petitioner from service."

17 In the event of the Labour Court holding that the enquiry conducted against the workman was not fair and proper, the petitioner Management also made an alternative prayer in para 13 which reads as follows:-

"If at all this Hon'ble Court holds for any reason that the enquiry conducted by the respondent was not fair and proper, this Respondent prays that this Hon'ble Court may be pleased to permit the respondent to adduce evidence before this Hon'ble Court and prove that the action taken against the petitioner is justifiable."

18 Before the Labour Court, the petitioner filed the enquiry proceedings comprising 9 documents which were marked as Exhibits R1 to R9. On the side of the workman, a copy of the criminal court judgment in Sessions Case No.107/1990 dated 9.3.1992 was marked as Ex.P1. No oral evidence was let in by either side. The Labour Court heard arguments both on the preliminary issue as well as on the main dispute and passed a consolidated award dated 29.6.2001, as noted already. Insofar as the validity of the domestic enquiry, the Labour Court held that proper notice was issued to the workmen for the enquiry and that excepting for two months, he was paid subsistence allowance. But, on the question of findings rendered by the Enquiry Officer, the Labour Court held that whether the workman has committed the murder or not, cannot be an issue which can be gone into by the Enquiry Officer and therefore, when there is no jurisdiction to hold any such enquiry, it cannot be acceptable to conduct a domestic enquiry and hold the workman guilty of two charges. When the petitioner Management has suspended the workman on the basis of the criminal case, they ought to have waited for the outcome of the criminal case without holding the enquiry. For this purpose, the Labour Court relied upon the judgment of the Supreme Court in **M.Paul Anthony Vs.Bharat Gold Mines Ltd. & another [(1999) 3 SCC 679]**. It also held that conducting of the domestic enquiry was not acceptable and since subsistence allowance for two months were not paid, the domestic enquiry was illegal and contrary to the principles of natural justice.

19 After having held that the enquiry was not fair and proper, the Labour Court straightaway went ahead to render a finding on the question of legality of the dismissal which was the second issue framed by it. It is strange the Labour Court did not keep in mind, the procedure to be followed in case of a matter falling under section 11-A of the ID Act. It was held in **Karnataka SRTC Vs. Lakshmiddevamma and another [(2001) 5 SCC 433]** that if an enquiry was held to be vitiated and if the employer seeks to lead fresh evidence by making a proper plea in his written statement, then, fresh evidence will have to be recorded by the Labour Court. If the employer does not seek permission for leading any fresh evidence, then, there was no obligation on the part of the Labour Court to provide any opportunity to lead fresh evidence and it can straightaway order reinstatement of the workman by holding that it was a case of no evidence. But, in this case, the petitioner Management had pleaded to lead evidence in case of the enquiry being held vitiated by the Labour Court. A grievance was also projected by the petitioner in the grounds raised in para 6(e) and (f) of the affidavit.

20 The Labour Court also committed another error inasmuch as it went ahead rendering a finding that the charges were not proved. It was held in **Neeta Kaplish Vs. The Presiding Officer, Labour Court & another [(1999) 1 SCC 517]** that in case where an enquiry held by the employer is set aside and if fresh enquiry is ordered by the Labour Court, then, no part of the evidence recorded in the enquiry conducted by the employer, can be relied upon by the Labour Court.

21 It is rather unfortunate that the Labour Courts do not look into the legal precedents laid by the Supreme Court in interpreting Section 11-A of the ID Act. But, on that score, this Court is not inclined to remit the matter back to the Labour Court for a fresh hearing, especially when more than 25 years have elapsed after the dismissal of the workman. More or less in a similar situation, the Supreme Court in **Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha and others [(1980) 2 SCC 593]** held that such an award can be corrected by an High Court under Article 226 of the Constitution. The relevant passage reads as under:-

"The Gujarat High Court in Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop. Department Stores Ltd. observed that the amended Article 226 would enable the High Court to interfere with an Award of the industrial adjudicator if that is based on a complete misconception of law or it is based on no evidence or that no reasonable man would come to the conclusion to which the Arbitrator has arrived.

Even apart from, but while approving, the Gujarat ruling in 19 G.L.R. p. 108 cited before us, we are satisfied that the writ power is larger given illegality and injustice, even if its use is severely discretionary as decided cases have repeatedly laid down. We over-rule the objection of invalidity of the High Courts order for want of power.

22 Assuming that the enquiry conducted by the petitioner Management is legal and valid, the question will be what follows from therein. As noted already, the Enquiry Officer held only charges one and three were proved and specifically held that in respect of charge no.2, i.e. there was no evidence to hold that the workman had committed any grave offence alleged against him. It also held that excepting for the statement from the Inspector of Police that the workman was arrested and kept in police

custody for some period, there was no other evidence. Both the Enquiry Officer and the Labour Court were right in holding that the petitioner management could not have conducted any enquiry independently on the incident of murder which did not take place within the premises and which is not connected with the employment of the workman. Even otherwise, no witness was examined by the petitioner management to prove any such misconduct.

23 Therefore, whether the charge nos.1 and 3 can be said to be proved against the workman and whether for those charges, he can be dismissed from service, is the only question that arises for consideration. The fact that the workman was arrested and kept in jail for sometime can only lead to his suspension and not beyond that. It must be noted that he was kept under suspension with effect from 02.01.1990. That fact of his arrest and incarceration in jail was not in dispute. It is not clear as to how his arrest before trial by the police on certain charges, can be said to be a misconduct under the relevant Standing Orders. The Standing Order only mentions about a misconduct which relates to conviction for an offence involving moral turpitude as per CSO 24(xxx), as noted above. That was not the case here. The 3rd charge relates to a publication of a news item in the Daily Thanthi newspaper dated 31.12.1989. In that newspaper, a statement given by Dhanalakshmi, the 2nd accused in the criminal case, was quoted. The statement incidentally referred to name of the workman (Vijayakumar) stating that she got acquainted with him who was working as a Conductor in the petitioner Management. Except a reference to the fact that the workman was working in the petitioner Management, there was no other news by which the petitioner Management could have been linked to the offence itself. The charge levelled against him was that by such widely published news item he had brought disrepute to the petitioner Management.

24 It must be noted that whenever any crime of this nature is registered by the police, they liberally leak out such information to the press. The newspapers also carry such news especially when the crime relates to a wife involved in killing her husband. In this case, the statement recorded by the police from Dhanalakshmi, wife of the deceased, was published by the newspaper. The workman was in no way responsible for publication. It is not as if the newspaper attempted to publish a news item denigrating the petitioner Management. Further, that the workman was working as a Conductor in the petitioner Management on the date of the crime is also a fact. May be, the news of the acquittal of the workman by the Sessions Court would also have been carried out by some newspaper. In that event, that news also would have mentioned about the fact that the workman was working in the petitioner Management. If only the workman was aware of his right of reply, he could have legally

enforced a right to get his acquittal also published in such papers. Anyhow, in a large corporation like the petitioner Management, such instances getting published also referring to the name of the petitioner Management along with the name of the accused is unavoidable. Neither there was any alleged motive attributed to the newspaper or to the workman being responsible for such publication by which the petitioner Management's image was tarnished. In numerous cases of road accidents involving the petitioner Management's buses, the name of the drivers of the buses as well as the name of the petitioner Management get published. Does it mean that whenever such news items appear, the petitioner Management gets a bad name because its name was dragged in?

25 Incidentally, the statement attributed to the said Dhanalakshmi was marked as Prosecution Exhibit No.8. The Sessions court judgment was marked before the Labour Court by the workman as Ex.P1. A perusal of the said order with reference to the alleged statement of Dhanalakshmi given to the police was commented upon by the learned Sessions Judge in para no. 40 of his order as follows:-

“அ.சா. 7 2வது எதிரி போலீசார் கைது செய்தபோது ஒப்ப
தல் வாக்குமூலம் பெற்றதாகவோ அதன் அடிப்படையில் அவர்
காட்டிய இடத்திலிருந்து கத்தி எடுக்கப்பட்டதாகவோ
சொல்லவில்லை. 29ம் தேதி பகல் 3.00 மணிக்கு வாக்குமூலம்
கொடுத்தது போல் சா.ஆ.8 உள்ளது. ஆனால், மதிய
நேரத்திற்கு முன்னாலே போலீசார் அழைத்துப்போனதாக
சொல்லியிருக்கிறார். இந்த ஒரு நிலையில் 2வது எதிரி 29.12.89
அன்று கைது செய்யப்பட்டாரா? அவர் ஒப்புதல் வாக்குமூலம்
கொடுத்தாரா? அதன் அடிப்படையில் சான்றுபொருட்கள்
கைப்பற்றப்பட்டதா என்பதே ஐயப்பாட்டிற்கு இடமாக உள்ளது.
எனவே எதிரிகளிடமிருந்து எந்த பொருளும்
கைப்பற்றப்பட்டதாக அரசு தரப்பில் எவ்வித ஐயப்பாட்டிற்கும்
இடமின்றி நிரூபணம் செய்யவில்லை.”

In this background, if the alleged statement given by Dhanalakshmi was not believed by the Sessions Court, how the publication of her statement allegedly recorded by the police, by a newspaper, can be attributed to the workman and it could be held as a misconduct of having brought disrepute to the petitioner Management?

26 Perhaps, realizing that there are no misconducts referable to the certified Standing Orders, the petitioner Management ingeniously referred to an omnibus clause in the

Standing Order i.e. 24(XLIII), which, even if it gets attracted can only mean an act/omission which should reasonably constitute a misconduct. In this case, neither the workman's arrest before the trial nor the news item describing the incident containing the name of the workman as working in the petitioner Management can be said to be reasonably constituting a misconduct. The Supreme Court, in its judgment in **Rasiklal Vaghajibhai Patel vs. Ahmedabad Municipal Corporation [(1985) 2 SCC 35]** dealt with more or less similar issue and held as follows:-

"The High Court while dismissing the petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence-removal or dismissal from service on account of the misconduct constitutes penalty in law-that the workmen sought to be charged for misconduct must have adequate advance notice of what section or what conduct would constitute misconduct.

Lastly we may refer to Workmen of Lakheri Cement Works (1) [1966] 2 S.C.R. 498. (2) [1974] 1 S.C.R. 434 Ltd. Associated Cement Companies Ltd(1) This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension other wise. Relying upon the earlier decision of this Court in Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh & Ors(2) the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none-the-less a misconduct not strictly falling within

the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bhusan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected. It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct."

27 It was seen from the records that the Enquiry Officer very correctly held that the second charge relating to the commission of crime was not proved before him by any evidence. This finding rendered by the Enquiry Officer was accepted by the petitioner Management at the time of issuing show cause notice on the proposed penalty. Therefore, whether the workman committed the offence of murder was not an issue either before the Enquiry Officer or before the Labour Court. It has been held in a number of cases that there is no bar for an employer to conduct an enquiry even when the criminal court is also trying the same issue, if the matter is based upon the same set of facts. Therefore, in this case, no question arises as to whether the employer has proceeded with an enquiry on an incident which was also the subject matter of trial before the criminal court.

28 Notwithstanding the same, the learned counsel for the petitioner Management relied upon the following four judgments which have no bearing on the issue at hand:-

a. South Bengal State Transport Corporation Vs. Sapan Kumar Mitra & Ors, 2006(2) SCC 584

b. Noida Entrepreneurs Association Vs. Noida & Ors.. 2007 (10) SCC 385

c. Divisional Controllor, Gujarat SRTC Vs. Kadarbhai J.Suthar, 2007(10) SCC 561

d. The Transport Commissioner, Vs. G.Durai & Anr., MANU/TN/1759/2007

29 The first case (South Bengal State Transport Corporation) cited by the learned counsel for the petitioner Management was a case where a bus driver of the State-owned Transport Corporation commits an accident in which 15 passengers

died and several others were injured. The matter was tried before the criminal court and he was acquitted on the ground of insufficient evidence. Whereas, in the domestic enquiry, he was found guilty and removed from service. It was in those circumstances, in para 10, the Supreme Court had observed as follows:-

"That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed."

It is not clear as to how the above decision is of any assistance to the case of the petitioner.

30 The second case (Noida Entrepreneurs Association) relates to a corruption case of a public servant. The question that arose therein was whether the stand of the U.P. Government not to proceed with the department enquiry since the corruption charges against the public servant was in progress, was correct. It was in that context, the Supreme Court, in para 16, observed as follows:-

"The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

Once again it is not clear as how this case can help the case of the petitioner especially when in the present case a domestic enquiry was conducted and the subject matter of dispute itself arose out of that."

31 The third case (Gujarat SRTC) also relates to a driver of a State-owned Transport Corporation who commits an accident in which an 8 year old child dies. The question arose in that case was whether the driver having been acquitted by the criminal court, can he be found guilty in the domestic enquiry. It was in that background, in para 5, the Supreme Court observed as follows:-

"mere acquittal in a criminal case does not have the effect of nullifying the decision taken in the departmental proceedings. They operate in different areas of considerations"

It must be noted that the same fact situation has not arisen in this case.

32 The fourth case (The Transport Commissioner) rendered by a Division Bench of this Court relates to corruption charges levelled against a Government servant. The question raised was whether the department can proceed with the enquiry on the charge sheet, especially when the prosecution launched against him had ended in acquittal. It was in that context, in para 41, the Division Bench had observed as follows:-

"We are convinced that the Tribunal was not justified in having set aside the charge memo on the sole ground that the criminal prosecution ended in acquittal by giving benefit of doubt and that since the state had preferred to launch a criminal prosecution, the departmental proceedings cannot be proceeded with."

Once again, the said decision is not helpful to the case of the petitioner Management as the fact situation in this case is completely different.

33 In this case, the question that arises for consideration is not whether the action before a criminal court or acquittal by a competent criminal court is a bar for departmental action being initiated against the workman. On the other hand, in this case, the allegation against the workman in respect of the second charge relating to commission of the offence was not held proved by the Enquiry Officer, which finding was accepted by the petitioner Management, as noted above. Further, the workman was also acquitted (marked as Ex.P1). The said acquittal from the criminal case is binding on the petitioner Management. In this context, it will be relevant to refer to the decision of the Supreme Court in **Management, Pandiyan Roadways Vs. N. Balakrishnan [(2007) 9 SCC 755]** and the following passage of the said judgment may be usefully quoted:-

"The factum of his acquittal has been taken into consideration by the Division Bench, which was considered to be an additional factor. Ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of punishment imposed upon the delinquent officer in a departmental

proceeding is a matter which will again depend upon the fact situation involved in a given case.

There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. Paul Anthony v. Bharat Gold Mines Ltd. and Another [(1999) 3 SCC 679] and G.M. Tank v. State of Gujarat and Others [(2006) 5 SCC 446]. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when : (i) the order of acquittal has not been passed on the same set of fact or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered. [See Commissioner of Police, New Delhi v. Narender Singh (2006) 4 SCC 265], or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the Civil Court. [See G.M. Tank (supra), Jasbir Singh v. Punjab & Sind Bank and Others - 2006 (11) SCALE 204, and Noida Enterprises Assn. v. Noida & Others - 2007 (2) SCALE 131 # Para 18].

In Narinder Mohan Arya v. United India Insurance Co. Ltd. and Others [(2006) 4 SCC 713], this Court held :

"39. Under certain circumstances, a decision of a civil court is also binding upon the criminal court although, converse is not true. (See Karam Chand Ganga Prasad v. Union of India). However, it is also true that the standard of proof in a criminal case and civil case is different.

40. We may notice that in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., this Court observed: (SCC p. 695, para 35) "35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instance case."

41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in large number of decisions points out that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Manager, Reserve bank of India v. S. Mani. Each case is, therefore, required to be considered on its own facts."

(emphasis added)

34 The writ petitioner, in para 6 (d) of the affidavit , raised a ground that the reliance placed by the Labour Court on **Paul Antony's case** (supra) does not apply to the facts and circumstances of this case. In **Paul Anthony's case** (supra), in para 34 and 35, it was observed as follows:-

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

35 Subsequently, in **G.M.Tank Vs. State of Gujarat and others [(2006) 5 SCC 446]**, the Supreme Court, in paras 20, 30 and 31, had observed as follows:-

"Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice....

The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses 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 his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed 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.

In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed"

The decisions in **Paul Anthony** case (supra) and **G.M.Tank** case were considered by the Supreme Court in the **Pandian Roadways** case (supra). However, these issues keep coming before the Supreme Court again and again and the Court had an occasion to consider similar issues subsequently also.

36 The Supreme Court, in **S.Bhaskar Reddy & another Vs. Superintendent of Police & another [(2015) 2 SCC 365]**, in para 26, after referring to the above two cases, came to the following conclusions and granted relief as under:-

"We have answered the alternative legal contention urged on behalf of the appellants by accepting the judgment and order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the appellants in the Disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to set aside the orders of dismissal passed against the appellants by accepting the alternative legal plea as urged above having regard

to the facts and circumstances of the case."

37 It must be noted that all the authorities of the Supreme Court had only considered whether it is permissible for the employer to conduct a parallel domestic enquiry in respect of the charges which are also the subject matter of criminal trial. Barring for a few exceptions, the Court held that it is permissible for the employer to hold a departmental enquiry even in respect of charges arising out of the same set of facts. But, at the same time, the limitation to conduct such enquiry and the binding nature of the findings rendered by the criminal court were also dealt with in some other cases.

38 In **Union Of India & Ors. Vs. Naman Singh Sekhawat [(2008) 4 SCC 1]**, it was observed as under:

"There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair."

39 Further, in the **State Bank of India & another Vs. Mohammed Abdul Rahim [(2013) 11 SCC 67]**, the Supreme Court observed as under:-

"There can be no doubt on the proposition that on the very same facts that give rise to a criminal offence it is always open to the employer to initiate a departmental proceeding which option the employer may or may not exercise. In the even the employer chooses to initiate a departmental proceeding, it would be open for such an employer to take disciplinary action against the erring employee if the charges levelled are found to be substantiated notwithstanding the acquittal of the employee in the criminal case that may have been lodged against him. This is on the principle that standard of proof in a criminal case and a departmental proceeding is different. However, in a case where the employer chooses not to initiate a departmental proceeding and

acts only on the basis of the conviction in the criminal prosecution he would be bound by the final verdict in the same i.e. in case of a reversal."

40 To recapitulate the facts in this case, the allegation against the workman was that he had illicit intimacy with one Dhanalakshmi and together, they had planned to eliminate Rajendran (Dhanalakshmi's husband), pursuant to which, it is alleged that the workman had given a dose of poison to Dhanalakshmi for administering it to her husband by mixing it in his food. It is the further case of the prosecution that Dhanalakshmi mixed the poison in the food of her husband Rajendran and after he fainted, the duo strangled him to death with a rope and in order to cover their misdeeds, they cut the body of Rajendran into seven pieces, stacked it in a gunny bag and threw the bag in a remote place. The entire prosecution case was based on circumstantial evidence and the prosecution had placed very strong reliance on the extra judicial confession that is said to have been given by Dhanalakshmi to Kuruvammal (P.W.9), who, unfortunately, turned hostile before the Trial Court, on account of which, the workman and Dhanalakshmi were acquitted.

41 This Court carefully perused the judgment of acquittal and is of the opinion that the workman was not acquitted, because, he was as innocent as a lamb, but, because, an important witness turned hostile. In the considered opinion of this Court, his acquittal cannot be said to be honourable. However, the Enquiry Officer was correct in not giving any finding with regard to charge no.2.

42 Post acquittal, the workman's reinstatement was inevitable. However, as regards the grant of backwages, this Court is of the view that he would not be entitled to full backwages, because, after the murder, he was arrested and consequently, he was suspended from service. The Management conducted enquiry and held that charge nos.1 and 3 have been proved. The workman surfaced only after he was acquitted by the Criminal Court and filed an appeal against the order of dismissal. He did not challenge his dismissal from service when the order dated 27.05.1991 was passed, but, waited for the verdict of the Criminal Court, to raise an industrial dispute. That apart, the Management reinstated him in service after the award was passed by the Labour Court, without prejudice to their right to challenge the award. Under such circumstances, this Court is of the considered view that that the workman will not be entitled to full backwages on the principle of "no work no pay".

In the result, this writ petition filed by the Management is partly allowed. The award dated 29.06.2001 passed by the Labour Court in I.D.No.148 of 1994 with regard to payment of full backwages alone is set aside and the rest of the award is sustained. No costs. Connected W.P.M.P.is closed.

cad

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Assistant Registrar

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Sub Assistant Registrar

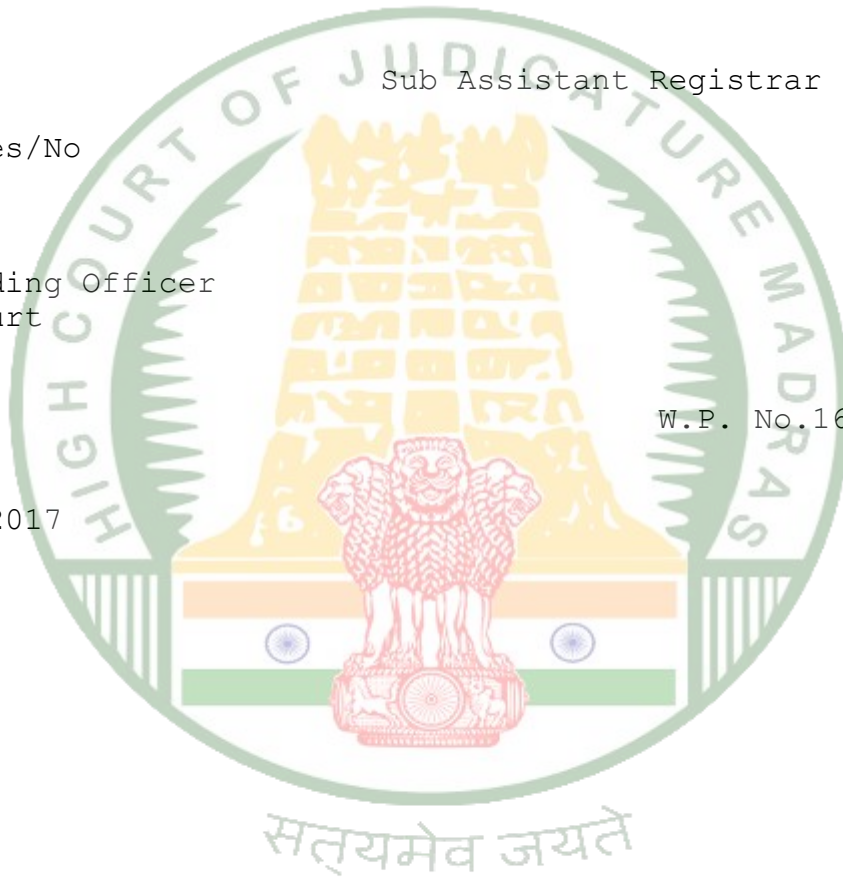
Index : Yes/No

To

The Presiding Officer
Labour Court
Vellore

W.P. No.16718 of 2003

MG (CO)
VS 13.03.2017



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