

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.34487 and 34488 of 2003
and

W.P.M.P.Nos.41872 and 41873 of 2003

The Management of Pannimedu Estate,
Represented by its Manager,
Valparai, Coimbatore.

.. Petitioner
(in all W.Ps)

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

.. 1st Respondent
(in all W.Ps)

2.Mohammed,
C/o.General Secretary,
Tamil Nadu Plantation
Workers Union (AITUC),
Valparai, Coimbatore.

.. 2nd Respondent
in W.P.No.34487 of 2003

2.Rajan
C/o.General Secretary,
Tamil Nadu Plantation
Workers Union (AITUC),
Valparai, Coimbatore.

.. 2nd Respondent
in W.P.No.34488 of 2003

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari to call for the records on the file of the first respondent and quash the impugned awards dated 24.10.2002 made in I.D.Nos.233 and 166 of 1992.

In all W.Ps.:

For Petitioner	:	Mr.M.Vijayan for M/s.King & Partridge
For R2	:	Ms.S.Girija

COMMON ORDER

Writ Petitions are filed for issuance of writ of Certiorari to call for the records on the file of the first respondent and quash the impugned awards dated 24.10.2002 made in I.D.Nos.233 and 166 of 1992.

2.The issue involved in both the Writ Petitions are one and the same and hence they are disposed of by this common order.

3.According to the petitioner, the petitioner issued charge memo dated 08.08.1991 to the second respondent in both the Writ Petitions, who are the workers of the petitioner estate alleging that the second respondent in both the Writ Petitions along with others threatened the Assistant Field Officer, Mr.Arthur Raja on 02.08.1991 at 08.45 a.m. with a pruning knife and abused him in a filthy language. On receipt of such complaint, show cause notice dated 02.08.1991 was issued to both the second respondents. Not being satisfied with the explanation given by the second respondents dated 06.08.1991 in both the Writ Petitions, domestic enquiry was conducted by Mr.D.C.Aiyanna as the Enquiry Officer. The second respondent in both the Writ Petitions did not appear before the Enquiry Officer in the domestic enquiry and the petitioner examined 5 witnesses on 10.08.1991. The Enquiry Officer in order to give another opportunity to the second respondent, issued notice to the second respondent for appearance on 16.08.1991 and on that date also the second respondent in both the Writ Petitions did not appear. Therefore the petitioner fixed 02.09.1991 and 30.08.1991 as the respective dates of domestic enquiry for the second respondent in W.P.Nos.34487 and 34488 of 2003. The second respondent in W.P.No.344488 of 2003 appeared with defence assistant Mr.Kannan and both the second respondents are permitted to cross examine the witnesses examined by the petitioner and also permitted to examine the defence witnesses. The second respondent in W.P.No.34488 of 2003 did not cross examine the management witnesses, but examined two defence witnesses and gave his statement before the Enquiry Officer. The Enquiry Officer considering the materials on record, gave separate reports dated 04.09.1991 and 03.09.1991 holding that charges leveled against the second respondent in W.P.Nos.34487 and 34488 of 2003 were proved. The Disciplinary Authority concurred with the findings of the Enquiry Officer and terminated second respondents in both the Writ Petitions by order dated 09.09.1991. Against the order of termination, the second respondent in both the Writ Petitions raised I.D.Nos.233 and 166 of 1992 respectively before the first respondent.

3(a).The first respondent by separate orders dated 12.08.1994 ordered reinstatement with continuity of service and back wages and other attendant benefits to both the second respondents. Challenging the same, the petitioner filed W.P.Nos.9155 and 12960 of 1995 and this Court by the order dated 01.08.2002, set aside both the awards passed by the first respondent in I.D.Nos.233 and 166 of 1992 and remanded the matter back to the first respondent for fresh consideration after affording opportunity to the parties.

3(b).After remand, the second respondent in both the Writ Petitions did not let in any oral and documentary evidence. The petitioner marked enquiry proceedings before the first respondent as Ex.M1 in I.D.No.233 of 1992 and marked 10 documents as Exs.M1 to M10 in I.D.No.166 of 1992. The first respondent passed the preliminary award dated 28.02.1994, holding that enquiry conducted by the petitioner was fair and proper. The first respondent after taking note of the preliminary award dated 28.02.1994 and enquiry proceedings as Ex.M1 filed by the petitioner in I.D.No.233 of 1992 and Exs.M1 to M10 filed by the petitioner in I.D.No.166 of 1992, the Labour Court set aside the order of dismissal disbelieving the evidence on the grounds that other workmen will give evidence only in support of the management, the petitioner did not issue second show cause notice, not registering police complaint, after enquiry report the petitioner did not call for explanation from the second respondent in I.D.No.233 of 1992 and the petitioner has not proved that the second respondent in W.P.No.34488 of 2003 (petitioner in I.D.No.133 of 1992) was in the place of occurrence on 02.08.1991 and he attended work on 02.08.1991. (பணிக்கு வந்தார் என்பது நிரூபிக்கப்படவில்லை) and the finding of the Enquiry Officer that charges are proved is also not correct and there were no allegations against the second respondents in both the Writ Petitions on their past working records. The report of the Enquiry Officer is also not correct.

3(c).Against the said awards, the petitioner has come out with the present two Writ Petitions.

4.The learned counsel appearing for the petitioner made various submissions on merits. The learned counsel appearing for the petitioner mainly contended that non issuance of second show cause notice will not vitiate the order of dismissal passed by the petitioner. Only when the second respondent in both the Writ Petitions allege and prove that they were prejudiced by non issuance of second show cause notice and not giving opportunity to submit their explanation, the order passed by the petitioner can be set aside. In the present case, the second respondent in

both the Writ Petitions did not plead and prove that they were prejudiced by non issuance of second show cause notice and order of dismissal is vitiated on that ground.

5.The learned counsel appearing for the petitioner further contended that the first respondent having passed a preliminary award holding that domestic enquiry was conducted in a fair and proper manner, erred in holding that finding of the Enquiry Officer is not correct. The first respondent failed to see that the petitioner has let in acceptable evidence and proved the charges leveled against the second respondent in both the Writ Petitions. The first respondent rejected the evidence of the workmen witnesses examined by the petitioner on erroneous ground that workers would give evidence only in favour of the management. The petitioner had examined the complainant who was threatened and abused by second respondent in both the Writ Petitions and proved the charges. The second respondent in both the Writ Petitions have admitted that complaints was given to police against them. The witness examined by the petitioner deposed that police examined him.

6.The second respondent in both the Writ Petitions claim to be victimised for Labour Union activities, but failed to prove the same. The learned counsel appearing for the petitioner in support of his contention relied upon the following judgments.

(i) (1976) 1 SCC 518, [Messrs Bharat Iron Works Vs. Bhagubhai Balubhai Patel and others], wherein at paragraph nos.10 and 11, the Hon'ble Apex Court held as follows:

"...10.A word of caution is necessary. Victimisation is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is, per se, no crucial instance. Collective bargaining being the order of the day in a democratic social

welfare state, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activity can flow in healthy channel only on mutual cooperation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.

11. The onus of establishing a plea of victimisation will be upon the person pleading it. Since a charge of victimisation is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced."

(ii) (1977) 2 SCC 491, [State of Haryana and another Vs. Rattan Singh], wherein at paragraph nos.3 and 4, the Hon'ble Apex Court held as follows:

"...3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as done out by the record, is that the

inspector of the flying squad who had said that they had paid the fares but they declined to give such written statement. The third round which weighted with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the

passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

(iii) (1996) 11 SCC 599, [Vijay Kumar Nigam (dead) through LRS. Vs. State of M.P. and others], wherein at paragraph nos.2 and 3, the Hon'ble Apex Court held as follows:

"...2. The appellant, while working as Sub-Inspector, and being in-charge of the Police Station Pakhanjur, District Jagadapur, on receipt of illegal gratification failed to prevent the running of common gambling house of one N.K. Ghosh. Consequently, in the departmental enquiry initiated against him the Enquiry Officer, after due enquiry and giving him opportunity, found that the appellant had received illegal gratification from the organiser of gambling, N.K. Ghosh. Thereby, misconduct was proved against him. Based thereon, he was dismissed from service by order dated July 31, 1971. On appeal, it was confirmed by the Inspector General of Police by order dated January 21, 1974. The same came to be challenged in the Misc. Petition No. 204/74. The Division

Bench of the High Court in the impugned judgment dated may 2, 1978, dismissed the same. Thus, this appeal by special leave.

3. Two grounds have been pressed for consideration in the High Court and reiterated in the appeal. The main ground was that the report of the preliminary enquiry conducted against him before initiating departmental enquiry, was not supplied to him and, therefore, it is violative of the principle of natural justice. The High Court has rejected the contention and, in our view quite, rightly. The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. The High Court also found as a fact that all the statements of persons that formed basis for report, recorded during the preliminary enquiry were supplied to the delinquent officer. It was then contended that one of the constables, namely, Palairam was a co-accused who was also charged along with the appellant and his evidence was taken into consideration in deciding against the appellant which is inadmissible in evidence. In a departmental enquiry, the question, whether or not any delinquent officer is co-accused with other does not arise. That would arise in a prosecution laid for officer under the IPC or prevention of Corruption Act. The evidence recorded in the departmental enquiry stricto sensu is not evidence as per the provisions of the Evidence Act. Therefore, the statement of Palairam also formed part of the record which could be taken into account in adjudging the misconduct against the appellant. The Inspector General of Police had stated that even if that evidence was excluded

from consideration, there was other sufficient evidence to come to the conclusion that the appellant had taken illegal gratification from the organiser of gambling. Thus, the High Court has not committed any error of law in dismissing the writ petition of the appellant."

(iv) (2000) 3 SCC 324, [U.P.State Road Transport Corporation Vs. Subhash Chandra Sharma and others], wherein at paragraph no.9, the Hon'ble Apex Court held as follows:

"...9.In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice."

(v) (2006) 13 SCC 619, [Kerala Solvent Extractions Ltd. Vs. A.Unnikrishnan and another], wherein at paragraph no.10, the Hon'ble Apex Court held as follows:

"...10.We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to

degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

(vi) (2009) 13 SCC 102, [Union of India and others Vs. Bishamber Das Dogra], wherein at paragraph nos.13 to 21, the Hon'ble Apex Court held as follows:

"...13. In *Syndicate Bank & Ors. v. Venkatesh Gururao Kurati JT* (2006) 2 SC 73, it was held :

"18. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

14. It is settled legal position that an order is required to be examined on the touchstone of doctrine of prejudice. A Constitution Bench of this Court in *Managing Director, ECIL v. B. Karunakar* (1993) 4 SCC 727, considered the issue at length and after taking into consideration its earlier judgment in *Union of India v. Mohd. Ramzan Khan*, AIR 1991 SC 471, came to the conclusion that furnishing the copy of the enquiry report and consideration of the employee's reply to the same by the disciplinary authority constitute an integral part of the enquiry.

"28...The second stage follows the enquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty".

Thus, it is the right of the employee to get the opportunity to make a representation against the findings in the enquiry report.

15. However, the Court further held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. The Court further observed as under:

"30. (v) They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

31. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment." (Emphasis added)

16. In *Haryana Financial Corporation v. Kailash Chandra Ahuja* (2008) 9 SCC 31, this Court applied the law laid down in *B. Karunakar* case (supra) and observed as under:

"21.....It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside." (Emphasis added).

17. In *State Bank of Patiala v. S.K. Sharma* (1996) 3 SCC 364, this Court emphasized on the application of doctrine of prejudice and held that unless it is established that non-furnishing the copy of the enquiry report to the delinquent employee has caused prejudice to him, the Court shall not interfere with the order of punishment for the reason that in such an eventuality setting aside the order may not be in the interest of justice rather it may be tantamount to negation thereof.

18. This court in *S.K. Sharma* case, held as under:-

"32.....Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice

are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise." (Emphasis added).

Similar view had been reiterated in *S.K. Singh v. Central Bank of India & Ors.* (1996) 6 SCC 415, *State of U.P. v. Harendra Arora & Anr.*, AIR 2001 SC 2315.

19. In *Aligarh Muslim University v. Mansoor Ali Khan*, (2000) 7 SCC 529, this Court considered the judgment in *M.C. Mehta v. Union of India & Ors.* (1999) 6 SCC 237 wherein it has been held that an order passed in violation of natural justice need not be set aside in exercise of the writ jurisdiction unless it is shown that non-observance has caused prejudice to the person concerned for the reason that quashing the order may revive another order which itself is illegal or unjustified.

20. This Court also considered the judgment in *S.L. Kapoor v. Jagmohan* AIR 1981 SC 136, wherein it has been held that in a peculiar circumstance observance of the principles of natural justice may merely be an empty formality as if no other conclusion may be possible on admitted or indisputable facts. In such a fact-situation, the order does not require to be quashed if passed in violation of natural justice. The Court came to the conclusion that a person complaining non-observance of the principles of natural justice must satisfy that some real prejudice has been caused to him for the reason that there is no such thing as a merely technical infringement of natural justice.

21. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had not been made

available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him."

The learned counsel appearing for the petitioner relied upon the above judgments of the Hon'ble Apex Court and contended that the finding of the first respondent is perverse.

7. Per contra, the learned counsel appearing for the second respondents in both the Writ Petitions contended that the petitioner try to victimize the second respondents for their Union activities. The report of the Enquiry Officer is not proper as the Enquiry Officer has given a report that charges against the second respondents were proved without there being any acceptable evidence. The petitioner did not furnish copy of the enquiry report, did not give opportunity to the second respondents to explain as to how the enquiry report is erroneous. The first respondent has properly considered the above materials and set aside the order of dismissal and prayed for dismissal of the Writ Petitions.

8. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondents and perused the entire materials on record.

9. From the materials available on record it is seen that the first respondent, the Labour Court considering the materials placed before it by the preliminary award dated 28.02.1994 held that the domestic enquiry conducted by the petitioner is fair and proper. After holding in the preliminary award that domestic enquiry was conducted in a fair and proper manner, the first respondent erred in holding that finding of the Enquiry Officer is not correct. The first respondent on assumption rejected the evidence of petitioner examined by the petitioner. The reason given by the first respondent that the witnesses examined by the petitioner would support the case of the petitioner as they are working as Supervisors is erroneous. The first respondent failed to see that the petitioner examined the complainant, who was abused and threatened by the second respondent in both the Writ Petitions. The first respondent failed to give any reason for not accepting the evidence of the complainant. The first respondent erroneously held that witness examined by the

petitioner before the Enquiry Officer supported the case of the petitioner as they were supervisors. As they were the witnesses of the petitioner working as supervisors, the first respondent held that the petitioner can pass final order only after issuing second show cause notice to the second respondents and considering the explanation submitted by the second respondents. On these ground the first respondent has held that action of the petitioner is not proper and is not in accordance with law. The said reason is not valid and contrary to the well settled judicial pronouncements.

10. Generally after enquiry report, the management has to give second show cause notice to the employee enclosing the report of the Enquiry Officer and call for the explanation from the employee. When the explanation submitted by the employee is not satisfactory, then the management can pass orders based on the facts and circumstances of the particular case. If the management passes final order without issuing second show cause notice or fails to furnish enquiry report, the employee must allege and prove that he was prejudiced by non issuance of second show cause notice and by non furnishing enquiry report. The judgments relied on by the learned counsel for the petitioner, especially the judgment reported in (2009) 13 SCC 102, cited supra, are squarely applicable to the facts of the present case and advanced the case of the petitioner. The Hon'ble Apex Court in the judgment reported in 2009 (13) SCC 102, while considering the non furnishing of enquiry report and second show cause notice, referred to the earlier judgments and concluded that non furnishing of enquiry report will not automatically vitiate the disciplinary proceedings. In the present case, the petitioner has not issued second show cause notice. But the second respondents have not stated in the claim petition that they were prejudiced by non issuance of second show cause notice. Even at the time of hearing also the learned counsel appearing for the second respondent in both the Writ Petition has not stated that the second respondent in both the Writ Petitions are prejudiced by non issuance of second show cause notice. In such circumstances, the first respondent has erroneously held that the petitioner has not acted properly and action of the petitioner is not in accordance with law and dismissal of the second respondent in both the Writ Petitions is not proper.

11. From the materials on record it is seen that the petitioner has conducted proper domestic enquiry, examined witnesses, gave opportunity to the second respondent to let in defence evidence and proved the charges leveled against the second respondent in both the Writ Petitions before the Enquiry

Officer. After holding that domestic enquiry is fair and proper, the first respondent can interfere with the punishment imposed by the petitioner only when the report of the Enquiry Officer is not based on any evidence or the punishment imposed is shockingly disproportionate to the proven charges. The petitioner has alleged and proved that second respondent in both the Writ Petitions threatened the superior officer with a pruning knife and abused him in a filthy language. For the above said proved charges, the order of dismissal is proper punishment.

12.For the above reason, both the impugned awards are set aside and both the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Coimbatore.

+2cc to M/s.King & Partridge, Advocate Sr.Nos. 68494 & 68495
+2cc to M/s.S.Girija, Advocate Sr.No.68564 and 68565

AKM/26.09.19/16P-6C /

सत्यमेव जयते

W.P.Nos.34487 and 34488 of 2003 and
W.P.M.P.Nos.41872 and 41873 of 2003

WEB COPY