

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.04.2022  
Pronounced on : 29.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.10959 of 2012

V.Sundaram

... Petitioner

Vs.

1. The Presiding Officer,  
The Principal Labour Court,  
Vellore,  
Vellore District.

2. The Management,  
Vellore Thiruvanamali District Milk Producers,  
Co-operative Union Limited (Avain),  
No.142, Arcot Road,  
athuvachari,  
Vellore - 9.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records from the 1st Respondent relating to impugned award dated 25.04.2011 in I.D. 182 /2009 and quash the same and to direct the 2nd Respondent management to reinstate the petitioner in service with full backwages, continuity of service and other attendant benefits, award cost.

For Petitioner : Mr.R.Rajaram

For Respondents 2 : No appearance  
R1 : Labour Court

O R D E R

The Writ Petition is filed challenging the award of the Labour Court dated 25.04.2011, in ID.No.182 of 2009 and to quash the same and to direct the 2nd Respondent management to reinstate the petitioner in service with full backwages, continuity of service and other attendant benefits and to award cost.

2. At the outset, before proceeding to deal with the facts

and the legal issues involved in the present writ petition, it may be relevant to take note of the fact that there were three bodies which worked closely with each other performing the following functions viz.,

a) The Milk Producers Co-operative Society supplies milk to the Chilling Centres.

b) The Chilling centres on receiving the milk from the Milk Producers Co-operative Society prepared a statement called Daily Milk Receipt Statements (hereinafter referred to as D.M.R Statements). The computer print of the D.M.R Statements are taken and signed by the officer in charge of the respective Chilling Centres and thereafter sent to the Apex Body at Vellore viz. (Vellore - Thiruvannamalai Milk Producers Co-operative Society).

c) On the basis of the said D.M.R. Statements, the milk bill payment statement is prepared and payments are made to the respective societies.

### 3. Background relating to the writ petition:

3.1. The petitioner had joined the Milk producers Co-operative Union as a daily wage skill worker in 1994 and was promoted as Senior Factory Assistant. Thereafter, the petitioner was working in the Computer Section. It is stated that a number of other employees were working along with the petitioner in the Computer Section which was headed by Selection Grade Executive Mr.Mohan.

3.2. While so, the petitioner was suspended from service vide order dated 27.12.2006.

3.3. Subsequently, a Charge Memo dated 19.12.2007 was issued, wherein, it was alleged that the petitioner had while preparing computer milk bill payment statements tampered with the said D.M.R Statements with a view to show a greater quantity of milk received from the Co-operative Societies than the quantities actually received. Resultantly, the 2nd Respondent which is the Apex Body viz., Vellore - Thiruvannamalai Milk Producers Co-operative Union paid more money to various Societies than what was legitimately due to them.

3.4. It was alleged that the data was tampered by the petitioner in connivance with the Secretaries of various Milk Producers Societies for the personal benefit of the petitioner inasmuch as the petitioner was paid a portion of the excess amount that was illegally paid to the Society.

3.5. The Charge Memo also stated that, in view of the above illegal acts, the 2nd Respondent had paid excess amount to the tune of Rs.33,48,255/-. The said act constituted misconduct under Clause 16 (c) (d) and 17 of the Model Standing Order framed under the Model Standing Order Act, 1948.

4.1. The petitioner submitted his explanation vide letter dated 24.12.2007, to the Charge Memo inter alia stating that, he did not prepare the D.M.R Statements but it was Mr.Mohan, the Selection Grade Executive in charge of Computer Section who prepared the Statements and the petitioner only carried out the instructions given by Mr.Mohan and refuted the allegation of manipulating the D.M.R Statements and prayed that the charges be dropped.

4.2. However, not satisfied with the said explanation, an enquiry was ordered, wherein, reliance was sought to be placed inter alia on statements allegedly obtained from Secretaries of various Co-operative Societies supplying milk, wherein, it has been uniformly stated by the Secretaries there was difference between quantity of milk supplied and the D.M.R Statements and that the difference was the result of manipulation of D.M.R Statements by the petitioner who was paid a percentage ranging from 20% to 50% of the excess payments received in view of such manipulation.

4.3. During the course of the domestic enquiry, though the petitioner had stated that he had never been involved in the job of entering data, reference was made to a letter dated 22.04.2004, wherein, the petitioner had requested the Director to re-instate him in the Computer Section and stated that he had been engaged for close to 10 years prior thereto in the job of entering the data and had carried out the said work to the satisfaction of the 2nd Respondent Society. The above was relied upon to show that the submission by the petitioner that he was never involved in entering data in computer was contrary to facts. The enquiry was completed finding the charges against the petitioner as having been proved.

5.1. Thereafter, another notice dated 10.09.2008, was issued to the petitioner, wherein, reference was made to the enquiry report and it was proposed to impose the punishment of dismissal from service. The petitioner was called upon to respond as to why the said punishment ought not to be imposed.

5.2. In response, the petitioner vide letter dated 18.09.2008, submitted his objection inter alia raising the following grounds:

i) That the entire proceedings suffered from malice and was carried out with a malafide intention of protecting the real

offenders, by making the petitioner a scape goat.

ii) That he was only engaged as a Mazdoor, cleaning the Computer Section, running errands and he worked under the supervision, control and instructions of the Superior officers particularly, Mr.Mohan.

iii) That the allegation of manipulation of D.M.R Statements and thereby causing loss to the 2nd Respondent is contrary to facts inasmuch as a number of officers were engaged in entering data, it was verified by another set of officers. Thereafter the statements were calculated, verified, signed by Superior Officer and cheques were issued to the respective societies and thereafter distributed to the concerned individuals. It was submitted that a number of officers were engaged in the process commencing with the preparation and verification of D.M.R Statements drawing and attesting cheques and clearance of funds. Thus, the allegation of manipulation and misappropriation by the petitioner who is a lower grade officer is contrary to facts, imaginary and based on mere suspicion. Furthermore, the allegation fails if one were to apply the test of "preponderance of probability".

iv) That no witnesses were examined nor was the petitioner permitted to cross-examine any of the alleged deponents viz., Secretaries of various Societies whose statements formed the basis for the entire proceedings. That the entire proceedings was made without providing the petitioner adequate opportunity to put forth their case.

6. Not satisfied with the said reply, the order of dismissal was passed by the 2nd Respondent vide order dated 28.01.2009, wherein, the charges were affirmed and the petitioner was imposed with the punishment of dismissal of service and that the same was stated to be without prejudice to surcharge proceedings/ Audit Objection/ any other action pending or contemplated. Aggrieved by the same, the petitioner carried the matter in appeal before the Labour Court Vellore. The Labour Court, Vellore confirmed the order of punishment. The said order of the Labour Court is under challenge in this writ petition.

7. It was submitted by the learned counsel for the petitioner that the order of the disciplinary authority and the Labour Court was not based on any evidence inasmuch as it has relied upon the Statements of witnesses who were neither examined by the 2nd Respondent nor permitted to be cross-examined by the petitioner. Secondly, the Presenting Officer has exceeded his mandate by proceeding to make submissions which were treated as evidence by the Labour Court.

8. To the contrary, it was submitted by the learned counsel for the Respondents that the order of the Labour Court was well-reasoned and statements obtained from the Secretaries of various Milk Producers Co-operative Societies clearly showed that the petitioner had manipulated the D.M.R. Statements and had enriched himself at the expense and cost of the 2nd Respondent. It was thus submitted that the order of the Labour Court does not warrant any interference.

9. Heard both sides and perused the materials placed on record.

10. This Court is of the view that the order of the Labour Court suffers from the following infirmities and thus cannot be sustained.

a) Order based on surmises and conjectures:

The Lower Court had come to the conclusion of manipulation of DMR statements and misappropriation only on finding that the petitioner was engaged in Computer Section and prepared D.M.R. Statements. It consequently concluded that the allegation of manipulation stood proved as would be evident from the impugned order, the relevant portion of which reads as under:

"It is seen from the letter dated 20.04.2007 addressed by the petitioner to the Managing Director of the respondent federation that he was engaged in the computer section for a period of 10 years and he prepared D.M.R. Statement data entries work and also prepared the milk bills society claimed bill preparation itself shows that the petitioner is responsible for the preparation of the DMR Statement and milk bill to the society. He was transferred to some other section from this computer section as per the order of the respondent dated 13.04.2004 and after 3 months he requested the management to re-transfer him to the same computer section. So, the argument of the counsel for the petitioner that there is no record to show that the petitioner was in charge of preparation of bills and manipulate the records is false."

(emphasis supplied)

The above finding would show that the Labour Court on finding that the petitioner was engaged in preparing the D.M.R. Statements had concluded that the petitioner had manipulated the D.M.R. Statements without any further enquiry, and furthermore, there was no reference to any other material in support of the said conclusion. The finding of manipulation of records by petitioner only upon finding that he entered data is suggestive and reflects predisposition on the part of the Labour Court. The

conclusion of manipulation and misappropriation is based on mere ipse dixit and surmises and conjectures and not on legal evidence. The Labour Court exercises quasi-judicial function and therefore it is incumbent on the Labour Court to assign reasons in support of the conclusion and to render findings on the basis of material and not on mere surmises and conjectures. The impugned order only contained conclusion that the petitioner manipulated the DMR Statements on the basis of surmises and conjecture. The above infirmity would prove fatal to the validity of the order.

b) Reliance on material / evidence - Not constituting evidence:

The entire proceeding was made on the basis of statements allegedly obtained from the Secretaries of various Co-operative Societies. Importantly, the Secretaries who had allegedly given statement that the petitioner had manipulated the D.M.R Statements and has enriched himself illegally consequent thereto, was not examined nor was an opportunity to cross examine granted to the petitioner. The Labour Court has not even examined the question whether in the absence of the above exercise, the alleged statement would constitute "evidence" in the eye of law for the purpose of departmental proceedings. If a document is sought to be relied upon, the author of the said document must be examined and an opportunity to cross examine must be granted, the exception being that when the genuineness of documents and the correctness of the content is not in dispute. It is settled that though strict rules of Evidence Act may not apply to disciplinary proceedings, however, it is equally true that the proceedings must be based on legal evidence. If the order is not based on legal evidence, the same may prove fatal. In this regard, it may be relevant to refer to the following judgments:

i) Cholan Roadways Ltd. Vs. G.Thirugnanasambandam,  
reported in (2005)3 SCC 241

"29.....

"14. ... No doubt the procedure prescribed in the Evidence Act by first requiring his chief examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the enquiry officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well-recognised rules of procedure. In these circumstances it was observed at p. 264:

.....

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a court or a tribunal the questions that naturally arise are, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order 19, Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except insofar as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection insofar as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt."

(emphasis supplied)

ii) LIC v. Ram Pal Singh Bisen, reported in (2010) 4 SCC 491:

"31. Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents

having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court...."

(emphasis supplied)

iii) Roop Singh Negi v. Punjab National Bank, reported in (2009) 2 SCC 570 :

"19. ....This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record . It was furthermore found that the order of the appellate authority suffered from non-application of mind."

23. .... A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

(emphasis supplied)

iv) M.V. Bijlani v. Union of India, reported in (2006) 5 SCC 88 :

"28.The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-70. The appellant, due to pendency of these proceedings, has suffered a lot. He is, therefore, directed to be reinstated in service, if he has not reached the age of superannuation. However, keeping in view the fact that he has not worked for a long time, we direct that he may only be paid 50% of the back wages. He is also entitled to costs of this appeal. Counsel's fee assessed at Rs 5000."



v) Narinder Mohan Arya v. United India Insurance Co. Ltd., reported in (2006) 4 SCC 713 :

"49. For the foregoing reasons the impugned judgments cannot be sustained which are set aside accordingly. Although, the consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the appellant as far back in 1976, we refrain ourselves from doing so. He, indisputably, has suffered a lot. However, the question which arises is what relief should be granted to the appellant. The appellant shall be reinstated in service. We, however, while directing reinstatement of the appellant, keeping in view the fact that no work had been taken from him, direct that only 50% of the back wages shall be payable. The appeal is allowed with the above mentioned directions."

A reading of the order of the Labour Court would show that though none of the Secretaries were examined and an opportunity to cross examine was not granted to the petitioner, the Labour Court did not even examine the issue as to whether the Statements of Secretaries of Co-operative Societies in such circumstance would qualify as a legal evidence which can be considered. Failure to examine the same may prove fatal to the validity of the proceeding.

Though, strict rules of evidence may not be applicable to a disciplinary proceeding and it is permissible to even place reliance upon hearsay evidence, it is equally true that hearsay evidence can be used to corroborate other material, admissible/legal evidence.

The above submission may not have merits in the facts of the case, since, if the statements of Secretaries of the Societies is excluded, there is no material much less legal evidence, resultantly, it may be reduced to an allegation solely based on hearsay evidence, surmises and conjectures. Reliance on solely hearsay evidence would vitiate the enquiry, as it would be contrary to rules of equity and natural justice. In this regard it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Jagannath Prasad Sharma vs. State of Uttar Pradesh reported in AIR 1961 SC 1245 wherein it was held as under:

"15. Regulation 490 of the Police Regulations sets out the procedure to be followed in an

enquiry by the police functionaries, and Rules 8 and 9 of the Tribunal Rules set out the procedure to be followed by the Tribunal. There is no substantial difference between the procedure prescribed for the two forms of enquiry. The enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true that by Regulation 490, the oral evidence is to be direct, but even under Rule 8 of the Tribunal Rules, the Tribunal is to be guided by rules of equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whereas the Tribunal may admit on record evidence which is hearsay, the oral evidence under the Police Regulations must be direct evidence and hearsay is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice.....

(emphasis supplied)

In the present case, there is no material/ evidence other than the alleged statements of the Secretaries of various Societies which I had already held may not constitute evidence in the eye of law, unless the deponents viz., Secretaries of various Societies are examined and an opportunity is granted to the petitioner to cross-examine, if a request is so made.

c) Presenting Officer Statement - Not evidence:

The Presenting Officer's statement cannot be taken as evidence. As stated earlier, there was no witnesses who were examined except the Presenting Officer whose statement alone was recorded. In the absence of any witness, the statement of the Presenting Officer cannot be taken as evidence to substantiate the case of the employer. In this regard, it may be relevant to refer to the decision of this Court in W.A.No.28299 of 2007 dated 26.04.2011, wherein it was held as under:

"16. Unfortunately, in the present case, there is no witness examined on the side of the management and the Presenting Officer, who is expected to present the case of management, himself has given a statement, which cannot be taken as evidence substantiating the case of the employer. That aspect has not been considered

by the Labour Court at all. The Labour Court has proceeded to receive various documents including the Enquiry Officer's report marked as Ex.M-19 dated 29.6.1998 apart from copy of minutes of the proceedings of the Enquiry Officer marked as Ex.M-18, a reference to which very clearly reveals the fact that the witnesses on the side of management have not been examined and the case of the management has not been presented through witnesses, but the case of the management has been presented through the Presenting Officer."

11. It appears from the above that the disciplinary authority and the Labour Court has discharged their functions in a perfunctory manner and in violation of settled principles relating to procedural propriety. The impugned proceeding is not based on any legal evidence but based on the basis of mere surmises and conjectures. The impugned order erred in failing to see that the statement of Presenting Officer cannot be treated as evidence.

12. The impugned order is set aside and the matter is remanded back to the Labour Court/ 1st Respondent. The 1st Respondent/ Labour Court shall dispose of the matter after ensuring that the Secretaries of various Co-operative Societies whose statements are sought to be relied upon is examined in the presence of the petitioner and an opportunity to cross-examine is granted. The 2nd Respondent shall reinstate the petitioner immediately and it is open to the 2nd Respondent to conduct a regular enquiry in accordance with law and in compliance with principles of natural justice and also bearing in mind the judgments referred to above. The above exercise shall be carried out by the 2nd Respondent within a period of 6 months from the date of receipt of a copy of this order.

13. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RAP/mka

To :

1. The Presiding Officer,  
The Principal Labour Court,  
Vellore,  
Vellore District.
2. The Management,  
Vellore Thiruvananthali District Milk Producers,  
Co-operative Union Limited (Avain),  
No.142, Arcot Road,  
Sathuvachari, Vellore - 9.

+1cc to Mr.R.Rajaram, Advocate, S.R.No.41251

W.P. No.10959 of 2012

SKM(CO)  
CT/18/07/2022