



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2022

Pronounced on : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.6313 of 2011

1.The Chennai Metropolitan Water Supply
and Sewerage Board,
Represented by its Board of Directors,
No.1 Pumping Station Road, Chintardripet,
Chennai - 600 002.

2.The Managing Director,
The Chennai Metropolitan
Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chintadripet,
Chennai - 600 002.

... Petitioners

Vs.

1. C.R. Sundaram

2. The Presiding Officer,
I Additional Labour Court,
Chennai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the entire records culminated in passing the Order dated 19.07.2010 made in I.D.No.613 of 2000 on the file of the First Additional Labour Court, Chennai, the second respondent herein, quash the same and pass orders.

For Petitioner : Mr.C.Vigneswaran

For Respondent -1 : Mr.Balan Haridoss

For Respondent - 2 : Labour Court

ORDER

This writ petition is filed challenging the order dated 19.07.2010 in I.D.No.613 of 2000 passed by the First Additional Labour Court, Chennai and praying to issue a Writ of Certiorari



to quash the said order.

2. The 1st respondent herein joined the services of the petitioner/ Board on 16.08.1982 as Drag Bucket Machine Driver and after successive promotions, he was working as Revenue Collector in Area-III from 05.08.1986 and he was in charge of Division No.109 (old Division). During May 1995, complaints were allegedly received against the 1st respondent from 5 customers stating that they have paid cash towards water/sewerage tax to the petitioner, however, no receipts were issued. An internal audit was directed to quantify the amount misappropriated by the 1st respondent. After scrutinizing the records, the total amount allegedly misappropriated by the 1st respondent was arrived at Rs.1,10,013/-. Pursuant thereto, a charge memo dated 20.03.1999 was issued to the 1st respondent containing three charges viz.,

a. That the 1st respondent had collected taxes and charges by way of cash from consumers contrary to circular/instructions issued by the Board dated 15.04.1996 wherein it is provided that Revenue Collectors shall not accept cash from consumers. The 1st respondent had violated the above instructions by collecting cash from customers.

b. The 1st respondent had misappropriated the amount collected fraudulently by way of cash towards water/ sewerage tax for his personal benefit.

c. Failure on the part of the 1st respondent to discharge his duty has tarnished the image of the Board among the customers whose remittances were left unpaid into the Account of the Board.

In view of the above, the 1st respondent was charged under Regulation 6(38) of Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Rules, 1978.

3. The 1st respondent submitted his response vide letter dated 07.05.1999 denying all the above charges and inter alia submitted the following:

A. No list of documents in support of the charges or list of witness by whom the charges are proposed to be sustained were given to him as mentioned in the charge memo.

B. That the 1st respondent was working as Revenue Collector in Area-VIII from 1984 to 1995 and during this period he had only collected D.D. and cheque towards tax and promptly remitted the collection into the Board's Account and he had never taken cash towards payment of water/sewerage tax.



C. Copy of the alleged complaints from consumers have not been furnished to the 1st respondent to enable him to respond/submit his explanations.

D. The charges have been framed for the alleged lapses during 1994-1995 after a lapse of 5 years.

E. That there was no possibility of misappropriation as the amounts collected towards tax and charges were reconciled then and there by Junior Accounts Officer and Senior Accounts Officer and audits were conducted periodically and no discrepancies was found in the audit conducted contemporaneously.

F. Assuming there were discrepancies in the figures the same may be due to the fact that the tax collected from one consumer would have been credited by mistake to the credit of another consumer account. Secondly, the difference may also be due to A.V. change to higher side, while the tax and charges based on old A.V. may have been less. These aspects were not taken into account while arriving at the alleged discrepancies the misappropriated before concluding that the petitioner had misappropriated.

G. That the charges were vague.

An enquiry report dated 07.09.1999 was made wherein it was allegedly found that the 1st respondent has misappropriated the Board's fund. It was found in the enquiry report that the 1st respondent in the course of verification of the complaint had accepted in writing that he had misappropriated the Board's fund in view of his ill health and he tried his best to remit back the fund misappropriated and requested the then Chairperson and Managing Director to show mercy on him and to reinstate him in service to enable him to repay the fund misappropriated. A sum of Rs.18,000/- was also remitted by the 1st respondent into the Board's Treasury through Canara Bank. Consequent to the enquiry report punishment order was passed on 27.10.1999 whereby the 1st respondent was dismissed from the services of the Board. Before proceeding further, it would be relevant to clarify that the alleged statement and admission by the 1st respondent was not marked and it is the case of the 1st respondent that it is false and in any view cannot not be taken into account.

4. Aggrieved by the same, the 1st respondent preferred an appeal before the Labour Court, the order of punishment was set aside, on the basis of the following findings:

a. The petitioner's witness admitted during cross examination that the charge memo did not contain any reference/



details of the complaints given by the alleged customers against the respondent.

b. The witness also admitted that the complaints of the 5 customers was not submitted during the departmental enquiry and further the cards of the 5 complainants which would indicate that cash was collected from the customers but not remitted has also not been filed/ marked as an exhibit before the Labour Court.

c. The charge memo does not indicate the amount collected by the respondent from each of the 5 customers.

d. Thirdly, it was also admitted by the petitioner's witness that there is no basis for arriving at the sum of Rs.1,10,014/- alleged to have been misappropriated by the petitioner.

e. The Labour Court found that though the entire proceedings was on the basis of the alleged complaints received from the 5 customers, no effort has been made to examine the complainants/ consumers to demonstrate/ prove the said allegation.

f. Further, the failure on the part of the petitioner to refer to the 5 complainants during the course of the departmental enquiry also gives reason to doubt the veracity and the genuineness of the case set up by the petitioner.

g. It was further found by the Labour Court that there is no reference to the various dates on which the alleged cash was collected from the respective customers and it was also submitted that the 1st respondent had not been granted adequate opportunity while being removed from service.

5. The present writ petition is filed challenging the order of the Labour Court setting aside the order of dismissal of the 1st respondent.

6. It was submitted by Mr.C.Vigneswaran, learned counsel for the petitioners that the order of the Labour Court is clearly contrary to the facts on record. The consumers having lodged complaint against the 1st respondent, action was taken only on the basis of the complaints received and it cannot be excepted of the consumers to come forward and depose as witness in a departmental proceedings, thus, the Labour Court ought not to have interfered with the order of the disciplinary authority.

7. To the contrary, it is the submission of the learned counsel for the respondents that the order of the Labour Court



does not warrant interference for the following reasons:

A. The scope for interference under Article 226 of the Constitution of India is limited and may be exercised only when it is shown that the finding of fact is perverse or unreasonable or is found to be based on conjectures and surmises. However, in the present case the order of the Labour Court does not suffer from any of the above defects/ infirmities.

B. Secondly, if the charges are serious as held by the Hon'ble Supreme Court repeatedly, the same should be proved beyond any shadow and doubt. In this regard, reliance was placed on the judgment rendered by the Hon'ble Supreme Court in the case of Union or India and others reported in (2009) 12 SCC 78.

C. Insofar as the alleged admission of the 1st respondent of having misappropriated, it was submitted by Mr. Balan Haridas, learned counsel for the 1st respondent that there is no such document and in any view, the document was never marked and thus no reliance can be placed on mere assertion.

8. Heard both sides. Perused the materials on record.

9. This Court finds no reason to interfere with the order of the learned Labour Court for the following reasons:

a. Vagueness of charge memo vitiates Disciplinary Proceeding - Fatal to its validity:

Neither in the charge memo nor during the disciplinary proceedings reference was made as found by the Labour Court to the alleged complaints made by the consumers except for a vague allegation that during May 1995 complaints were received from the consumers that they had paid cash towards Water/ Sewerage tax to the 1st respondent as could be seen from the following extract:

"During May 1995, complaints were received from the consumers stating that they have paid cash towards the water/sewerage tax to Thiru.C.R.Sundaram, Depot Manager but no receipts were issued to them. Therefore, Thiru.C.R.Sundaram, D.M., was placed under suspension vide Proc.No.MMWSBB/Area III/3842/95 dated 20.06.1995 pending of disciplinary proceedings/ Inquiry."

The above allegation which is the basis on which the entire proceedings have been made is vague inasmuch as it does not set out the name of the complainant nor does it give the dates on which the cash was allegedly collected nor does it set out the



details of the cash collected from each of the customers.

It thus appears that the charge memo and the disciplinary proceedings appears to suffer from the vice of being vague and the finding of the Labour Court to the said effect does not warrant interference. In this regard, it may be relevant to refer to the following decisions wherein it has been held that vagueness of the charge would prove fatal to the proceedings:

i) Transport Commissioner vs. A.Radha Krishna Moorthy reported in (1995) 1 SCC 332:

"9.....The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularized. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to G.O.Ms.No.928 dated 25.04.1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf."

10. We are therefore, of the opinion that the judgment of the Tribunal is right insofar as it holds that the charges communicated to the respondent are vague...."

ii) Surath Chakrabarty vs. State of W.B., reported in (1970) 3 SCC 548:

"6. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to



WEB COPY

the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges..... We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the Trial Judge was fully justified in decreeing the suit. "

iii) Sawai Singh vs. State of Rajasthan reported in (1986) 3 SCC 454:

"14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

....

16. It has been observed by this Court in Surath Chandra Chakrabarty v. State of W.B. [(1970) 3 SCC 548 : AIR 1971 SC 752 : (1971) 3 SCR 1] that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25 : (1964) 2 Lab LJ 150] and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation."

(emphasis supplied)

b. Admission not marked as evidence - Author of the document not examined - Absence of legally admissible evidence to support the allegation of misappropriation - vitiates the proceedings:



Though it is submitted by the learned counsel for the petitioners that the 1st respondent has admitted to misappropriation and also made certain payments, the same is refuted by the 1st respondent stating that there was no such admission and the payment of Rs.18,000/- was under coercion and cannot by any stretch of imagination be taken to be an admission to the allegation of misappropriation. It is fairly admitted by the learned counsel for the petitioners that the alleged admission has not been marked as an exhibit.

Though, admission is possibly the best evidence, however the failure on the part of the petitioners to mark the alleged admission made it difficult for the Labour Court to rely on the said assertion. In this regard, it may be relevant to refer to the decision of this Court in the case of Madras Aluminium vs. Labour Court, Coimbatore reported in (1992) II L.L.N. 101, wherein it was held that one cannot place reliance on the document which has been marked as an exhibit.

It is well-settled that if any document is produced, it is relevant that the writer or the author of such document must be examined. In the present case, the case of the petitioners primarily is premised on the alleged complaints made by 5 consumers. The complaint has not been admittedly marked nor has the consumers been examined. Though, it is stated that 5 complaints have been received from the consumers/customers, no effort had been made by the petitioners to either examine the complainants/ customers or obtain an affidavit. As a matter of fact, even the alleged statement given by consumers did not form part of the enquiry report or the disciplinary proceedings and was produced for the first time in the Labour proceedings and no opportunity was granted to the 1st respondent to respond and dispute the same. In this regard, it is relevant that even in Labour/ Service law jurisprudence when a letter or a document is produced to establish a fact which is relevant to the enquiry, the author must be produced or his affidavit filed. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

i) Cholan Roadways vs. G.Thirugnasambandam reported in (2005) 3 SCC 241:

29. In Bareilly Electricity Supply Co. Ltd. vs. workmen and reported in [(1971) 2 SCC 617] this Court was seized with a different question.....

"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-recognized rules of procedure. In these circumstances it was observed at p. 264:

WEB COPY

".....

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..... 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...."

(emphasis supplied)

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

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is



WEB COPY

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)

Further, failure to mark the alleged admission would prove fatal to rely upon the same. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of L.I.C. of India and another vs. Ram Pal Singh Bisen reported in 2010 III L.L.J. 97, wherein it was held as under:

"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)

It may also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Madras Aluminium vs. Labour Court, Coimbatore reported in (1992) II L.L.N. 101, wherein it was held as under:

"7. It is not in dispute that while the matter was argued before the Labour Court, neither the Tamil Nadu Boilers Attendants Examination Rules were referred to or pressed into service by the petitioner/management, nor any details regarding the initial appointment of the juniors of the second respondent who were confirmed in service, be it as helper or in any other capacity, were produced for the consideration of the Labour Court. It is not given to any of the parties to a proceeding to introduce points and produce the records at different stages as it suits them. The parties before the Labour Court have invited the decision of the Labour Court on the basis of certain materials, and on a particular plea raised before it and if that be so, it is not open to one of the parties to the proceedings before the Labour Court to try to introduce new materials which involve factual verification regarding the correctness of the claims now made before this Court and thereby attack the findings, and conclusions of the Labour Court. The



WEB COPY

submissions that are sought to be raised in the form of reply-affidavit and any advanced at the time of arguments were not even thought of as a challenge to the very award even at the time of arguments were not even thought of as a challenge to the very award even at the time of filing of the writ petition. Consequently, in my view, it is not given to the petitioner/ Management to attack the award of the Labour Court on grounds either advanced or on materials which were never placed before the said Court at the appropriate point of time. This Court, exercising jurisdiction under Article 226 of the Constitution of India, is concerned with any error apparent on the face of the record and the correctness of the award vis-a-vis the said infirmity cannot be tested with reference to plea and materials now sought to be urged and introduced at the time of hearing."

c. Finding of fact - Adequacy or sufficiency of evidence on the basis of which Labour Court decided is beyond the powers of Judicial review:

It is trite law that Court in exercise of its powers of Judicial review under Article 226 of the Constitution of India, would not get into disputed question of fact nor examine adequacy or sufficiency of evidence in the present case. The Labour Court after examining the facts has come to the conclusion that the charges were vague and that the petitioners have not proved/ demonstrated even on the basis of preponderance of probability that the 1st respondent was involved in the alleged misappropriation. The above being essentially a question of fact unless shown to be perverse, this Court would not interfere but would rather exercise restraint. Further, as stated above, the adequacy or sufficiency of evidence is again not a matter for being tested under Article 226 of the Constitution of India. In this regard, it may be relevant to refer to the following decisions:

i) Mohd. Shahnawaz Akhtar v. District Judge, Varanasi reported in (2010) 5 SCC 510:

"...we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is



within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised..."

WEB COPY

(ii) State of A.P. v. Chitra Venkata Rao, reported in (1975) 2 SCC 557 :

"A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoobv.K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64] ."

d. Delay in Disciplinary Proceedings:

It also appears that the petitioners have been lax in conducting the disciplinary proceedings, though it is alleged that complaints were received from the customers in the charge memo as early as May 1995, however, we find that the charge memo has been issued on 23.03.1999 which is almost 4 years thereafter. There is no reason/ explanation for the delay in initiating the disciplinary proceedings. It may be relevant to note that whenever there has been unexplained delay in initiating proceedings, Courts have frowned upon the same. In this regard, it may be relevant to refer to the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Bani Singh and another reported in (1990) Supp SCC 738, wherein it was held as under:

"4. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage..."

Though, in the present case there is a delay of 4 years in initiating the reasons for the same remains unexplained while the 1st respondent was under suspension from the year 1995, the charge memo was issued in the year 1999. Now, keeping a Government official under suspension for charges of corruption and doubtful integrity would cause unbearable mental agony and disgrace to the officer concerned. Disciplinary enquiry should be completed at the earliest. Further, when the charge memo is issued after enormous delay, it also causes hardship to the delinquent inasmuch as with the passage of time material evidence could be lost/ destroyed which could make it difficult for either side.



In the four years, however, there appears to be no improvement of the allegations nor has it been shown that new materials have been gathered after issuing the charge memo. This Court finds that in the charge memo and throughout the disciplinary proceedings there is no reference to the name of the customers/ consumers, the date on which the cash was received from the customers/ consumers and the amount which was received from each of the alleged customers. The above would show that there is a complete laxity on the part of the petitioners in initiating and completing the disciplinary proceedings, which is yet another reason for not interfering with the order of the Labour Court.

10. For all the reasons stated above, this Court finds that the order of the Labour Court does not warrant interference. The writ petition stands dismissed.

11. In the light of the above conclusion it is made clear that the Terminal and other benefits that may be due in terms of this order may be extended in accordance with law within a period of 8 weeks from the date of receipt of a copy of this order.

In case there is a need for any application to be submitted, it is open to the respondent to submit and on such application being filed the same shall be disposed of in accordance with law by the 1st petitioner within a period of eight weeks from the date of a receipt of such application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

smn/mka

To:

1. Board of Directors,
The Chennai Metropolitan Water Supply
and Sewerage Board,
No.1 Pumping Station Road, Chintardripet,
Chennai - 600 002.
2. The Managing Director,
The Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chintadripet, Chennai - 600 002.



3. The Presiding Officer,
I Additional Labour Court, Chennai.

+1cc to Mr.Balan Haridoss, Advocate SR.No.32224

+1cc to Mr.C.Vigneswaran, Advocate SR.No.32183

W.P. No.6313 of 2011
and
M.P. No.1 of 2011

JPL (CO)
GMY (22/06/2022)