

(1987) 08 KL CK 0042

High Court Of Kerala

Case No: None

Madikal Service Co-op. Bank Ltd.
and Another

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision: Aug. 25, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 33

Citation: (1988) 2 LLJ 49

Hon'ble Judges: U.L. Bhat, J

Bench: Single Bench

Judgement

U.L. Bhat, J.

This petition is filed under Article 226 of the Constitution of India on behalf of Madikal Service Co-operative Bank Ltd., challenging exhibit P-8 award passed by the first respondent, Labour Court, Calicut, holding that the dismissal of the second respondent by the Bank was not proper and that he was entitled to be reinstated in service with all benefits including continuity of service and back wages.

2. The second respondent joined service under the Bank as a clerk. He was promoted and posted as Branch Manager in the Bengalam branch with effect from 1st January, 1974. On 13th May, 1976, an audit party consisting of Assistant Registrar, Audit Squad, Calicut and Assistant Registrar (General), Hosdurg, conducted surprise inspection of the branch and noted three irregularities, to some of which the cashier-clerk, A.V. Sreenivasa Raghavan, was also privy. It is said that both of them gave statements admitting their guilt. Immediately, the second respondent was reverted as clerk and Sreenivasa Raghavan was transferred and posted as clerk in the head office. The Secretary of the bank deputed P.V. Bhaskaran, Accountant, to assume charge of the bank from the second respondent.

It is alleged that P.V. Bhaskaran went to the branch to assume charge on 15th May, 1976, and then the second respondent refused to hand over charge and left the office after locking the branch. The second respondent did not turn up subsequently to open the branch and the branch remained closed till 23rd May, 1976. The bank authorities had to request the help of the police as per warrant issued by the Judicial Sub-Divisional Magistrate, Hosdurg, to break open the locks and open the branch. The second respondent was placed under suspension and disciplinary action initiated against him. Exhibit P-2 is a copy of the proceedings framing charges against him. The charges included three irregularities detected by the audit party and the conduct of the second respondent in declining to hand over charge and leaving office closed till 23rd May, 1976.

3. The board of directors appointed a subcommittee to conduct an enquiry. The committee had a sitting on 18th August, 1976 and the second respondent was given notice of the sitting. It appears he was present. He gave exhibit P-4 letter stating that he could not defend himself and pleading for leniency. It appears that on 28th August, 1976, the subcommittee received written statement of defence sent by the second respondent by post. In that statement he denied the charges. As per exhibit P-5 proceedings of the disciplinary committee, the committee held the second respondent guilty of charges 1, 2 and 3 and ordered to dismiss him from service with effect from the date on which he had been put under suspension. The second respondent had a right of appeal to the board of directors. He gave representation to the board stating that he had committed mistakes and he may be pardoned. The board rejected his request.

4. At the instance of the second respondent, treating the dispute as an industrial dispute under the Industrial Disputes Act, it was referred for adjudication by the Labour Court, Calicut. On 27th April, 1979, the second respondent filed statement contending that there was no enquiry at all conducted by the disciplinary authority and in any event enquiry was conducted in violation of the principles of natural justice in as much as no oral or documentary evidence was adduced and he was not given an opportunity to cross-examine material witnesses nor allowed to examine witnesses. He also denied his guilt in regard to the charges. On 7th June, 1979, the Bank filed statement denying the allegations of the second respondent. On 17th August, 1979 the second respondent filed a rejoinder. It is seen that both sides produced documents and witness lists. They also took steps to summon witnesses. On an application dated 9th July, 1980 filed by the employer, the Labour Court directed that the question whether domestic enquiry was proper should be tried as a preliminary issue. The order was passed on 11th July, 1980. On 8th May, 1981, the Labour Court found that the domestic enquiry was not valid and posted the case for further evidence to 11th June, 1981. Thereafter two witnesses were examined for the management and the case stood posted for further evidence. At that stage the second respondent, relying on a decision of the Supreme Court in [Shambhu Nath Goyal Vs. Bank of Baroda and Others](#), contended that since the request for an

opportunity to adduce additional evidence before the Labour Court to prove the charges against the second respondent was not made in the written statement filed by the employer and the request was made only late, such opportunity should not have been given. The Labour Court accepted this contention. The Labour Court further held that the second respondent was a workman entitled to protection under the Industrial Disputes Act and since the domestic enquiry was not held, found the dismissal illegal and passed an award as indicated above. The legality of the award is now challenged.

5. Learned Counsel for the petitioner urged the following contentions before me:

(a) The Labour Court committed serious error in holding that the second respondent was a workman. He was not a workman and, therefore, he is not entitled to the relief under the provisions of the Industrial Disputes Act.

(b) The finding of the Labour Court that the domestic enquiry was not held is unsustainable. The second respondent pleaded guilty and as a matter of fact proper enquiry had been conducted.

(c) The Labour Court having given an opportunity to the employer to adduce additional evidence in proof of the charges against the second respondent, committed an illegality in ultimately holding that the employer cannot be permitted to prove the charges.

6. The second respondent joined service of the employer as a clerk on March 1, 1963. With effect from January 1, 1974, he was transferred and posted as Branch Manager in the branch of the Bank at Bengalam. It is his contention that he had only clerical duties. The only other member of the staff of the branch was a clerk-cum-cashier. It is the contention of the petitioner that the function of the second respondent as Branch Manager was mainly managerial and, therefore, he could not be treated as a workman. Exhibit P-1 herein is a copy of the Subsidiary Rules relating to the branch. A copy of exhibit P-1 had been produced in the Labour Court also. The Labour Court considered the rules and relying on the decision in Thirurangadi Service Co-operative Bank v. N.K. Venkitachalam (1971) KLT 813, and distinguishing the decision in Pallasana Service Co-operative Bank Ltd. v. Deputy Labour Commissioner, Kozhikode ILR (1982) Ker 131, held that he was a workman. This finding rested mainly on the conclusion of the Labour Court that the Branch Manager had no direct control of the Managing Board and his duties were mainly of a routine nature and that he had no power of appointment nor could he take policy decisions. The Labour Court was prepared to concede that his functions were to some extent managerial and supervisory in nature, but held that his work was mainly clerical.

7. Counsel appearing on both sides have placed reliance on a number of decisions. I shall briefly deal with the same. In *Burmah-Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah-Shell Management Staff Association* (1972) 41 FJR 361 the

Supreme Court considered the duties and functions of a Depot Superintendent under the employer and held that his principal duties were managerial in nature and the clerical duties were only incidental. In arriving at this conclusion, the Supreme Court took note of the circumstances that he was in charge of the stock and his principal duty was to see that stock was properly received, stored and sent out, that he had to get all the jobs done by the workmen and guide them in their work, that he was not the seniormost officer in the depot, that he allocated the work to the men working under him and sanctioned leave to them, that he was empowered to engage casual labour and took review of the position of strength, that he could take decisions regarding overtime work of the staff and had to maintain discipline and report all cases of indiscipline to the head office. He was authorised to spend money within the prescribed limit on behalf of the company and represent the company and the depot in dealing with other authorities.

In [Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay](#), the Court had to deal with an employee having multiple duties and observed that the test that the Court must employ in order to determine the question is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. If he is incidentally asked to do some other work which may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned.

8. The second respondent places strong reliance on the decision in *Thirurangadi Service Co-operative Bank v. N.K. Venkitachalam* (supra), holding that the Secretary of the employer in that case, viz., co-operative society, was a workman. The decision cannot have general application. Similar is the case of the decision of a learned single Judge of this Court in *Pallasana Service Co-operative Bank Ltd. v. Deputy Labour Commissioner* (supra). The Court in this case was dealing with the provisions of the Payment of Subsistence Allowance Act, 1972, which contains the definition of employee more or less on a par with the definition of workman under the Industrial Disputes Act. The Court held that the Secretary of the Co-operative Society in question is not an employee as defined. This decision again turned on the facts of the case.

9. The finding on this question should naturally turn on the Subsidiary Rules, exhibit P-1. They are styled as rules relating to management of the Bengalam branch. The provisions can be summarised as follows: There shall be a Manager who shall be responsible for the executive administration of the branch subject to control of the Secretary. He shall exercise such powers as may be delegated to him by the Secretary from time to time. The Manager shall have power to operate on the accounts of the branch with other banks within the limits prescribed by the Board. He shall exercise control over the members of the staff. In case of disciplinary action against the members of the staff, the Manager shall obtain explanations of the persons concerned, note his findings on it and submit a detailed report to the

Secretary with his remarks. He shall sign, endorse and negotiate cheques and other instruments within the limit prescribed by the Board. The cash and jewels lodged with the bank and other articles pledged by the borrowers shall be kept under the joint custody of the Manager and such other employees of the branch authorised by the Board. All the other properties belonging to the bank which are pledged with the branch shall be in the custody of the Manager, The Manager shall see to the maintenance of books, accounts and other records as may be directed by the Secretary from time to time. For all moneys paid to the branch the receipt shall be signed by the Manager or any member of the staff authorised by the Secretary. It shall be competent to the Manager to incur petty contingent expenditure subject to a maximum prescribed. Previous sanction should be obtained for incurring expenditure over and above the limit prescribed. Application for admission as A-class members and allotment of shares shall be accepted by the Manager on behalf of the Secretary and such applications shall be forwarded to the head office. C-class members shall, however, be admitted on payment of the value of share prescribed subject to the ratification by the Board. Application for mortgage loans shall be obtained by the Manager and forwarded to the head office. Loan shall be disbursed by the Manager after executing necessary bonds and loan file shall be kept in his safe custody. Loans on the pledge of gold jewels, bullion and silver articles shall be sanctioned by the Manager, in accordance with the provisions in the bye-laws and according to the instructions issued by the Secretary from time to time, subject to ratification by the Board of Directors. Loans on the pledge of agricultural and non-agricultural produce shall be issued by the Manager and loans under the security of fixed*, recurring and day deposits shall be sanctioned by the Manager in accordance with the bye-laws.

10. The Subsidiary Rules would show that the Manager is in immediate and near total control of the functions of the branch. He is responsible for the executive administration. Of course, he has to function under the Secretary and subject to the control of the Board of Directors. He is the custodian of the valuable records, accounts and responsible for the maintenance of the records. He has a significant part to play in initiating disciplinary action against members of the staff. He controls members of the staff. He has authority to sanction loans except mortgage loans. Going by the rules he has practically no clerical duties. That is perhaps because the branch has a cashier-cum-clerk. Whatever clerical duties he may have would only be negligible. He has power to operate bank accounts and deal with third parties, of course, subject to the limit prescribed. All these are clear indications to show that his duties and functions are mainly managerial. He is employed mainly in a managerial or administrative capacity and, therefore, exempt from the definition of "workman" in the Industrial Disputes Act. The Labour Court has missed the essence of his functions and misdirected itself in law and in appreciation of the facts. I, therefore, hold that the second respondent was not a workman as defined in the Industrial Disputes Act. With this finding the award deserves to be quashed.

11. The Labour Court held that the domestic enquiry conducted was not valid. The answer of the employer is that fullfledged domestic enquiry was not conducted because the second respondent pleaded guilty to the charges. This argument rests on an alleged inculpatory statement given by the second respondent to the audit party and exhibit P-4 letter. This argument ignores the written statement of defence sent by the second respondent by post, where he had denied every one of the charges. He also challenged the alleged inculpatory statement said to have been given by him to the audit party as not a voluntary statement. Exhibit P-4 does not specifically admit the facts mentioned in the charges. It contains only general statement that he had committed mistakes and was, therefore, guilty. The Labour Court was justified in concluding that he did not plead guilty to the charges. There should have been a proper enquiry with the should have been a proper enquiry with the witnesses examined and the second respondent being allowed to cross-examine the witnesses and adduce evidence. Petitioner has no case that any witness has been examined to behalf of the employee. I find no ground to interfere with the finding of the Labour Court that the domestic enquiry was not valid.

12. The Labour Court at one stage granted permission to the employer to adduce additional evidence in proof of the charges framed against the second respondent. After two witnesses were examined on behalf of the employer, the decision in Shambhu Nath Goyal v. Bank of Baroda (supra), was cited before the Labour Court. Thereupon, the Labour Court cut short the evidence and held that the management was not entitled to an opportunity to adduce additional evidence in proof of the charges. This action is seriously challenged by learned Counsel for the petitioner. Strictly it is unnecessary for me to consider this question since I have already found that the second respondent was not a workman. Since the matter has been argued I propose to consider it.

13. The leading case on the point is [Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another](#), In this decision, the Supreme Court reviewed a large number of its earlier decisions and held at p. 206 as follows:

It is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either u/s 10 or Section 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, application or written statement, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded, the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an

opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings.

The judgment was by Desai, J., speaking also on behalf of Krishna Iyer, J., and Koshal, J.

14. The leading judgment in Shambhu Nath Goyal's case, (supra), was delivered by Varadarajan, J., with Desai, J., supplementing. Both these judgments relied on the judgment in Shankar Chakravarti v. Britannia Biscuit Co., Ltd., (supra). In paragraph 16 of the judgment, Varadarajan, J., states that if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But, when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry, there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into the statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing an application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do. This was a case where the request was made fourteen years after the employee was placed under suspension. That certainly weighed with the court. In the supplementing judgment of Desai, J., the learned judge observed [Shambhu Nath Goyal Vs. Bank of Baroda and Others](#), at 425:

Ordinarily, where a party claims relief, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading has to be granted. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not, depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action. Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings, keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting; the same.

It is interesting to note that in [Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another](#), another Bench of the Supreme Court, consisting of Chandrachud, C.J., Varadarajan, J., and A.N. Sen, J., had occasion to consider the question once again and deal with the norms prescribed in Shankar Chakravarti's case, (supra), and other cases. The question which arose there was whether the Labour Court had granted permission suo motu. The Supreme Court indicated that in all probability an oral request for permission to adduce evidence was made by the employers to the Labour Court when the hearing of the application filed u/s 33(2)(b) was coming to a close. The Labour Court also stated that both sides produced documents and the management examined witnesses. It was thereafter that the workman filed an application in the Labour Court contending that the management should not be allowed to lead evidence. The Court pointed out that the order passed by the Labour Court allowing the management to lead evidence was not challenged by the workman and that both sides acted upon the order of the Court. This decision to which Varadarajan, J., was a party did not refer to Shambhu Nath Goyal's case, (supra), though it marks a line of departure from the latter. It is also significant to note that in the latter decision the Supreme Court approved the principle laid down in [Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh](#), and Shankar-Chakravarti's case, (supra).

15. I may now consider the facts of the present case. The second respondent was dismissed from service as per order dated 15th September, 1976. Reference was made to the Labour Court as per G.O. dated 17th January, 1979. The workman filed his written statement on 27th April, 1979. The employer filed a statement on 7th June, 1979. Workman filed rejoinder on 17th August, 1979. It is true that in the statement of the employer no specific request was made for permission to adduce additional evidence in proof of the charges. At the same time it is significant to note that both sides produced documents and filed list of witnesses, documents and witnesses having a bearing on the merits of the facts. It was after both sides produced documents, witness lists and petitions for issue of summons that the employer, on 9th July, 1980 filed an application praying that the issue whether the order of dismissal was preceded by a proper domestic enquiry or not may be decided as a preliminary issue. In the affidavit filed in support of the application, the President of the Bank stated:

Since the propriety and legality of the enquiry has been challenged by the workman in the above matter, it is highly essential that in the interests of justice, the Court should decide as a preliminary issue the question as to whether the domestic enquiry was held properly or not. Otherwise the management will not be in a position to adduce evidence before this Court to justify the order of dismissal on the charges levelled against him in case it will be found necessary to do so at a later stage.

This submission was the basis of the request to try the issue as a preliminary issue. The second respondent had no objection to the petition and consequently the same was allowed on 11th July, 1980. After the preliminary finding against the employer, the employer was allowed to examine two witnesses. They were cross-examined on behalf of the second respondent, who thereby duly participated in that part of the enquiry. In these circumstances the second respondent could not later on be permitted to challenge the correctness of the decision of the Labour Court to permit the employer to adduce additional evidence in proof of the charges. He had no objection to the request and the request was allowed. He cannot turn round and challenge the same. It cannot also be said that the request for permission to adduce additional evidence came at a late stage. The request by necessary implication came immediately after the pleadings were filed and without any delay. In these circumstances, I find that the Labour Court was in serious error in preventing the employer from adducing additional evidence.

16. In view of my finding that the second respondent was not a workman, exhibit P-8 award deserves to be and is hereby set aside.