(2012) 12 MAD CK 0056

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 3365 of 2006

K. Pichaimani	APPELLANT
Vs	
The Management, The Tamil Nadu State Transport Corporation Limited and Another	RESPONDENT

Date of Decision: Dec. 14, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) 137 FLR 307 : (2013) LabIC 1929 : (2013) 1 LLN 781

Hon'ble Judges: K. Ravichandra Baabu, J

Bench: Single Bench

Advocate: R. Vijayakumar, for the Appellant; K. Jayaraman, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

K. Ravichandra Baabu, J.

The Petitioner challenged the award passed in I.D. No. 39 of 1999, dated 26.4.2005 by the Labour Court, Trichy and consequently, sought for reinstatement of service with all attendant benefits. The case of the Petitioner is that he was appointed as a ''Driver'' in the First Respondent Corporation on 10.1.1987. While he was in service, the Petitioner was placed under suspension on 2.4.1998, pending Disciplinary proceedings. On 5.5.1998, a Charge Memo was issued by stating that the Petitioner had committed theft of a sum of Rs. 810/- on 27.3.1998 in the bus, while it halted at Sayalkudi. Based upon the Charge Memo, an enquiry was conducted. At the time of enquiry, the Petitioner sought for the report submitted by the Conductor, by name, P. Anbazhakan, which necessitated the Departmental action against the Petitioner. However, the said Report was not furnished to the Petitioner and on the other hand, the enquiry was proceeded by setting him ex parte. A Criminal case was also filed against the Petitioner in Crime No. 67 of 1998, on the file of Sayalkudi Police Station.

The same was taken on file in C.C. No. 4 of 1999, on the file of Judicial Magistrate, Muthukulathur. After an elaborate trial, the learned Judicial Magistrate acquitted the Petitioner, by his Judgment, dated 29.9.1999. The Departmental Enquiry was concluded and a Report, dated 23.9.1998, was submitted by the Enquiry Officer by giving a finding that the charge levelled against the Petitioner as proved. Consequently, an order of dismissal came to be passed against the Petitioner. Aggrieved against the same, the Petitioner preferred an Industrial Dispute on 12.1.1999. As the Conciliation proceedings ended in failure, the Petitioner filed I.D. No. 39 of 1999, on the file of the Labour Court, Trichy. Though the Petitioner had raised very many valid points, the Labour Court without considering the same, dismissed I.D. No. 39 of 1999, by the impugned order. Hence, the present Writ Petition is filed.

2. The First Respondent filed a Counter Affidavit and stated that the Petitioner was employed as a ''Driver'' and while he was on duty on 27.3.1998 in the bus bearing registration No. TN-55-N-0160 plying on the route from Trichy to Sayalkudi, he had stolen Rs. 810/- being the collection amount kept in the cash bag of the bus Conductor. The Charge Memo, dated 5.5.1998, was served on him. Despite granting of opportunity, he did not reply. Hence, an enquiry was ordered and one K. Ramanathan was appointed as Enquiry Officer. The enquiry was conducted after due intimation to the Petitioner and the Petitioner also participated in the same thoroughly. However, for the Enquiry, dated 26.6.1998 despite notice the Petitioner did not turn up. Therefore, he was set ex parte. The Enquiry Officer through his report, dated 31.8.1998, concluded that the Petitioner was guilty of the charges of theft of Rs. 810/-. Taking into account of the gravity of the misconduct as well as the past service record, the management came to a provisional conclusion to dismiss the Petitioner from service and accordingly, a second Show-Cause, dated 9.9.1998, was served on the Petitioner. The explanation submitted by the Petitioner was also considered and the same was found not satisfactory. The Petitioner was dismissed from service, by order, dated 23.9.1998. The same was confirmed by the Second Respondent/Labour Court.

3. It is further stated by the First Respondent that the Labour Court after having analysed the evidence thoroughly came to the conclusion that the charges against the Petitioner have been proved and consequently justified the order of the dismissal.

4. Learned Counsel appearing for the Petitioner submitted that the Labour Court having seen that the Petitioner was acquitted in the Criminal case on benefit of doubt, ought to have set aside the order of dismissal.

5. The learned Counsel further contended that when the charge framed in the Criminal case as well as in the Departmental proceeding is one and the same arising out of the same cause of action, the Labour Court was not justified in ignoring the Judgment rendered in the Criminal Court in toto. Even on merits, the learned

Counsel submitted that the Labour Court relied on the evidence of MW1, Conductor, who had deposed only on presumption and there was no eyewitness. The other witness, namely, MW2, is also an Employee of the Corporation, who had admittedly deposed not having any knowledge about the offence committed by the Petitioner.

6. It is also contended by the learned Counsel that when admittedly, the cash recovered as well as the Conductor bag were not produced or marked as exhibits either before the Criminal Court or before the Labour Court, the Labour Court ought not to have confirmed the order of dismissal when the so called recovered cash and bag were not marked as material objects.

7. In support of his contention, the learned Counsel for the Petitioner relied on the decision of the Hon''ble Supreme Court reported in the case of G.M. Tank Vs. State of Gujarat and Another, .

8. Per contra, the learned Counsel for the First Respondent Corporation submitted that once Labour Court concluded its finding based on evidence, the power to review the same by this Court by exercising its jurisdiction under Article 226 of the Constitution of India is limited and therefore, the same cannot be interfered with in this case. Moreover, the past conduct of the Petitioner is also not good and the same has also been considered by the Labour Court, before confirming the order of punishment. Thus, the learned Counsel for the Respondent submitted that the order imposed against the Petitioner does not warrant any interference.

9. Heard the learned Counsel appearing for the respective parties.

10. In this case, the Petitioner was served with the Charge Memo on 5.5.1998 and thereafter, an enquiry was conducted. The Enquiry Report submitted by the Enquiry Officer reveals that two witnesses were examined on the side of the Management, namely, one G. Murugesan and K. Anbazhahan, as MW1 & MW2 respectively. A perusal of the statement made by those witnesses, as extracted in the Enquiry Report only shows that both of them are not eyewitnesses to the offence said to have been committed by the Petitioner. MW2, Anbazhahan, the Conductor, had only spoken that when he was sleeping by having the cash bag under his head, he found the same missing only after waking-up in the morning and therefore, he suspected that the Petitioner alone could have committed the offence.

11. Likewise, MW1-Murugesan also had spoken that he came to the place of occurrence next day and on enquiry, he came to know that the Petitioner had stolen the amount of Rs. 810/- and he had also taken the same from the battery box in the presence of the Police.

12. Thus, from the statement of these two witnesses one thing is clear that both of them are not eyewitnesses and they have spoken against the Petitioner only on presumption. The very same conductor was examined by the Criminal Court as PW4. The Criminal Court considered his evidence and ultimately came to the conclusion

that his testimony was not acceptable as he himself had stated that he felt as if somebody was taking his cash bag while he was sleeping and he was not aware as to who had done that. Therefore, based on the presumption, PW4 had spoken against the Petitioner. Such evidence of the said person, namely, the Conductor, was rejected by the Criminal Court. Apart from that one more vital aspect of the matter was also taken note of by the Criminal Court, namely, non-production of the cash recovered from the Petitioner and the cash bag. Thus by taking note of all these facts and circumstances, the Trial Court, by giving benefit of doubt to the Petitioner, acquitted him.

13. On the other hand, the Disciplinary Authority passed the order of dismissal, based on the Enquiry Report submitted by the Enquiry Officer. Even during the enquiry, the Conductor as MW2 had only stated that he suspected the Petitioner as having stolen the cash. There also neither the recovered cash nor the cash bag were marked before the Enquiry Officer. This vital aspect has not been considered by the Labour Court properly and it had proceeded to confirm the order of dismissal by holding that there was no reason to disbelieve the version of MW1. It had also pointed out that since the Petitioner had been acquitted only by giving benefit of doubt, by the Criminal Court, so much of proof is not required in domestic enquiry as that of Criminal Court.

14. Further, the Labour Court pointed out that since the Police had recovered a sum of Rs. 810/- under the battery box and the Petitioner had also admitted before the Sub-Inspector of Police that he had committed the offence, the Management had proved the charges against the Petitioner.

15. Apart from that the Labour Court at point No. 2 had also considered several past misconduct committed by the Petitioner showing his disorderly behaviour. Accordingly, the order of punishment imposed on the Petitioner was found to be not disproportionate taking note of misconduct.

16. All these findings of the Labour Court, in my considered view, cannot be sustained. The Labour Court had come to the conclusion only based on the evidence of MW1 who had stated that Police had recovered a sum of Rs. 810/- from the battery box and that the Petitioner had admitted the guilt before the Sub-Inspector of Police. Such findings based on the circumstantial evidence alone cannot be held to be valid. On the other hand, the Criminal Court categorically found that the evidence of said Conductor as PW4 is not acceptable as he had admittedly given the complaint based on presumption only. Therefore, the findings of the Criminal Court based on the same set of facts ought to have been taken note of and considered by the Labour Court in a proper and perspective manner before coming to a conclusion. Moreover, the so called ''recovered cash'' and the ''Conductor bag'' were admittedly not marked an Exhibits either before Criminal Court or before Labour Court or even before the Enquiry Officer. Thus only an adverse inference has to be drawn against the prosecution.

17. At this juncture, it is useful to refer the decision of the Hon''ble Apex Court reported in G.M. Tank Vs. State of Gujarat and Another, , wherein, at paragraph 30, it has been as follows:

30. In this case, the Departmental proceedings and the Criminal case are based on identical and similar set of facts and the charge in a Departmental case against the Appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the Departmental proceedings and in the Criminal case is grave. The nature of the case launched against the Appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, Criminal and Departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the Appellant''s residence, recovery of articles there from. The Investigating Officer Mr. V.B. Raval and other Departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the Appellant. The same witnesses were examined in the Criminal case and the Criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the Appellant beyond any reasonable doubt and acquitted the Appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the Departmental proceedings to stand.

18. A perusal of the above referred ruling of the Hon''ble Apex Court would show that the finding of the Criminal Court has got a bearing on the Departmental proceedings and though the decree of proof varies, the department cannot proceed to take a different view without showing strong reasons and circumstances to deviate from the finding of the Criminal Court. When the Management has miserably failed to prove the case against the Petitioner, considering his past conduct does not arise at all. Equally any admission said to have been made by the Petitioner before Police also cannot be relied upon as the contention of such admission cannot be taken as a conclusive proof. Thus, by considering all the facts and circumstances of the case and by following the decision of the Hon''ble Apex Court stated supra, I find that the order passed by the Labour Court is unsustainable and accordingly, the same is set aside and the Writ Petition is allowed. The First Respondent is directed to reinstate the Petitioner, however, without back-wages and with continuity of service. No costs.