

The Management Vs. D.Jeevanesan

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Court : Chennai

Decided On : Apr-25-2014

Judge : C.S.Karnan

Appellant : The Management

Respondent : D.Jeevanesan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

25. / 04 /2014 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
W.P.No.46404 of 2002 & W.P.M.P.Nos.67509 of 2002 & 1953 of 2006 The
Management, Christian Medical College and Hospital, Ida Scudder Road, Vellore -
632 004. ... Petitioner Vs. 1.D.Jeevanesan 2.The Presiding Officer, Labour Court,
Vellore. ... Respondents PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for a Writ of Certiorarified Mandamus, to call for the records
connected with the Award dated 07.10.2002 made in I.D.No.1133 of 1993, on the
file of the second respondent Labour Court and quash the same. For Petitioner :
Mr.Sanjai Mohan For M/s.S.Ramasubramaniam For Respondents :
Mr.S.T.Varadarajulu for R-1 R-2 (Labour Court) - - -

ORDER

The petitioner submits that the first respondent herein was employed as an
attender Grade-II with effect from 01.07.1990. While so, the first respondent was

issued charge sheets for various acts of misconduct vide petitioner's letter dated 18.04.1992 and 30.04.1992. It was submitted that when the first respondent was under suspension, he indulged in serious and violent activities, which endangered the very safety of the personnel and the safety of the patients. This being the position the petitioner decided that it would not be conducive to conduct an enquiry in the interest of discipline and also no useful purpose would be served in affording the first respondent an opportunity to explain the charges levelled against him. Hence, the petitioner had no other alternative except to dismiss the first respondent from the services of the petitioner vide its order dated 26.08.1992 by reserving its right to prove the charges, if need arises before the appropriate forum.

2. The petitioner further submits that aggrieved by the order of dismissal, the first respondent herein, viz., Jeevanesan has filed a claim statement before the second respondent-Labour Court, Vellore alleging that his dismissal from the service was based on false and concocted charges and no enquiry was conducted before passing the order of dismissal and prayed to set-aside the order of dismissal and reinstate him with back wages, attendant benefits and continuity of service.

3. The petitioner additionally added that the Industrial Dispute raised by the first respondent before the second respondent Labour Court was numbered as I.D.No.1133 of 1993. The petitioner herein entered appearance before the second respondent Labour Court and filed a detailed counter statement justifying the dismissal of the petitioner on the charges of various serious misconducts and denied the averments made in the claim statement filed by the respondent.

4. The petitioner further submits that in the counter statement filed by the petitioner herein, it was stated as follows:- ".that the first respondent herein was employed as an ".Attender Gr.II". with effect from 01.07.1990. While so, the first respondent was charge sheeted for various acts of misconduct vide petitioner's letter dated 18.04.1992 and 30.04.1992. It was further stated that the first respondent was charge sheeted under Rule Nos.19:1, 19:2, 19:3, 19:13, 19:32 and 19:36 of the Staff Service Rules of the C.M.C. & Hospital.".

5. It was reported that on 20.02.1992, the first respondent was given bone marrow slide smears of the patient, Noorjahan, received from City Hospital, Trichy to be delivered to the Clinical Pathology Department and the first respondent actually delivered the same only on 16.03.1992. It was further reported that on 04.03.1992, he was given another set of slides of patient, Manickam, received from CSI Mission Hospital, Trichy, to be delivered to Clinical Pathology Department. Instead of delivering the same immediately, the first respondent delivered them to the Clinical Pathology Department only on 16.03.1992. It was further reported that on 11.03.1992, the first respondent was given one more set of slides of patient Padmavathy received from CSI Mission Hospital, Trichy, to be delivered to Clinical Pathology Department. The first respondent delivered the same only on 16.03.1992 and thereby the first respondent not only endangered the life of the patients, but also spoiled the reputation of the petitioner's institution. It was also reported that on 13.03.1992, a confidential cover containing draft question paper for CMAI examination addressed to Dr.C.J.G.Chacko, to be delivered to him was given to the first respondent. But, the first respondent did not deliver the question paper cover to Dr.Chacko immediately, but it was delivered only on 24.03.1992, by a person who claimed to be the brother of the first respondent and the cover was opened and it was spoiled.

6. It was further reported that while the first respondent was under suspension, on 15.04.1992, he parked his Hero Majestic TN-23-8013, in cycle stand near Hospital Main Gate of the petitioner Institution which is inside the Hospital Campus between two main gates of the Hospital. It is maintained by a contractor and managed by the employees of the contractor. He did not come to take his vehicle till 09.30 p.m. According to the usual practice, his Hero Majestic Vehicle was secured with chain by the cycle stand keepers, so that the vehicles which are left in the cycle stand after 09.30 p.m., will not be lost and that on 16.04.1992, at about 6 a.m., one of the cycle stand keepers one Mr.Keethiseelan noticed that the chain with which the vehicle of the first respondent was secured, the previous night, was broken and the vehicle No.TN-23-8013 of the first respondent was not there and at about 8 a.m., when he was questioned about this by one of the cycle stand keepers, the first respondent abused them.

7. It was further reported that on 18.04.1992, at about 10.30 a.m., the first respondent parked his Hero Majestic in the cycle stand at Hospital Main Gate meant for the patients and relatives where the first respondent is not supposed to keep his vehicle and when he was questioned by the cycle stand keepers Mr.Arul & Mr.Pichandi, the first respondent threatened them with dire consequences. At about 11.40 a.m., on the same day, the brother of the first respondent Mr.Aruldoss and two other outsiders came to the cycle stand near the Hospital Main gate and threatened the cycle keepers Mr.Arul and Mr.Pichandi saying in Tamil. ".vd;d?. vd; mz;zdplk; vd;dlh ngrpdPu;fs;. thH;ehs; KGtJk; if ,Uf;fhky; bra;J tpLntd;/ ".

8. It was also reported that at about 1 p.m., on the same day, after the first respondent was placed under suspension, the first respondent parked his Hero Majestic near the P.M.R.Department of the petitioner's institution and when Mr.Keerthiseelan, cycle stand keeper asked the first respondent why he extended threats by bringing outsiders for which the first respondent told in Tamil:- ". cd;dhy; jhnd vd;id r!;bgz;l bra;jhu;fs;". and kicked Mr.Keerthiseelan and when Mr.Keerthiseelan tried to defend himself, the first respondent kicked him again and the first respondent refused to come to the security office.

9. It was reported that at about 3.00 p.m. on the same day i.e., on 18.04.1992, the first respondent brought his Hero Majestic vehicle and parked it in front of the security office and at about 3.30 p.m., the first respondent came to the public cycle stand near the main gate of the petitioner institution with Mr.Daniel father of the first respondent, Mr.Aruldoss, brother of the first respondent, Ms.Margeret Rose, mother of the first respondent and the sister of the first respondent. The father of the first respondent Mr.Daniel caught hold of Mr.Keerthiseelan and Mr.Aruldoss, brother of the petitioner assaulted Mr.Keerthiseelan using a cycle chain and an iron rod and hit Mr.Keerthiseelan and he started bleeding from his nose and mouth and he felt giddy. After this when Mr.Jacob, Additional Chief Security Officer, came out and caught hold of the shirt of the first respondent, the mother of the first respondent caught Mr.Jacob's hand and the first respondent freed himself and ran out of the Hospital campus along with the father Mr.Daniel, brother of Mr.Aruldoss, mother Ms.Margeret Rose and his sister. It is further reported that a criminal case in S.T.C.No.1146/92, was registered against the first respondent and his brother

Mr.Aruldoss on a complaint given by Mr.Keerthiseelan in Crime No.522/92, under Section 324 IPC at Vellore NOOrth Police Station. The first respondent and Mr.Aruldoss, brother of the first respondent were found guilty under Section 323 IPC for their above act and convicted and fined Rs.250/- each and in default to undergo simple imprisonment for seven days by the Judicial I Class Magistrate No.IV, Vellore in S.T.C.No.1146 of 1992, dated 27.04.1992 and the first respondent and the brother of the first respondent paid the fine. In view of the seriousness of the violent activity of the first respondent, the situation was not conducive to conduct an enquiry for the charges levelled against him and the first respondent was dismissed vide petitioner's order dated 26.08.1992.

10. The petitioner further added that they had made a prayer in the counter statement to permit them to prove the charges levelled against the first respondent before the second respondent, Labour Court, Vellore. The petitioner submits that as prayed, the petitioner herein examined six witnesses on their behalf i.e., MW-1 to MW-6 to prove the charges levelled against the first respondent. The witnesses examined on behalf of the petitioner were duly cross-examined by the counsel for first respondent. On behalf of the petitioner Ex.M1 to M29 were marked as exhibits. On behalf of the first respondent one witness (i.e.,) the first respondent himself was examined as WW-1 and no documents were marked. The petitioner further submits that on completion of the evidence, both the parties filed their written arguments and also advanced oral arguments. After hearing the arguments, the learned second respondent passed an award dated 07.10.2002 directing the petitioner herein to reinstate the first respondent with continuity of services and attendant benefits, however, without back wages within two months from the effective date of the award.

11. Aggrieved by the said award passed by the second respondent, the above writ petition has been filed challenging the said impugned order.

12. The highly competent counsel, Mr.Sanjai Mohan for the petitioner submits that the learned Judge ought to have seen the interference under Section 11-A of the Industrial Disputes Act, after a finding that all charges proved was not available to the learned Judge in the light of the fact that the petitioner is a minority educational

institution, entitled to the protection of Article 30(1) of the Constitution of India as reiterated and emphasized by 11 Judges Bench Judgment dated 31st October 2002, in the light of this position. The impugned order suffers from errors apparent from the face of the record when the learned Judge after finding the employee guilty of three separate acts of serious misconducts proceeded to invoke Section 11-A and directed reinstatement of the employee with back wages. The highly competent counsel further submits that the learned Judge found the employee guilty of acts of misconduct of assault, on the premises of the Educational Institution and Hospital, of a contract employee incharge of the cycle stand provided for staff, students, patients and relatives. This cycle stand was provided well within the campus in the precincts of College and hospital. He further submits that after finding that the employee had indeed assaulted a man incharge of the cycle stand, the learned Judge interfered on the ground that running the cycle stand was not the business of the establishment. This reasoning of the learned Judge apart from being wholly uncalled for is un-understandable and without jurisdiction. The assault admittedly had taken place within the campus of the establishment and final decision as to who has been assaulted was not available with the learned Judge for the purpose of interference with punishment. Be it a co-employee, a contract employee, a patient or student, assault remains assault particularly when the assault arose when the dismissed employee admitted to parking his vehicle in a manner not provided for by the establishment and when this was pointed out by the assaulted person he proceeded to thrash him. Indeed a criminal case in connection with his assault held in conviction of the dismissed employee. In the circumstances, on the sole ground of assault itself, the order of dismissal, it is respectfully submitted, could be upheld. Assault is an act that it punishable with imprisonment and is an act involving moral turpitude and the learned Judge far exceeded jurisdiction in interfering with the penalty that too after rendering a finding with the acts of misconduct held to be serious. Thus the learned Judge completely exceeded jurisdiction in interfering with punishment. The first respondent has taken law in his hands and misbehaved with others and also found to have rendered insufficient service, lack of service and negligence. As such, the dismissal order passed is an appropriate one.

13. The highly competent counsel further submits that the learned Judge ought to have seen that even as per their own findings, it was seen that the employee had not delivered the bone marrow slide smear of a patient to be taken analysis within a specific time. As a result of the deliberate delay by the employee, the patients did not get the report in time and it has also delayed the treatment. Completely forgetting this serious offence particularly when it relates to a treatment of patient, the learned Judge has observed that other samples of the patient could be obtained. This extraordinary approach by the learned Judge has rendered completely meaningless the importance of patient care and collection of samples and timely delivery of samples to the Laboratory for assessing and furnishing report. Indeed the reasoning of the learned Judge is extremely casual, illogical and more lay than the legal completely forgetting that there is such a thing as discipline. As a matter of fact, the learned Judge also forgot that delay of this nature would render the petitioner liable in this regard to the patients. Equally, the learned Judge found the employee guilty of not bothering to deliver draft question paper for CMAI examination. This aspect of the matter has not even been referred to when he chose to interfere with punishment after finding the employee guilty. This is a case where the employee threw the draft question papers of the students among the refuse where they were found. The consequence of this grave act was not even considered let alone approved by the learned Judge. He further submits that the first respondent would be taking steps to implement the award and if it is not stayed great prejudice and irreparable loss would be caused to this petitioner. Now, as a result of this award when the employee was found guilty on three grounds, reinstatement which has been directed, is against law and justice.

14. The very competent counsel for the petitioner has cited a judgment reported in 2007 Supreme Court Cases 517 (JANATHA BAZAR v. SECRETARY) ".A. Labour Law - Dismissal - Scope of judicial review of, under S.11-A ID Act - Where the charge of misappropriation of goods was established in the domestic enquiry, and the delinquent employee was dismissed, held, the Labour Court erred in directing his reinstatement with 25% back wages on the ground that his past record was without blemish - Further held, a proved case of misappropriation does not call for any sympathy - Industrial Disputes Act, 1947, Ss.11-A and 10 - Scope of judicial review of punishment, under S.11-A - Misconduct - Misappropriation of funds or

material - Punishment of dismissal for - Scope of judicial review of - Reinstatement
- Uncalled-for sympathy as basis for improper - Penal Code, 1860, S.403. B.
Labour Law - Misconduct - Penalty/punishment - Discretion of employer exercised
in imposing penalty after misconduct proved in domestic enquiry - Held, Labour
Court cannot substitute the penalty imposed by the employer - Industrial Disputes
Act, 1947, Ss.11-A and 10."

15. The very competent counsel, Mr.S.T.Varadarajulu appearing for the first respondent submits that the petitioner / institution had not given preliminary notice regarding the charges levelled against the first respondent and domestic enquiry was not conducted. Further, it was alleged that the first respondent had not given the smear slide of patients to the clinical lab on three occasions, for which, no proper enquiry was conducted. As such, the said allegation which have been levelled against the first respondent is not maintainable and is unjustifiable. Further, it was alleged that one confidential cover containing a draft question paper, addressed to a doctor had been given to him on 13.03.1992 and that the same was delivered on 24.03.1992, by his brother, but regarding this allegation, no enquiry was conducted. Further, another allegation was that he had assaulted the cycle stand keeper along with his family members, for which a criminal case had been levelled against him and that the same had ended against the first respondent. Aggrieved by the said conviction, the respondent had filed an appeal and challenged the said conviction. As such, the dismissal order passed by the petitioner is not sustainable under law since the order has been made in a premature way and not based on documentary evidence. As such, the petitioner's dismissal order has been appropriately set-aside by the second respondent. Further, before conducting enquiry and before serving preliminary notice, the petitioner was dismissed from service which is against the principles of natural justice. Therefore, the dismissal order of the employer has been set-aside by the Labour Court and it is found to be suitable for execution. In support of his contention, the learned counsel has cited the following judgment:- PALGHAT BPL & PSP T.U. v. BPL INDIA LTD & ANR. (C.A.NO.8384/1995, dated September 7, 1995) ".Industrial Disputes Act, 1947 - Section 11-A-Labour Court has discretion to consider the quantum of misconduct and the punishment - Clause 39(h) of the Certified Standing Orders of the Company (employer) - Meaning of misconduct -

Any act subversive of discipline committed outside the premises is also misconduct - Any act unrelatable to the service committed outside the factory would not amount to misconduct. Three workmen belonging to the appellant trade union, while on strike were alleged to have assaulted the Officers of the Management. They were charged with misconduct and on the submission of an exparte report by an enquiry officer were dismissed from service. The dismissal was challenged in a reference under Section 10 of the I.D. Act before the Labour Court, which set-aside the punishment and directed reinstatement of the workmen with 25% back wages. The management filed a writ petition in the High Court against the Labour Court award. A single Judge of the High Court allowed the writ petition and set-aside the Labour Court's award. On appeal to the Division Bench, the Single Judge's order was confirmed. The appellant Trade Union espousing the cause of the three dismissed workmen took the matter in appeal by Special Leave granted by the Supreme Court. It was argued on behalf of the workmen that their alleged acts of assault against the officers were not misconduct within the meaning of clause 39(h) of the Certified Standing Orders of the Company. HELD: Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. The Labour Court had discretion under Section 11 of the I.D.Act, to consider the quantum of misconduct and the punishment. The Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal. This discretion exercised by the Labour Court was, in the opinion of the Supreme Court, proper and justified in the circumstances of the case. Labour Court was directed to decide whether the workmen were gainfully employed from the date of dismissal till reinstatement, in order that the management's liability to pay back wages might be determined.".

16. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the order of the Labour Court, this Court does not find any discrepancy in the conclusions arrived at to set-aside the dismissal order passed by the petitioner. This Court is of the view that the writ petitioner had levelled several charges against the employee for which prior notice was not served and domestic enquiry was not conducted. Further, relevant witnesses were not examined and connected material evidence

was not marked. As such, the dismissal order issued by the writ petitioner is unjustifiable. Therefore, the order passed by the Labour Court is found to be fit for operation. This Court is of the further view that the first charge of the petitioner was that the employee had not submitted the smear slides of patients at the Clinical Pathology Department on time. It was alleged that the employee received the slide on 20.02.1992 and handed it over to the Pathology Department on 16.03.1992 only. This Court is at a loss to understand as to why the petitioner herein had remained silent for about a period of 26 days and as such, the petitioner is also equally at fault in not providing adequate medical services to the patient. Likewise another allegation was that the employee had received the slides of patients on 04.03.1992 and 11.03.1992 and delivered the same on 16.03.1992 and as such, there was allegedly a delay of 12 days and 5 days respectively in delivering the above said slides. As such, it is evident that the petitioner herein has also been at fault in not keeping a strict watch on delivery of these slides as these are very important pertaining to towards for patient care. Regarding the tampering of the draft question paper cover, alleged by the petitioner and the alleged delay of delivering the same after a delay of 11 days, no documentary evidence had been let in and no criminal case had been levelled against the employee.

17. Therefore, the above writ petition is dismissed. Consequently, the award passed in I.D.No.1133 of 1993, on the file of the second respondent herein dated 07.10.2002 is confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed. 25 / 04 / 2014 Index : Yes. Internet : Yes. r n s To The Presiding Officer, Labour Court, Vellore. C.S.KARNAN, J.

r n s Pre Delivery Order made in W.P.No.46404 of 2002 & W.P.M.P.Nos.67509 of 2002 & 1953 of 2006 25 /04 /2014

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