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Kalyani Vs. Superintending Engineer

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Court : Karnataka

Decided On : Aug-11-1988

Reported in : ILR1988KAR2855; (1989)ILLJ245Kant

Judge : M. Rama Jois, J.

Acts : Evidence Act; Penal Law

Appeal No. : W.P. No. 18358/1987

Appellant : Kalyani

Respondent : Superintending Engineer

Judgement :
ORDER

1. In this petition presented by the petitioner, the Cashier, in the service of the Karnataka Electricity Board, the following question of law arises for consideration :

Whether the Karnataka Electricity Board has no jurisdiction to hold departmental inquiry against the petitioner as a criminal proceeding is also pending against the petitioner before the Chief Judicial Magistrate, Bagalkot, in respect of some of the charges which also constitute the subjects matter of departmental inquiry ?

2. The petition has come up for preliminary hearing after notice to the respondents. By consent of both the Counsel it is taken up for final hearing and is

disposed of by this order.

3. The facts of the case, in brief, are as follows : On 25th July 1987 the Articles of charges framed against the petitioner by respondent No. 1, who is Specially Empowered Authority, was served on the petitioner. The three charges framed against the petitioner are :

(1) That you Sri. R. N. Kalyani, while working as cashier in the O & M Sub-Division Office Bagalkot from 12/80 and 7/86, misappropriated Board cash amounting to Rs. 1,95,933.77 by manipulating the cash records, such as cash book, remittance register, cheques register etc., and thereby committed a grave official misconduct.

(2) That you Sri R. N. Kalyani, while working as Cashier in the Sub-Division Office at Bagalkot from 12/80 to 7/86, neglected your duties as you have failed to maintain the relevant cash records uptodate, and thereby committed grave official misconduct.

(3) That you Sri R. N. Kalyani, while working as Cashier in O & M Sub-Division Office, Bagalkot during the period from 12/80 to 7/86, deliberately misplaced certain important registers, such as back remittance Registers of the Sub-Division Office of the relevant period, the thereby committed a grave official misconduct.

The state of allegations in respect of the charges has been furnished to the petitioner.

4. On 17th September 1987, the petitioner made a representation for supply of certain documents to enable him to prepare for his defence. Thereafter, he made another representation on 17th November 1987 (Annexure-D). On 24th November 1987 enquiry notice was given by the 1st respondent and the petitioner was called upon to appear before the Inquiring Authority on 16th December 1987. Thereafter, the petitioner has presented this petition. On 5th January 1988 there has been an interim order by this Court restraining the respondents from holding the departmental inquiry. The ground on which the writ petition has been presented by the petitioner is that as a criminal case has also been instituted against the petitioner before the Chief Judicial Magistrate, Bagalkot, respondents have no

jurisdiction or authority to hold any departmental inquiry and they are in duty bound to stop further proceedings in the departmental inquiry and await for the result of the criminal trial.

5. The very question which has been raised in this writ petition had been raised in the case of Sri Rama v. Superintendent of Police. Kolar (1987-II-LLJ-142) decided by a Division Bench of this Court. The Division Bench rejected the contention of the petitioner therein relying on the judgment of the Supreme Court in Delhi Cloth & General Mills v. Kushal Bhan (1960-I-LLJ-520). The relevant portion of the judgment of the Supreme Court in Delhi Cloth Mills reads at p. 521 :

'3. It is true that very often employers stay enquiries pending the decisions of the criminal trial Courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision atleast of the criminal trial Court before taking action against an employee. In Shri Bimal Kanta Mukherjee v. Messrs. Newman's Printing Works, (1956-I-LLJ-453) this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial Court, so that the deference of the employee in the criminal case may not be prejudiced.'

Applying the ratio of that judgment, the Division Bench held as follows at pp 142-143 :

'What constitutes an impediment to a disciplinary proceeding is an acquittal in a criminal prosecution in respect of the same charge. If there be no such acquittal and even if a criminal prosecution has commenced and is continuing, a disciplinary proceeding in respect of an accusation which forms the subject matter of the charge in the criminal Court is not forbidden and can be commenced and concluded so long as the prosecution has not ended in an acquittal. That is the principle clearly emerging from the decision of the Supreme Court in Delhi Cloth & General Mills v. Kushal Bhan (1960-I-LLJ-520) '.

The ratio of the decision is clear i.e., there is no bar for holding disciplinary proceeding during the pendency of a criminal trial though the basis or subject

matter of the charge in both the proceedings is one and the same. The view that acquittal by a Criminal Court on a charge bars the disciplinary proceedings on the same charge was only an obiter. Even that has been overruled by the Full Bench of this Court in. T. V. Gouda v. State of Mysore (1975-II-LLJ-513). The Full Bench held that there is no bar for holding disciplinary inquiry even after acquittal on a charge by the criminal Court. The above view stands confirmed by the decision of the Supreme Court in Corporation of Nagpur v. R. G. Modak : (1981)IILLJ6SC . The ratio of the decision in Sri Rama, (supra) was also followed by this Court in Balaiah v. Inquiring Authority 1983(1) KLJ 541.

6. The learned Counsel for the petitioner, however, strenuously contended that in view of the judgment of the Supreme Court in Tata Oil Mills Company Limited v. Their Workmen (1964-II-LLJ-113) and the decision of the Supreme Court in R. P. Kapur v. Union of India (1966-II-LLJ-164) it should be held that the departmental inquiry cannot be held by the respondent during the pendency of a criminal trial.

7. In Tata Oil Mills Company's case (supra) the observations made in Delhi Cloth & General Mills case (supra) were reiterated. The observations in Kapur's case (supra) are also to the same effect. From the judgment of the Supreme Court in Delhi Cloth Mills, (supra) extracted earlier, it may be seen that the Supreme Court has clearly held that the principles of natural justice do not require that an employer must atleast wait for the decision of the criminal trial Court. Having stated thus, the Supreme Court has observed that in case of a grave nature it is advisable for the employer to await the decision of the trial Court so that the defence of the employee in the criminal case may not be prejudiced.

8. It is on consideration of the ratio of the aforesaid decision, the Division Bench of this Court ruled in Sri Rama (supra) that the disciplinary proceeding was not barred during the pendency of criminal trial on similar charge. It is well settled that a writ of prohibition can issue preventing the holding of disciplinary proceedings, if only it is without jurisdiction. Therefore, I fail to see how in the absence of a statutory bar, a writ of prohibition can issue refraining the respondents from holding the disciplinary proceedings. Even assuming without accepting that violation of natural justice which constitutes a basis for the issue of Writ of

Certiorari, would also constitute a basis for the issue of Writ of Prohibition, no such writ would issue, for, the Supreme Court in the case of Delhi Cloth Mills has clearly ruled that the principles of natural justice do not require the employer to wait till atleast the decision of the trial Court. Therefore, it is a matter to be decided by the disciplinary authority concerned in its discretion, but there is no want of jurisdiction, which alone constitutes the basis for the issue of Writ of Prohibition prohibiting the disciplinary authority from holding departmental inquiry on a charge during the pendency of criminal trial on the similar charge. Precisely, this is the ratio in Sri Rama's (supra) case. The ratio of the said decision was followed in Balaiah (supra). These decisions are binding. Further, it would be difficult to hold that when departmental inquiry is not barred even after acquittal, the same is barred before acquittal. Therefore, all that can be said is that it is for the disciplinary authority to decide as to whether in a given case it should keep the domestic inquiry pending till the outcome of the criminal trial or not.

9. The learned Counsel for the petitioner, however, relied on a recent decision of this Court by Bopanna, j., in Sridhar Kumar v. Ramachandrappa : AIR1988 Kant215 . In that case the learned judge held that when certain allegations made in an election petition against the respondents was identical with a charge levelled against him in a criminal case, the election petition should be stayed, till the disposal of the criminal trial and on that view of the matter the proceeding before the Election Tribunal was stayed. The said decision is of no assistance to the petitioner for two reasons. Firstly, that was not a case relating to master and servant and the question whether the master has the power to hold disciplinary proceeding against his employee during the pendency of criminal trial if both the charges are similar did not arise for consideration. Secondly, two reported decision of this court, namely, the division Bench decision in Sri Rama's (supra) case and the decision in Balaiah (supra) rendered following it, were not brought to the notice of the learned judge. As the Division Bench judgment in Sri Rama's case (supra) directly applies to this case and it is binding, it has to prevail.

10. As rightly pointed out by the learned Counsel for the respondents, there are several weighty reasons, in support of the view that disciplinary proceedings in respect of a charge of misconduct is permissible during the pendency of the

criminal trial on a charge of an offense both based on the same acts or omission on the part of an employee and it should not be delayed. They are :

(i) The first and the most important reason is that if departmental inquiry is kept pending till the disposal of the criminal trial, which normally takes a long time, by the time the criminal trial comes to a close, the matter would have become stale and persons who are required to give oral evidence in support of the charge might become unavailable to give evidence and even if available on account of lapse of time their memory might fail and as a result they would not be in a position to give the correct evidence, and further in all such cases the employee concerned himself would raise an objection that holding of an inquiry after such delay itself causes prejudice to him and therefore violative of rules of natural justice;

(ii) The same act or omission constitutes the basis for framing a charge in disciplinary proceedings which is different from the one in the criminal trial. To illustrate, an incident which constitutes the basis for the charge of theft or criminal breach of trust or misappropriation would be the basis for framing a charge of gross negligence either independently or in the alternative;

(iii) There is clear difference between a misconduct and an offense though they arise out of the same incident or conduct. In the case of the former, he is answerable to the master as a servant and in the case of the latter as an individual he is answerable to the society as a whole under the Penal Law of the land. The liability which ensues to an employee on the proof of the charge is different in the criminal trial as compared to disciplinary proceedings, in that in the case of former, he suffers sentence of fine or imprisonment, whereas in the case of latter, he has to suffer only a departmental punishment which could be imposed under the relevant rules (See : Venkataraman v. Union of India) : 1954 CriLJ993 .

(iv) There is difference in the rules of evidence applicable. The provisions of Evidence Act prescribing strict rules of evidence are applicable to criminal trials, whereas strict rules of evidence are not applicable to disciplinary proceedings (See : State of Haryana v. Rattan Singh) : (1982)ILLJ46SC .

(v) It is settled law (vide (1975-II-LLJ-513) and : (1981)IILLJ6SC that even after acquittal by the criminal Court, departmental inquiry is not barred.

(vi) When disciplinary proceedings are instituted and the employee is placed under suspension, the employer has to pay the subsistence allowance. The employer cannot be expected to wait till termination of proceedings in the trial Court and continue to pay the subsistence allowance for indefinite period as the employer has no control over the time occupied by the Court in deciding the matter, and further the employer cannot be compelled to the necessity of appointing another parson in the place of the suspended employee and pay his salary also.

These reasons, in my opinion, are valid and therefore it should be held that the employer is entitled to hold and complete the disciplinary proceedings most expeditiously.

11. In the light of the discussion as above, the question arising for consideration is answered as follows :

'The Karnataka Electricity Board has the jurisdiction to hold departmental inquiry against the petitioner even though a criminal proceeding is pending against the petitioner before the Chief Judicial Magistrate, Bagalkot, in respect of some of the charges which also constitutes the subject matter of the departmental inquiry.'

12. The learned Counsel for the petitioner submitted that the respondents had not supplied certain copies of the documents which were necessary for preparing the defence of the petitioner. That is a matter to be looked into by both respondents-1 and 2 in their own interest for the reason if documents which are relevant for preparation of the defence of the petitioner and/or are required for cross-examination are not supplied, the whole inquiry proceedings would be vitiated. However, that constitutes no ground for stopping the disciplinary proceedings.

13. The learned Counsel submitted that he had also mad a request for engaging the services of an Advocate and no orders are passed. With reference to this submission the learned Counsel for the Board fairly submitted that the petitioner was at liberty to engage the services of any Advocate of his choice.

14. Accordingly, I make the following order :

The writ petition is dismissed, but subject to the condition that the respondents shall permit the petitioner to engage the services of any Advocate of his choice to defend him in the Departmental Inquiry.

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