

Padmanabhan Vs. Kerala State Handloom Development Corporation Limited

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Court : Kerala

Decided On : Jun-24-1992

Reported in : (1993)ILLJ1226Ker

Judge : Jagannadha Rao, C.J. and; Krishnamoorthy, J.

Acts : [Constitution of India](#) - Articles 14 and 311(2)

Appeal No. : W.A. No. 1284/1991

Appellant : Padmanabhan

Respondent : Kerala State Handloom Development Corporation Limited

Advocate for Pet/Ap. : T.P. Kelu Nambiar and; P.C. Sasidharan, Adv.

Disposition : Appeal dismissed

Judgement :

Jagannadha Rao, C.J.

1. This is an appeal preferred by the writ petitioner against the judgment of the learned Single Judge dismissing the Writ Petition. The question related to the validity of the disciplinary action taken against the appellant and the order of dismissal from service, Ext. P6 dated September 7, 1987.

2. The appellant was formerly the Finance Manager of the Kerala State Handloom Development Corporation Ltd., Cannanore, and was holding the said post till September 10, 1987 when the above said order of dismissal was passed. A domestic enquiry was earlier conducted by the third respondent, Enquiry Officer, who was a practising lawyer. There were, in all, 19 charges against the appellant out of which 17 were held to be proved. In this appeal before us, the same points which were urged before the learned Single Judge are again urged.

3. The following points arise for consideration:

'(1) Whether, the Regulations applicable to the officers of the Corporation contemplated a second opportunity in regard to the 'action' proposed to be taken by the disciplinary authority and therefore the copy of the inquiry report should have been furnished?

(2) Whether a second opportunity against the 'action' to be taken or the 'punishment' to be awarded is part of general principles of natural justice applicable to all disciplinary actions other than those governed by Article 311(2) (as it stood before 1976) of the [Constitution of India](#)?

(3) Whether principles of natural justice are a facet of Article 14 of the [Constitution of India](#) after the Delhi Transport Corporation v. D.T.C. Mazdoor Congress 1991-I-LLJ-395 and require a second opportunity to the officer of the Corporation at the stage of punishment by way of furnishing a copy of the inquiry report?

(4) Whether after the decision in Union of India v. Mohd. Ramzan Khan, 1991-I-LLJ-29 rendered on November 20, 1990 requiring copy of the inquiry report to be furnished in cases of Government servants applies only to cases of punishments awarded after November 20, 1990, even if it applied to the cases of the officer of the Corporation?

(5) Whether the other irregularities alleged by the Officer are proved and violate the order of punishment?'

4. Point No. 1: The appellant is an officer of the Kerala State Handloom Development Corporation Ltd. It was registered as a company under the Indian

Companies Act, 1956. It is a State owned company.

5. The regulation relating to the disciplinary inquiry is contained in paragraph 4.17 which deals with penalties. Sub-clause (i) enumerates the various penalties that could be imposed on any employee. Sub-clause (ii) deals with the procedure for inquiry and punishment and reads as follows:

'(ii) No employee shall be subjected to the penalties in Clauses (a) to (f) of sub-regulation (i) of this Regulation except by an order in writing signed by the Managing Director or any other officer empowered for the purpose and no such order shall be passed without the charges being formulated in writing and given to the employee so that he shall have reasonable opportunity to answer them in writing or in person as he preters, and in the latter case, his defence may be taken down in writing and read to him:

Provided that the requirements of this sub-regulation may be waived if the facts on the basis of which action is to be taken have been established in a court of law or where the employee has absconded or it is for any other reason impracticable to communicate with him where there is difficulty in observing them and the requirements be waived without injustice to the employee. In every case where all or any of the requirements of this sub-regulation are waived reasons for so. doing shall be recorded in writing:

Provided further that the final orders under item (i) of sub-regulation (i) shall be passed only by the appointing authority'.

6. It will be noticed that the Regulation contemplates only one opportunity in relation to proof of the charges and no second opportunity is contemplated requiring a show cause notice as to the 'action' that is proposed to be taken. We are, therefore, of the view that as far as the Regulations are concerned, they do not contemplate that there should be a second opportunity as to the proposed punishment by way of furnishing the inquiry Officer's report and calling for further explanation. Point No. 1 is held against the appellant.

7. Point Nos. 2 and 3: Our decision on these two points has also to be read along with our decision on Point No. 4. It was argued for the appellant that a second opportunity at the stage of imposition of punishment is a natural corollary to every case of punishment for misconduct and that therefore such second opportunity need not be expressly stated in Regulations but could be implied.

8. In our view, this contention is untenable and contrary to the law laid down by the Supreme Court as early as in 1969 in *Suresh Koshy George v. University of Kerala* AIR 1969 SC 198. While dealing with the case of a student against whom action was taken for misconduct, the Supreme Court observed that there prevailed an erroneous impression in certain quarters, evidently influenced by the provisions of the un-amended Article 311(2), (i.e. as it stood before 1976), that every disciplinary proceeding must consist of two inquiries-one before issuing a show cause notice to be followed by another inquiry before the punishment. It was observed:

'Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course'.

9. A similar question arose in *Sahrapur Light Rly. Co. v. Workers Union*, 1969 I LLJ 734. In page 744 of the said decision it is stated that 'neither the ordinary law of the land, nor the Industrial law' required an employer to give a second show cause notice at the stage of punishment. It was pointed out that Article 311(2) (before amendment) requiring such second show cause notice was the 'only case' where such a requirement was held necessary. They observed that 'to import such a requirement from Article 311 in industrial matters' does not appear to be either necessary or proper and would be equating industrial employees with civil servants' and that 'there was no justification on any principle for such equation'. The above decision was followed by the Supreme Court in *Associated Cement Company Ltd. v. T.C. Shrivastava*, 1984 II LLJ 105. It was reiterated that 'neither under the ordinary law nor the industrial law' a second opportunity to show cause against the proposed punishment was necessary. The Court then considered paragraph 3 of the Standing Order 17 in that case which read:

'all dismissal orders shall be passed by the Manager...after giving the accused an opportunity to offer any explanation '.

and held that, 'on a plain reading of the relevant words, no second opportunity of showing cause against the proposed punishment' was contemplated, either 'expressly or by necessary implication'.

10. The above said view, and in fact, the decision in Suresh Koshy George v. University of Kerala, (supra) and, Associated Cement Company Ltd. v. T.C. Shrivastava, (supra) have been accepted by the Constitution Bench of the Supreme Court in Union of India v. Tulsiram Patel 1985 II LLJ 206 , and again in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, (supra) the last case being the one vehemently relied upon for the appellant.

11. Tulsiram Patel's case dealt with punishments awarded to Government servants under the 2nd proviso to Article 311(2) which, in three types of cases, dispenses with the inquiry under Article 311(2). It will be noted that before the Forty Second Amendment of 1976, a second opportunity against the proposed punishment was necessary, and the position was the same under Section 240(3) of the Government of India Act, 1935 as interpreted by the Privy Council in High Commissioner for India v. I.M. Lall, AIR 1948 PC 121. In the 1976 Amendment, while dispensing with the second opportunity, the first proviso to Article 311(2) specifically stated that 'it shall not be necessary to give such person any opportunity of making representation on the penalty proposed'. The Supreme Court in Tulsiram Patel's case (supra) considered the history of Article 311 and coming to the exclusion of any inquiry in cases falling under Clauses (a) (b) and (c) of the 2nd proviso to Article 311, held that no inquiry could be implied by invoking principles of natural justice when they were specifically excluded. In that context, reference was made to Maneka Gandhi's case, AIR 1978 SC 597 and to the observations therein that natural justice was a facet of Article 14 and it was held that when even a single opportunity was expressly excluded in the three cases covered by the 2nd proviso to Article 311(2), the same could not be brought in by the side- wind by resorting to principles of natural justice. In that context the Supreme Court referred to Suresh Koshy George v. University of Kerala (supra)

and Associated Cement Co. Ltd. v. T.C. Shrivastava, (supra) with approval when they stated that second opportunity was not part of the law of the land nor the industrial law.

12. Even in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, (supra) (hereinafter called 'DTC case') the Supreme Court approved the principle in Suresh Koshy George v. University of Kerala (supra) and in Associated Cement Com, Ltd.'s case (supra). In DTC case, the Court was concerned with the question of termination of services of the 'permanent' employees of the DTC, (which was a statutory body formed and established under the Delhi Road Transport Act, 1950 (as amended in 1971), and the statutory regulation 9(b) in the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952. Regulation 9 (b) permitted termination without any inquiry, i.e., even if the cases did not relate to probation period, misconduct, specific period of appointment, contract. Only one month's notice or pay in lieu thereof was contemplated in cases falling under Regulation 9 (b). The majority struck down Regulation 9(b) as being arbitrary and violative of Article 14 of the [Constitution of India](#), as it did not confirm to principles of natural justice. It was observed that the right of Government Companies and Public Corporations which are State instrumentalities under Article 12, that employees cannot be governed by the general principle of master and servant as to unrestricted power of termination. Even so, the decisions of the Court in Suresh Koshy George's case and Associated Cement Com, Ltd.' case were approved and distinguished by the Constitution Bench. The law laid down in those two cases that a second opportunity at the stage of punishment was not part of the general principles of natural justice as explained in Maneka Gandhi's case was accepted. This is clear from 5 paragraph 96 of the DTC case wherein it is observed: (AIR 1991 SC 101)

'.. ..now a government servant has no right to make any representation against the penalty proposed to be imposed upon him, but, as pointed out earlier, in the case of Suresh Koshy George v. University of Kerala, AIR 1969 SC 198, such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Co. Ltd. v. T.C. Shrivastava, AIR 1984 SC 1227 neither the ordinary law of the land nor industrial law requires such an opportunity to be

given.'

The Court also pointed out in paragraph 97 that the principles can be adopted and modified by statutes and statutory rules to suit different situations.

13. Principles of natural justice are a facet of Article 14, but they can be excluded either expressly or by implication in a special class of cases if such exclusion has nexus with the purpose of the Act or Rules. Article 14 does certainly permit reasonable classification and there could be cases where principles of natural justice could be excluded expressly or by implication. This is clear from the observations of the Supreme Court in *Union of India v. Col. J.N. Sinha*, AIR 1971 SC 40 (a case of compulsory retirement) where it was observed:

'But, on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority and read into it the concerned provision of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not, depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose from which it is conferred and the effect of the exercise of that power'.

This ruling which permits exclusion of principles of natural justice in certain types of cases, is also approved in *Tulsiram Patel's case* AIR 1985 SC (see page 1461, paragraph 99) and also in *DTC case* AIR 1991 SC. see page 155, para. 152 & page 196, para. 261. The decision in *J.N. Sinha's case* is followed recently in *Baikuntha Das v. Chief Dt. Medical Officer*, (1992) 2 SCC 294 in the case of compulsory retirement of public servant

14. The point to be noticed is that both *Tulsiram Patel's case* and *DTC's case* were concerned with a situation of no inquiry at all, that is to say, not even a single opportunity being given. In the former case, such exclusion in the three cases referred to in the 2nd proviso to Article 311(2) was upheld because of the specific provision therein. In the latter case, the DTC Regulation 9(b) permitting termination without inquiry was struck down as arbitrary and violative of Article 14. But both

rulings accept-referring to Suresh Koshy George's case and Associated Cement Co. Ltd. 's case, that a second opportunity at the stage of punishment is not part of the law of the land and is not a necessary requirement of principles of natural justice. Even a single opportunity could be excluded if there was nexus with the object of the statutory or rule provision in a given distinct class of cases and this is not violative of Article 14. This is so even though principles of natural justice are a facet of Article 14.

15. We, therefore, hold on point No.2 that a second opportunity against proposed 'action' or 'punishment' is not part of the general principles of natural justice as applicable to disciplinary cases. We further hold on point No.3 that even though principles of natural justice are a facet of Article 14, and one opportunity is generally necessary before imposition of punishment, a second opportunity by way of furnishing inquiry report is not contemplated even by the decision of the Supreme Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, (supra). Here one opportunity is provided clearly. While principles of natural justice may be a facet of Article 14, on the same basis, in certain cases falling under areasonable classification, if principles of natural justice are excluded, Article 14 cannot be said to be violated. Point Nos. 2 and 3 are found against the appellant. This finding has to be read in conjunction with our finding on Point No. 4 below.

16. Point No. 4: We shall now come to the point raised on the basis of Union of India v. Mohd. Ramzan Khan 1991-I-LLJ-29 decided on November 20,1990.

17. Before referring to the above said judgment, we have to point out that in 1987, long after the Constitution (Forty Second) Amendment, 1976 dispensing with the second opportunity under Article 311(2) at the stage of imposing punishment, the Supreme Court had to consider the question whether by virtue of principles of natural justice, a copy of the inquiry report was to be furnished to the delinquent employee. A.P.Sen and M.M, Dutt, JJ. dealt with this very question in Secy., Central Board of E&C; v. K.S. Mahalingam, 1986-II-LLJ-434, and held that there was no question of any second opportunity after the Forty Second Amendment. They referred (see paragraph 9 at page 436) to the judgment of the Five Judge Bench in Union of India v. Tulsi Ram Patel, 1985-II-LLJ-206 and stated that was

the view of the majority in that case. Thereafter M.B. Thakkar & N.D. Ojha, JJ. in *Union of India v. B. Bhashyam*, AIR 1988 SC 1000 thought that the correctness of *Secy., Central Board E & C. v. K.S. Mahalingam*, (Supra), should be decided by a larger bench. It was at that stage that the same question came up for consideration in *Union of India v. Mohd. Ramzan Khan*, (supra), before a three Judge Bench.

18. Mohd. Ramzan Khan's case is again the one arising under Article 311(2) of the [Constitution of India](#) after the Forty Second Amendment. The Court took the view that the punishing authority was likely to be influenced by the report of Inquiry Officer and therefore the delinquent employee was entitled to a copy of the report of the Inquiry Officer. Reference was made in that connection to the judgment of three Judges in *State of Gujarat v. R.G. Teredesai*, AIR 1969 SC 1294 for the above said proposition.

19. It is, however, pointed out for the respondent-employer that in Mohd. Ramzan Khan's case, no reference was made to *Tulsi Ram Patel's* case, (supra) which affirmed *Suresh Koshy George's* case and *Associated Cement Co. Ltd.'s* case which held that a second opportunity was not part of principles of natural justice. It is also pointed out that even in *D.T.C.'s* case., (supra) decided by Five-Judges on September 4, 1990 (two months before Mohd. Ramzan Khan's case), the Supreme Court approved *Suresh Koshy George's* case' and *Associated Cement Co. Ltd.'s* case. *Teredesai's* case relates to a punishment before 1976.

20. We need not go into the above aspects inasmuch as in Mohd. Ramzan Khan's case, the Court categorically laid down that their decision that public servants should be furnished with the inquiry report as part of compliance with principles of natural justice under Article 311(2) would apply only prospectively. This is clear from paragraph 17 of the said judgment which reads as follows:

'There have been several decisions in different High Courts which, following the Forty Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to the delinquent officer. Even on some occasions, this Court has taken that view. Since we have reached a different conclusion, the judgments in the different High Courts taking the contrary view

must be taken to be no longer good law. We have not been shown any decision of a co- ordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two Judges Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be given to challenge on this ground'.

That would mean that if any punishment was imposed in respect of a public servant governed by Article 311(2) before November 20, 1990, the punishment would be valid, notwithstanding the fact that the inquiry officer's report was not furnished to the delinquent employee. If, however, the punishment of the Government servant was on or after November 20, 1990, the matter will have to be reopened. Point No. 4 is held accordingly.

21. Point No. 5: The contentions regarding irregularities in the course of the inquiry before the Inquiry Officer have been dealt with in great detail by the learned Single Judge. We agree with him. But inasmuch as some of them have again been raised before us, we shall refer to them.

22. One of the arguments for the appellant was that after the management examined MWs. 1 and 4, they examined MW5 and marked Exts. M38C and 39 to 42. It is said that the appellant requested the inquiry Officer to recall MWs. 1 and 4 for cross examination and that this was not done. The answer to this contention is that these documents were marked by consent. The endorsement is 'no objection to marking without examining the signatory'. This objection raised now cannot be accepted in view of the judgment of three Judges Bench of the Supreme Court in P.C. Purushothama v. S. Perumal, AIR 1972 SC 608. It is held that it is not open to a party to object to the right of the opposite party to rely on a document which is marked without any objection. The decision of the Privy Council in Bhagat Ram v. Khetu Ram, AIR 1929 PC. 100 was followed. As to the contents are concerned, it was stated in the same judgment:

'Once a document is properly admitted, the contents, of that document are also admitted in evidence though those contents may not be conclusive evidence.'

In that view of the matter, the decision in Baricly Electric Supply Corporation v. The Workmen 1971-II-LLJ-407 cannot help the appellant. There, the matter related to the proceedings before an Industrial Tribunal relating to bonus and to the evidentiary value of a balance sheet. No question of admissibility of contents of a document admitted by consent arose. The case is clearly distinguishable. It has also been held that mere absence of a right of cross-examination does not vitiate a domestic enquiry, when there is no proof of any prejudice: Tripath K.L v. State Bank of India, 1984-1- LLJ-2.

23. Similarly, the grievance that the Managing Director was not examined by the management, even though cited as a witness, cannot stand. The Managing Director sought permission of Government to appear in the inquiry and in the meantime, the time fixed by this court for completion of inquiry was expiring. Again, as pointed out by the learned Single Judge, the objection that the Inquiry Officer did not summon certain witnesses cannot stand because the Inquiry Officer has no power to summon witnesses: See Tata Oil Mills Ltd. v. Its Workmen, 1964 II LLJ 113; and Tata Engineering & Locomotive Co. Ltd. v. Prasad, 1969 II LLJ 799. Yet another point is that MW2 cross-examination was not allowed to be cross-examined fully. The Management had to give him up as he did not turn up for evidence on dates of adjournment. The learned Judge held that no prejudice was caused to the appellant because, according to the Inquiry Officer, 'his evidence in chief to the extent not subjected to cross-examination has to be discarded'. The further submission that this is a vague statement made by the Inquiry Officer cannot be accepted. The Learned Single Judge found that there is no proof of any prejudice to the appellant on this ground. We do not also think that there is any merit in the plea of non-supply of copies of depositions. The appellant was noting down the gist of evidence then and there. This cannot be placed on the footing of non-supply of material documents. As to non-supply of copies of two documents, relating to evidence, we agree with the view of the learned Single Judge that one was marked by the appellant himself, and the other was not relevant. In the result, we agree that no irregularities are proved which can be said to have caused prejudice to the appellant. We hold point No. 5 against the appellant.

In the result, the Writ Appeal is dismissed.

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