

H.D.V. Eustace Vs. the General Manager, Southern Railway and anr.

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Court : Chennai

Decided On : Apr-24-1967

Reported in : (1968)1MLJ208

Appellant : H.D.V. Eustace

Respondent : The General Manager, Southern Railway and anr.

Judgement :

ORDER

T. Venakatadri, J.

1. The petitioner herein is the Chief Inspector, Communications, Southern Railway, Madras. He has filed the present petition for the issue of a writ of prohibition restraining the respondents, The General Manager, Southern Railway, and the Divisional Superintendent, Southern Railway, from proceeding with the enquiry in pursuance of their Memorandum M/Con. 090/A, dated 19th September, 1964.

2. On 26th August 1963 at about 1 P.M., when according to the affidavit, the petitioner entered the office-room of one Gupta, Divisional Engineer, Signal and Telecommunications, to ascertain the reasons for some directions given by the said Gupta to him, Gupta got excited and assaulted the petitioner. Immediately, the petitioner gave a complaint to the Divisional Superintendent of Railways, against the unprovoked assault; by Gupta. It is stated that he was treated for the

injuries and that he has obtained a medical certificate for the injuries sustained by him.

3. Equally, Gupta gave a complaint, on the same day, that the petitioner came to his room and asked him whether he had instructed the Inspector of Communications not to give him any position of control failure etc., on the phone and when Gupta replied in the affirmative, the petitioner assaulted him and slapped him on his face very hard causing injuries on the face.

4. The whole incident happened in the office-room of Gupta. It was only on hearing the shouts, shrieks and screams from the office-room of Gupta, two persons rushed into it, and they heard the incident as narrated by Gupta.

5. On the same day, the Administration suspended the petitioner and started disciplinary proceedings against him. Subsequently, the Administration thought that enquiry was unnecessary and that the services of the petitioner could be terminated under Rule 149 of the Railway Establishment Code, Vol. 1. Accordingly, the Railway Administration did terminate the services of the petitioner, in accordance with Rule 149 of the Code, and also required him to vacate the Railway quarters.

6. Subsequently, the Supreme Court held that Rule 149 of the Indian Railway Establishment Code, Vol. 1, was inoperative and unconstitutional. Thereupon, the petitioner wrote to the Administration to reinstate him in service. The Divisional Superintendent, by his order dated 26th May, 1964, reinstated the petitioner in service, treating the period of absence from the date of termination of services to the date of reinstatement 'as on duty'. Acting under instructions of the Railway Board, that, after reinstatement in such cases as the petitioner's the Department should initiate departmental proceedings, wherever it was feasible to do so, the Divisional Superintendent framed a charge against the petitioner on 19th September, 1964 to the effect that the petitioner assaulted Gupta on 29th August, 1963 in his room causing injuries on his face, and called upon the petitioner to submit his explanation. It is this enquiry which is now attacked by the petitioner, who wants to restrain the respondents by the issue of a writ of prohibition.

7. Learned Counsel for the petitioner submits that once the authorities decided not to proceed with an enquiry against the petitioner but to terminate the services of the petitioner under Rule 149 of the Railway Establishment Code and when that Rule was subsequently held to be inoperative and unconstitutional, the same authorities cannot start the proceedings again after he was reinstated in service. According to learned Counsel the principle of res judicata would apply to such a case.

8. The principle of res judicata would apply only if there was a prior decision between the parties. In this case, it cannot be said that there was any such prior decision given in the case against the petitioner, when the authorities were taking steps to conduct an enquiry against the petitioner. The Railway Administration thought that it was unnecessary to conduct an enquiry and that they could proceed to terminate the service of the petitioner under Rule 149 of the Code. It was on the ground that the services of the petitioner were terminated. Subsequently, Rule 149 was held to be unconstitutional by the Supreme Court. In view of that, the Railway Board gave general instructions as to how the cases of those employees whose services were terminated under Rule 149 were to be dealt with. One such instruction was that after reinstatement action to initiate departmental proceedings should be taken where it was feasible to do so. It was how the Administration began to take departmental proceedings against the petitioner after his reinstatement, in service, The principle of res judicata cannot, therefore, be applied to the facts of this case, even assuming that such principle would apply also to domestic or departmental enquiries.

9. Learned Counsel for the petitioner next contends that the principle of autrefois acquit would apply to this case. In this connection, Emperor v. Chinna Kaliappa Goundan (1966) 16 M.L.J. 79 : I.L.R. 29 Mad. 126, has been cited before me. That case was heard and decided by a Full Bench of five Judges. That case arose on a reference by the Sessions Judge as to whether it was competent to a Magistrate, after dismissing a complaint¹ under Section 203 of the Code of Criminal Procedure, to rehear the complaint, when such order of dismissal had not been set aside by a higher Court, The majority judgment held that the dismissal of complaint under Section 203 of the Criminal Procedure Code does not operate as

a bar to the rehearing of the complaint by the same Magistrate, even when such order of dismissal has not been set aside by a competent authority. It was also held that the principle of *autrefois acquit* would not apply as there was no trial when the complaint was dismissed under Section 203 of the Code. But learned Counsel for the petitioner relies on the observations of Subramania Ayyar, J., in his dissenting judgment at page 138:..even where the plea of *autrefois acquit* is not technically available, the principle of it is available for the accused when the interests of justice require its extension in his favour. Bishop, in his commentaries on the law of Criminal Procedure, after pointing out that according to the better doctrine a person is in legal jeopardy when the jury is empanelled and ready to try him on a valid indictment and there is no latent or patent obstacle in the judicial path to prevent the cause proceeding to the end, observes then, if, contrary to his rights and without his consent, the cause is suffered to break off before a verdict of acquittal or conviction is reached, there cannot technically be a plea of *autrefois acquit* or *autrefois convict* by reason of this jeopardy, yet the prisoner is entitled in some way to rely upon it afterwards for his protection.

There may be some force in the contention of learned Counsel for the petitioner. Still, in view of the majority decision in that case, I am of the opinion that there is nothing wrong in the authorities starting the enquiry against the petitioner on the facts and circumstances of this case. Further, the petitioner himself, as a matter of right, claimed to be reinstated as per the decision of the Supreme Court, and also received his salary for the period. When such is the case, he should also participate in the enquiry which is intended to be started against him by the Railway Administration. In this connection, learned Counsel appearing for the respondents-cited *Devendra Pratap v. State of Uttar Pradesh* : (1962)ILLJ266SC , where their Lordships of the Supreme Court have observed that, after an order passed in an enquiry against a public servant imposing a penalty is quashed by a civil Court, a further proceeding can be commenced against him, if, in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant concerned were never investigated. In this case, though the Railway Administration started the proceedings, they never continued them, and they decided to take action under Rule 149 of the Railway Code. Therefore, when Rule 149 was struck down by the Supreme Court as

unconstitutional, the Administration would be at liberty to continue the proceedings left unfinished.

10. It is next contended by learned Counsel for the petitioner that the enquiry to be conducted by the Railway Administration would be a mockery, since the Administration has already made up their mind to terminate his services. It is submitted that the petitioner strongly suspects the bona fides and the motive of the authorities concerned in starting the enquiry against him.

11. It is an admitted case that on the date of the incident, two persons were involved in the incident, the petitioner and Gupta, the Divisional Engineer. Two complaints were preferred, one by the petitioner against Gupta, and the other by the said Gupta, against the petitioner. On the complaint preferred by the petitioner against Gupta, no orders appear to have been passed, and there is no indication available in the records to show that the Department took any action on it. On the other hand, on the complaint preferred by the said Gupta, the Divisional Engineer, prompt action has been taken by the authorities to start the proceedings against the petitioner. The petitioner, therefore, apprehends that he may not get justice in the hands of the Railway Administration. There is considerable force in the contention so put by the petitioner. As I said, there is nothing on record to show that any action worth the name has been taken by the Department, on the complaint of the petitioner. In all fairness, the Railway Administration should have considered both the complaints or they should have at least given a decision on the complaint of the petitioner, before starting the enquiry against the petitioner on the complaint given by Gupta. Learned Counsel for the petitioner cited the decision of the Supreme Court in *Barium Chemicals Ltd. v. Company Law Board* : [1967]1SCR898 , where it is observed:

Though an order passed in exercise of power under a Statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose.

But, in this case, I am not prepared, at this stage, to say that there are mala fides or bad faith on the part of the Railway Administration or that they have any motive in resuming the enquiry proceedings against the petitioner. The petitioner is not,

therefore, entitled to writ of prohibition restraining the Railway Administration from proceeding with the enquiry or the charge framed against the petitioner.

12. The writ petition is, accordingly, dismissed, but without costs.

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