

Binny Limited Vs. C.C. Thomas

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SooperKanoon Citation : sooperkanoon.com/819562

Court : Chennai

Decided On : Mar-06-1975

Reported in : (1975)2MLJ223

Appellant : Binny Limited

Respondent : C.C. Thomas

Advocate for Pet/Ap. : Mr. Ramasubramanian

Judgement :

M.M. Ismail, J.

1. The defendant in O.S. No. 5625 of 1967 on the file of the City Civil Court, Madras, is the appellant herein. The respondent herein at the relevant time was working as Assistant Engineer in the Shipping Section, (Madras Harbour) of the appellant herein. Certain charges were framed against the respondent by the appellant and those charges have been set out in the following terms in paragraph 20 of the judgment, which alone was brought to my notice during the hearing of this appeal, as follows:

The gravamen of the charge found in Exhibit B-13 may be divided into four categories as shown hereunder : (1) the first is that the plaintiff received Rs. 2,450 from Southern Shipping Corporation on or about 27th April, 1967, Rs. 240 on 22nd May, 1967 from Chettinad Cement Corporation, and failed to deposit the said

amounts, thereby caused loss to the defendant company; (2) that he failed to ensure that the said amounts were remitted to the head office and thereby he was negligent in his duty; (3) that he received the following amounts on the following dates:

Amount Date Parties Retained till Rs. 3,820 14-3-1967 Southern Shipping 27-4-67Rs. 720 14-3-1967 Corporation Rs. 3,559 23-12-1966 --do-- 12-4-1967 Kathina T.H.Agencies Inter-national Clearing and ShippingAgents 4-1-1967 Rs. 5,562 25-4-1967 S.S. Marthon Victory 8-5-1967, and thus unauthorisedly retained these amounts for the aforesaid periods and thus committed misappropriation, (4) that the plaintiff deliberately and intentionally gave a false statement to the Chief Executive Officer that he received the sum of Rs. 2,450 only on 19th May, 1967 whereas in fact he had received it as early as 25th April, 1967.

An enquiry was conducted into the said charges by D.W. 1 and ultimately by an order dated 19th September, 1967 marked as Exhibit B-34, ' the respondent was dismissed from the appellant-company's service with effect from the date of that order. The respondent filed the present suit claiming a declaration that the dismissal of the respondent from the service of the appellant was wrongful, illegal and irregular and praying for a decree directing the appellant to pay the respondent a sum of Rs. 8,210 with future interest. The sum of Rs. 8,210 comprises of five months salary amounting to Rs. 7,655 at the rate of Rs. 1,531 per month and a sum of Rs. 555 being the refund of annuity deposit deducted from his salary from April, 1967 to June, 1967. The case of the respondent was that the charges framed against him were not proved and that the enquiry was vitiated and invalid. A written statement was filed by the appellant herein disputing the claim of the respondent and the details thereof are reflected in the following issues framed for trial by the learned trial Judge:

(1) Whether the suit as framed for recovery of salary and allowances after the dismissal of the plaintiff from service is maintainable in law ?

(2) Whether the suit is not maintainable for the reason that the plaintiff should have claimed the benefits of Pension Fund and Provident Fund as a consequential relief to the declaration sought for ?

(3) Whether the order of dismissal is invalid for the reason that it was under the signature of one of the Directors of the defendant-company ?

(4) Whether the domestic enquiry and disciplinary proceedings conducted by the defendant is vitiated as being opposed to the principles of natural justice or as being irregular ?

(5) Whether the plaintiff is guilty of any or all of the acts of misconduct with which he was charged ?

(6) Whether the plaintiff is entitled to a declaration that the dismissal of the plaintiff from the service of the defendant was wrongful and illegal ?

(7) Whether the plaintiff is entitled to the sum of Rs. 8,270 or any other sum ?

2. The learned VII Assistant Judge, City Civil Court, Madras, by judgment and decree dated 4th August, 1970 found the material issues in favour of the respondent and decreed the suit as prayed for. It is against this judgment and decree that the present appeal has been filed by the defendant.

3. Mr. S. Ramasubramanian appearing for the appellant very elaborately argued this appeal before me. The learned Counsel contended that the finding of the learned trial Judge that the charges were not proved against the respondent herein was beyond the jurisdiction of the civil Court, since the civil Court had no jurisdiction to go into the correctness or otherwise of a finding, arrived at a domestic enquiry. In order to sustain this contention, the learned Counsel took me through the relevant paragraphs of the judgment. Since I uphold the judgment and decree of the trial Court on another point with reference to which the appellant has practically no answer, I do not propose to consider the validity or otherwise of this submission. In paragraph 26 of the judgment which in effect deals with issue No. 4, the learned trial Judge has come to the conclusion that the domestic enquiry conducted by the appellant was in illegal violation of the principles of natural justice and was illegal and irregular and that therefore the respondent was entitled to the declaration that the order of dismissal passed against him was ineffective and inoperative. The facts which will sustain this conclusion of the learned trial

Judge are as follows:

4. D.W. 1 was the person who conducted the enquiry. There was a charge by the respondent that the said D.W. 1 functioned both as Judge and Prosecutor, because it was he who framed and put questions to the witnesses and recorded the answers given by them. Admittedly there was no other officer on behalf of the appellant who examined the witnesses and it was only D.W. 1, who examined the witnesses and recorded the evidence. I am not going to rest my conclusion even on that.

5. More serious are certain matters which I propose to refer to now by way of upholding the judgment of the trial Court. Throughout it was the case of the respondent, with regard to the charges framed against him, that he handed over the money to one Mr. Andrews, who was a checker, on the very same day he received the money, that Mr. Andrews paid the told the respondent that he (Mr. Andrews) had remitted the money to the Head Office, that in token of his having paid the money to Mr. Andrews and Mr. Andrews having received the money, an entry was made in the cash book and that the said cash book was not made available during the domestic enquiry. In more than one place the respondent in his evidence as P.W. 1 has referred to this fact, namely, that the said cash book was the company's cash book, that it was not the private book of Mr. Andrews and that yet the company had not chosen to produce that book at the time of the enquiry. There was no cross-examination whatever of P.W. 1 on that question. The result of that will be that the said cash book was the company's cash book and yet it was not produced during the domestic enquiry, thus preventing the respondent from establishing his innocence and that consequently it would constitute denial of an opportunity to the respondent to put forward his case.

6. Secondly, D.W. 1 had prepared a report in which he had stated, that he had analysed and discussed the evidence given by him during the time of the enquiry. Admittedly no copy of such report was given to the respondent before the Court. As a matter of fact D.W. 1 admitted that the said report was not produced before the Court. Mr. Ramasubramanian could not deny the position that if domestic enquiry had been conducted in which an employee had put forward a defence, the

employee was entitled to know how his defence had been considered and rejected, before it was found that the charges framed against him were proved.

7. Thirdly, on the basis of the report of the Enquiry Officer, D.W. 1, the Director of the Company, who passed the order dismissing the respondent from service as per Exhibit B-34, appears to have written a judgment marked as Exhibit B-35 on the same date. As a matter of fact, Exhibit B-34 refers to that judgment having been pronounced on that date. But it is admitted that no copy of that judgment was given to the respondent herein and the learned Counsel for the respondent points out that the respondent became aware of the judgment only when it was marked in the Court during the course of the trial of the suit in question. There can be no doubt whatever that this again constitutes violation of principles of natural justice.

8. Fourthly, Exhibit B-19 is a communication dated 7th August, 1967 sent to the respondent herein by the Director of the company. That communication sets out the names of six persons and states:

The witnesses who will be examined at the enquiry will be selected from among the following persons:

Mr. M. G. Kamat, Chief Executive, B.E.W., Ltd.,

Mr. P. U. Cariappa, Asst. Engineer, B.E.W., Ltd.,

Mr. P. Mohanasundaram, Cashier, Binny & Co., Ltd.,

Mr. P. Somasundaram, Cashier B.E.W., Ltd.,

Mr. P.K. Raman of Southern Shipping Corporation.

Mr. P.S. Ramachandran of Southern Shipping Corporation.

If any other witness is examined during the enquiry, you will be given sufficient time to cross-examine the witnesses.

It is admitted that the enquiry was conducted on two days, that is, on 16th and 17th August, 1967. Two persons whose names did not find a place in the list of

witnesses, Exhibit B-19, had been examined during the enquiry. One was Mr. Andrews and the other was one Mr. Venkateswaran. As a matter of fact, it is represented that the said Mr. Venkateswaran was examined in the place of Mr. P.S. Ramachandran, who figured in the list of witnesses contained in Exhibit B-19. It is admitted that no advance notice of the proposal to examine these two witnesses was given to the respondent. Equally it is admitted that when these witnesses were examined or after they were examined, the Enquiry Officer did not tell the respondent that those witnesses were persons not included in the original list contained in Exhibit B-19 and that therefore it was open to the respondent to take time to cross-examine them, if he wanted. As a matter of fact, when witnesses are suddenly produced and examined, the other side will be at a disadvantage in cross-examining such witnesses and particularly so in a domestic enquiry. Hence, the other side must have previous information as to who would be examined so that the cross-examination of such witnesses may be effective. In this particular case, notwithstanding the assurance given in Exhibit B-19 that sufficient time for cross-examination would be given, if witnesses not included in the list were examined the respondent was not 'told about it at the same time and he did not have any such effective opportunity to cross-examine the two witnesses. Mr. Ramasubramanian, learned Counsel for the appellant contends that there is nothing to show that the respondent asked for any such opportunity or protested against the same. On the other hand Exhibit B-23, copy of the proceedings shows that on 17th August, 1967 itself, namely, the second day of enquiry the respondent protested against calling Mr. Venkateswaran and Mr. Andrews as witnesses, because their names were not included in the letter dated 7th August, 1967 addressed to him.

9. Mr. Ramasubramanian in this context contended that the failure to give sufficient time to cross-examine these witnesses had not prejudiced the respondent in any manner. I am unable to accept this argument. The case of the respondent throughout was that he handed over the moneys to Mr. Andrews then and there and Mr. Andrews ' told the respondent that he remitted the moneys to the Head Office. Consequently, the examination of Mr. Andrews without giving an opportunity to the respondent, to cross-examine him certainly has prejudiced the respondent. Equally Mr. Venkateswaran has spoken to his having paid certain

amounts to the respondent on specified dates which, according to the respondent, from the beginning was not true and the case of the respondent was that he received the amounts only later. As a matter of fact, with regard to the amount of Rs. 2,450 the case of the respondent was that he received the same only on 19th May, 1967 though he signed the receipt on 25th April, 1967. Consequently the evidence of Mr. Venkateswaran that he paid money to the respondent on 25th April, 1967 itself was prejudicial to the case of the respondent and therefore the respondent should have been given an effective opportunity to cross-examine Mr. Venkateswaran.

10. In my opinion, the above features will clearly go to show that there has been violation of the principles of the natural justice with regard to the conduct of the enquiry and therefore the resultant order is vitiated. Consequently, the learned trial Judge is right in holding that the order was ineffective and invalid.

11. However Mr. Ramasubramanian drew my attention to the judgment of the Supreme Court in *Lakh Raj Khurana v. Union of India* : [1971]3SCR908 , and contended that in the case of master and servant, there is no scope for the application of principles of natural justice. The only sentence on which reliance has been placed in this behalf occurring in the said judgment is as follows:

As regards the applicability of the rule of natural justice it has not been shown to us how under the general law of master and servant, in the absence of any protection conferred by Article 311 of the Constitution such a rule can be invoked.

I am unable to agree that this observation has any application to the facts of this case. Once a domestic enquiry is conducted that enquiry has to be fair and proper and one of the requirements which that enquiry should comply with is the principles of natural justice. The decision of the Supreme Court referred to above has not dealt with this question at all and the above sentence occurring in the judgment torn out of context cannot be relied upon to contend that in any domestic enquiry conducted by a master against his servant alleging misconduct against him, the enquiry need not comply with the requirements of principles of natural justice.

12. Mr. Ramasubramanian then contended that even if the order of dismissal is held to be illegal or inoperative or ineffective, the quantum of damages to which the respondent would be entitled by way of damages for wrongful dismissal will be only three month's notice pay which has been provided for in the contract between the parties. I have already referred to the fact that the respondent claimed only five months' salary, and though he called it arrears of salary and allowance, still in effect it represents damages for wrongful dismissal. He himself would have retired from service on 1st January, 1968 and consequently he claimed salary only for five months. I am unable to hold that the said five months salary does not represent the proper damages for wrongful dismissal. With regard to this case also, Mr. Ramasubramanian relied on a judgment of this Court in *Percy Edward Warne v. Quchterlosy Valley Estate* : AIR1956 Mad505, holding that where a contract of employment provides for terminating the employment by three months' notice at the perfect discretion of either party and a person is wrongfully dismissed, the damages which he would be entitled to would only be the pay and allowance due for the notice period and nothing more. I am unable to hold that this decision applies to the facts of this case. The position may be different where the services of an employee are terminated, which termination is in the nature of a termination simpliciter without being preceded by a domestic enquiry into the alleged misconduct of the employee and the termination not being based on the said enquiry. On the other hand, when a person is dismissed on the basis of a domestic enquiry held against him into certain alleged misconduct which had been proved, the position will be entirely different. In one case there will be no stigma attached to the employee concerned and in the other case a stigma will be attached to the employee concerned which may have the effect of preventing him from seeking employment elsewhere. Consequently the rule enunciated in the above decision cannot apply to a case where the employee is dismissed on the basis of a finding arrived at as a result of an enquiry conducted into an alleged misconduct against him. It is admitted that the decision of this Court referred to above did not deal with a case where the employee was dismissed on the basis of being found guilty of misconduct at a domestic enquiry held against him.

13. No other point was urged before us.

14. Under these circumstances, the appeal fails and is dismissed with costs.

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