

M. Jagadeesan Vs. the Manager-legal, Tamil Nadu Small Industries, Development Corporation Ltd. and ors.

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Court : Chennai

Decided On : Jan-08-1999

Reported in : (1999)2MLJ42

Appellant : M. Jagadeesan

Respondent : The Manager-legal, Tamil Nadu Small Industries, Development Corporation Ltd. and ors.

Judgement :

ORDER

T. Meenakumari, J.

1. The writ petition is for the issue of writ of certiorarified mandamus to call for the records of respondents culminated in proceedings Reference No. 36610/EC-2/88, dated 3.7.1989 and the resolution of the Board in the 109th meeting held on 22.9.1989 communicated by memo Ref.No. 36428/Ec-2/89, dated 8.11.1989 and quash the same and direct the respondents to treat the petitioner to have remained in service from 3.7.1989 and to pay all attenuating benefits accrued in the service.

2. The case of the petitioner is that he was selected by the Tamil Nadu Public Service Commission for appointment as Junior Assistant and was allotted to the

Directorate of Industries and Commerce. From 2.6.1965, he was working as Junior Assistant. In April, 1970 he was promoted as the Assistant, The Tamil Nadu Small Industries Development Corporation Limited has come into existence on 23.5.1970. The petitioner herein was deputed by the Directorate of Industries and commerce to the abovesaid Corporation. He joined the services of the Corporation (SIDCO) as an Assistant with effect from 1.12.1971. In 1975, the petitioner was promoted as Commercial Accountant and subsequently in 1984 as the Accounts Officer. In the year 1983 he became the permanent employee of the Corporation and his services were regularised in the Corporation with effect from 1.12.1971. In the year 1987, the petitioner was promoted as Deputy Chief Accounts Officer. There was a distribution of work by the Managing Director in office order No. 10-87-Rc.No. 49196/ACI/86, dated 11.2.1987. The Deputy Chief Accounts Officer had been vested with the power to pass the bills/vouchers/personal claims of officers upto Deputy Manager level and the bills/vouchers upto Rs. 2,00,000, by office Order No. 11787 Rc.No. 48336/B3/86, dated 3.4.1987. On the resignation of one Thiru M. Bhaskar, Accounts Officer (Bills and Banking), the work attended to by him was allotted to the petitioner herein by Memo No. PC/S&FC;/88, dated 4.11.1987. The accounts of the Corporation was audited for the financial year 1987-88. The internal audit found certain discrepancies during the course of verification of accounts and reported that certain payments made towards refund of amounts deposited by raw material buyers were false. It is alleged in the affidavit that on such report, the Chairman and the Managing Director decided to institute a detailed enquiry and pending enquiry the personnel working in the Accounts Department were ordered to be suspended from service. By proceedings No. 36610/EC-2/88, dated 23.8.1988, the petitioner herein was placed under suspension and charge-memo dated 6.12.1988 was served upon the petitioner. The suspension made was in exercise of power under service Rule 6.18(a). It was stated in the above memo that during the course of audit of the accounts of the Corporation for the financial year 1987-88, it was brought to light that certain employees of the Corporation had conspired, colluded and connived to commit acts of misconduct, cheating, forgery, breach of trust and misappropriation of Corporation funds. The respondents Corporation has framed nearly eight (8) charges against the individuals in the charge memo reference No. 36610/EC-2/88,

dated 6.12.1988. To the abovesaid charge memo, the petitioner was directed to submit his explanation to the show cause notice and also to state whether he prefers oral enquiry or to be heard in person. The further case of the petitioner is that the claims were prepared by Jeyabharathi (Cashier), Sivanandham and Matharsha (Commercial Accountants) of the Accounts Department and P. Sekki, Accounts Officer had approved the payment in the above claims. The petitioner had merely countersigned the cheques made out for the above payments as second signatory to the cheques. The cashier and the Commercial Accountants alone had taken the cheques and had encashed the same in the bank. It was also stated in the affidavit filed in support of the writ petition that there was no evidence on record to show that the petitioner was concerned either in preparing or approving the bills or drew any benefit from those fraudulent payments. On 3.1.1989, the petitioner has made his representation concerning the charge memo dated 6.12.1988. On 23.1.1989 the Managing Director has ordered reinstatement of the petitioner without any prejudice to the Corporation rights to continue the departmental proceedings and accordingly the petitioner joined his duties. On 23.1.1989 the first respondent herein was appointed as the Enquiry Officer to hold the enquiry. On 27.1.1989, the first respondent directed the petitioner to appear before him for enquiry on 2.2.1989. The case of the petitioner is that during the course of enquiry, no evidence of the Corporation was adduced and no documents were marked. It was also stated by the petitioner that as the cheques were countersigned in a routine manner, it could only be an unintentional omission and in view of his past services, he should be pardoned and further action should be dropped. The Enquiry Officer has submitted his report on 2.2.1989. It was also stated by the petitioner that since the Managing Director Thiru J.R. Ramanathan was transferred and another Managing Director Thiru F.J. Vaz has assumed the charge, the enquiry officer has resubmitted a fresh report on 6.2.1989. It is also stated that the second respondent has passed the impugned order on 4.7.1989 dismissing the petitioner from service on the ground that all the charges have been proved. The said order has been impugned in this writ petition.

3. In this case, the respondents have filed their counter. It has been contended by the learned Counsel for the petitioner that the petitioner has countersigned the cheques prepared by the lower staff and it was only an unintentional one and not a

deliberate one. The petitioner himself has agreed that he has countersigned the cheques and basing on that, the then Managing Director has reinstated the petitioner into service on 6.1.1989 on an understanding that the petitioner would be given only a minor penalty. It was further argued that the petitioner was imposed with a major penalty of dismissal from service as enunciated under Sub-clause (b) of Rule 6.15. It was also argued that even though the petitioner has not asked for the oral enquiry, a duty is cast upon the respondent Corporation to prove the charges with reference to the records and by producing their own witnesses.

4. In this case, the respondent-Corporation has never chosen to mark any documents or produce any witnesses. It has also been argued on behalf of the petitioner that as per Rule 6.17, before imposing any of the major penalties, the competent authority should give a reasonable opportunity to the employee concerned to show cause against such imposition.

5. In this case, charge memo was framed on 3.1.1989 and the petitioner has submitted his explanation and the enquiry was conducted and the Enquiry Officer has submitted his report on 6.2.1989 holding the petitioner guilty of all the charges levelled against him basing on which the respondent-competent authority has imposed the major penalty of dismissal from service. It was argued that the respondents have not complied with the rules of the Tamil Nadu Small Industries Development Corporation Limited (TISCO) by not giving a reasonable opportunity to the employee concerned to show cause against such imposition. Even though the dismissal order has been passed after the receipt of the enquiry report, the respondents have failed to give any reasonable opportunity before imposing the punishment in this case. In such view of the case, the petitioner has argued, that the dismissal order has to be quashed for non-complying with the mandatory provisions.

6. On the other hand, the learned Counsel for the respondents has argued that there is no necessity for the issuance of the second show cause notice as the petitioner himself has never asked for any oral enquiry. Since the petitioner has not chosen to examine any witnesses or mark any documents on his behalf, the Corporation has also not marked any documents or produced any witnesses in the

enquiry. It is also contended that the provisions of Rule 6.17 have been complied with as the petitioner was given an opportunity to show cause by calling for the explanation. In the circumstances, it was argued by the learned Counsel for the respondents that there is no illegality or irregularity in conducting the enquiry and the enquiry as such is in compliance with the rules. Basing on these contentions, the learned Counsel has argued that the impugned order is sustainable in law.

7. In this case, the charge memo was issued on 6.12.1988 to which the petitioner has submitted his explanation. The Enquiry Officer was appointed on 23.1.1989. The enquiry was conducted and the Enquiry Officer submitted his report on 6.2.1989. Meanwhile, the petitioner was reinstated into service without prejudice to the right of the Corporation to proceed with the departmental enquiry. It is a fact that the petitioner has never chosen to opt for the oral enquiry or examine any witnesses but there is a duty cast upon the respondent-Corporation to examine their own witnesses and mark the concerned documents to prove the charges. In this case, the respondents have utterly failed to produce their witnesses and have not marked any documents to prove the charges. Rule 6.15 deals with the imposition of the penalties-major and minor. Imposition of the major penalties should be as per Sub-clause (b) of Rule 6.15. Rule 6.17 reads as follows:

Before imposing any of the penalties, the competent authority shall give a reasonable opportunity to the employee concerned to show cause against such imposition.

From the above, it can be culled out that the competent authority must issue a second show-cause notice before imposing of the penalty. In this case, even though the competent authority has taken a decision to dismiss the petitioner from service, the records annexed to the writ petition affidavit shows that there was no reasonable opportunity provided to the petitioner to show cause against such imposition. In similar circumstances, a Division Bench of this Court in W.A.Nos. 1033 and 1142 of 1990, dated 20.3.1991 has upheld Regulation 8(b) of the Tamil Nadu Electricity Board Employees Discipline and Appeal Regulations wherein a similar provision has been enunciated which reads that after the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, a further

written statement of his defence, whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before passing of final orders. While dismissing the writ appeal filed by the Electricity Board for non-compliance of Regulation 8(b), the Divisional Bench has held as follows:

The provisions of law that directly apply and really govern the case are those contained in Regulation No. 8(b) of the Tamil Nadu Electricity Board Employees Discipline and Appeal Regulations made in the purported exercise of powers conferred under Section 79(c) of the Electricity (Supply) Act, 1948 referred to supra. The provision therein that 'After the enquiry has been completed, the person shall be entitled to put in, if he so desires, a further written statement of his defence whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before passing of final orders', assumes great significance and importance in deciding the question directly in issue before us. The enquiry officer submits a report only and does not pass final orders. Therefore, before the passing of final orders by the Disciplinary Authority so far as the guilt of the delinquent officer is concerned and before the findings are arrived at finally one way or the other, the delinquent officer is entitled to 'be heard'. The second para of Regulation 8(b) has to be harmoniously read with the other portion and if so read, the second para has to be limited in its operation to the stage and purpose of showing cause against the penalty proposed to be imposed. Thus, the effect of the amendment introducing the second para to Regulation No. 8(b) is that the disciplinary authority is not obliged to inform before hand the nature of the penalty proposed to be imposed and hear or give an opportunity to the delinquent officer against the imposition of such penalty and that the delinquent officer cannot claim that he should be given an opportunity to show cause against the quantum or nature of punishment before the delinquent officer being visited with such penalty. Apart from this, we are unable to either appreciate or countenance the plea of the appellants that no opportunity need be given to the delinquent officer after receipt of the report submitted behind his back but before either agreeing or disagreeing with the findings recorded or arrived at by the enquiry officer or condemning him. The fact that the findings recorded or conclusion arrived at by the enquiry officer are not per se binding upon

the disciplinary authority has no relevance or impact upon the decision of the question before us for our consideration. The report is a material which comes into the hands of the disciplinary authority and the conclusions and findings recorded play a vital role in condemning or exonerating the delinquent officer and that being the real position, the giving of an opportunity as prayed for become all the more important and necessary. Viewed either on the basis of the Regulation or on the basis of the principles of natural justice, the conclusions of ours as expressed supra become inevitable and inescapable.

Basing on the above and interpreting Rule 6.17, it has to be held that the competent authority is bound to give reasonable opportunity to the employee to show cause against the imposition of penalty either major or minor. In the instant case, the penalty imposed was major. There is no record to show that the competent authority has chosen to give a reasonable opportunity to the petitioner herein, to show cause against such imposition of penalty of dismissal from service. The impugned order also shows that the petitioner was not given an opportunity to show cause against the imposition of major penalty as required under Rule 6.17.

8. Basing on the above decision of the Division Bench, I have no hesitation to hold that there is violation of the provisions of Rule 6.17 and there is utter failure on the part of the respondents in not complying with the provisions of Rule 6.17 as no reasonable opportunity was given to the petitioner herein before imposing the penalty.

9. For the above reasons, the impugned order dated 8.11.1989 in Memo Ref.No. 36428/EC-2/89 is quashed. The writ petition is allowed. No costs.