IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2004

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.NO.9600 OF 1997

The Management of Devala Tea Division
Tamil Nadu Tea Plantation
Corporation Limited
Devala Post
Gudalur Taluk
Nilgiris 643 270 ..Petitioner

-Vs-

1.The Presiding Officer
Labour Court
Coimbatore

2.Thiru Ganesan

3.Thiru Ramachandran

4.Thiru Muniswamy

Respondents 2,3 and 4 rep. by
Plantation Labour Association
AITUC, Joseph Advocate Budg.,
Gudalur, Nilgiris 642 212 ..Respondents

Petition is filed under Article 226 of the Constitution of India for the issue of writ of Certiorari calling for the records of the first respondent in I.D.Nos.368 to 370/94 and quash its Award dated 25.9.9 6.

!For petitioner : Mr.Karthic
for M/s T.S.Gopalan & Co.

For respondents 2 to 4: No appearance

:ORDER

The petitioner seeks a Writ of Certiorari to call for the records of the first respondent/Labour Court, Coimbatore in I.D.Nos.368 to 370 of 1994 and quash the award dated 25.9.1996.

2.Brief facts of the case are that the respondents 2 to 4 were the daily workers in Range III of Devala Tea Division of the Tamil Nadu Tea Plantation Corporation Limited, Gudalur Taluk; that on 7.11.1992, when the Field Conductor allotted them the work, they refused to go for work and when questioned by him, they assaulted him; that based on the said incident, a police complaint was lodged in the Devala police station in Cr.No.578/1992 and the counter complaint lodged by respondent No.2 herein was registered as Cr.No.617/1992; that thereafter, a domestic enquiry was conducted by the petitioner and having found them guilty, a punishment of dismissal from service was inflicted on respondents 2 to 4; Aggrieved, they have filed I.D.Nos.368 to 370/1994 before the Labour Court and the Labour Court, Coimbatore has ordered reinstatement of Respondents 2 to 4 with continuity of service and 5 0% of backwages. Aggrieved, the Management has come forward with this Writ Petition.

3.The learned counsel for the petitioner would submit that the petitioner is a Tea Plantation Corporation Limited; that the incident took place on 7.11.92; that the respondents 2 to 4 did not work and when they were asked to work; that they refused and assaulted the Field Conductor; that a complaint was given to the police, registered in C. C.No.578/92 and the management was intimated; that show cause notices were issued to respondents 2 to 4; that enquiry was sought to be adjourned on ground that they have filed the Writ Petition; that enquiry was not adjourned and the witnesses were examined; that since the enquiry was conducted by the Field Officer, the respondents 2 to 4 wanted change of enquiry officer; that their request was acceded to; that the manager was appointed as the enquiry officer; enquiry was conducted; that after the change of enquiry officer, the enquiry officer while travelling between Coimbatore and Coonoor, the enquiry papers were lost in the bus; that the enquiry officer gave a report to the police; that, fresh enquiry was ordered and the respondents refused to participate in the enquiry and the enquiry was held exparte; that the witnesses were examined; after the enquiry, the respondents 2 to 4 were given the order of dismissal due to misconduct; that they raised a dispute challenging their dismissal before the Labour Court; that the preliminary issue is as to whether the enquiry was held properly or not; that by preliminary order dated 3.7.96 the Labour Court held that the enquiry was fair and proper; that the Labour Court held that the workmen have to be acquitted for the benefit of doubt.

4.The learned counsel for the petitioner has made the following submissions:
(i)That the workmen were acquitted in criminal trial on benefit of doubt only and the order of acquittal has no bearing on the departmental activities. The departmental proceedings against the workmen can go on without any bearing of the acquittal of the workmen in criminal trial. Relying on the decision reported in 1997 (XI) SCC page 239 SENIOR SUPERINTENDENT OF POST OFFICES V. A.GOPALAN the learned counsel for the petitioner submits that the acquittal in criminal trial on benefit of doubt will have no bar to impose the penalty in departmental proceedings.

(ii)Relying on another decision reported in 1997 Vol.(XI) SCC page 3 61- GOVIND DAS V. STATE OF BIHAR AND OTHERS the learned counsel for the

petitioner would further submit that acquittal in criminal trial has no effect on punishment awarded on departmental enquiry and therefore, the acquittal of the workers in the criminal case on the basis of benefit of doubt could not be the basis for setting aside the order of termination of the services of the workers.

(iii)That the plea of the management that the enquiry papers were lost is not false. The enquiry officer was changed only at the request of the respondents 2 to 4 and during transit between Coimbatore and Coonoor only the enquiry papers were lost and it is not falsely pleaded before the Labour Court that the enquiry papers were lost.

(iv)That even if the workmen were not given the second show cause notice, it will not invalidate the order of dismissal and it cannot be a ground to invalidate the same. In support of the said submission the learned counsel for the petitioner relied on the decision reported in 1994 (1) LLJ 162 MANAGING DIRECTOR ECIL, HYDERABAD V. B. KARUNAKAR at page 178 wherein in para 30 it has been held as follows:
`The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence, to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice.'

Relying on the aforesaid portion, the learned counsel for the petitioner submits that there is no ground to invalidate the order of dismissal since the second show cause notice has not been given.

(v)The next question is what is the effect of the order of punishment. The workmen were all placed under suspension on 9.11.92 and the order of termination was issued on 22.12.93. The learned counsel states that whatever be the amount paid in interregnum, whether it was subsistence allowance or wages, the workmen were paid money. Therefore, it cannot be said that they were not paid the subsistence allowance. The learned counsel relied on the

decision reported in 2004 (Vol. I) SCC page 281(INDRA BHANU GAUR V COMMITTEE, MANAGEMENT OF M.M. DEGREE COLLEGE)at 286 in para 7 wherein it has been held that unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. The learned counsel for the petitioner submits that in the present case, it cannot be said that there is non-payment of subsistence allowance and denial of opportunity, because payment was made in this case.

5.The learned counsel for the petitioner submits that the point to be decided here is whether the employees can take the law by themselves and assail their superiors and no leniency should be taken against them and no reinstatement should be given to them and if reinstatement is given to them, it is nothing but premium for the misconduct of the employees/respondents 2 to 4. Hence, the award of the Labour Court has to set be aside and the Writ Petition is to be allowed.

6.Since no representation has been made on the part of the contesting respondents 2 to 4 and the first respondent being the Labour Court below and since none represented on its behalf, orders are to be passed by this Court in consideration of the facts pleaded on the part of the petitioner having regard to the materials placed on record and upon hearing the counsel for the petitioner alone. However, from the petition filed to vacate the interim stay on the part of the respondents 2 to 4 this Court is able to get a glimpse of the case of these respondents and it would be urged on their part that they have been working as daily wages employees under the petitioner management for over eight years; that only they were attacked by the Field Conductor, Ponnambalam on 7.11.1992 and it is not true that they attacked him; that the complaint lodged by them was also registered by the police; that the enquiry was without notice to these respondents nor with their participation ultimately the enquiry officer's finding that the charge against these respondents proved; that the further enquiry conducted by yet another was also biased; that on a fresh enquiry conducted they fully participated wherein it was neatly established that the charges were false; that the said enquiry was completed on 25.5.93; that whileso, on 24.8.93 they received a letter from the enquiry officer stating that the enquiry papers were lost during transit and directed the respondents 2 to 4 to appear before him for a fresh enquiry; that in spite of these respondents having filed the Writ Petition in W.P.No.16792/93, the enquiry officer proceeded with the enquiry exparte resulting in ultimately the enquiry officer's finding that the charges were proved; that the criminal trial held against them in C.C.No.161/93 ended in acquittal; that they have raised I.D.Nos.368/94, 369/94 and 370/94 and the Labour Court rendered a finding that the termination was bad and directed the management to reinstate the workmen with continuity of service and backwages; that aggrieved, the management has come forward to file the above Writ Petition and that the respondents 2 to 4 are not able to get the benefit of the order of the Labour Court and they are facing much loss and hardship against them; that the management ought to have been complied with Section 17 B of the Industrial Disputes Act. On such pleadings, the case of the respondents 2 to 4 has been revealed and therefore, this Court has to pass orders in full consideration of the same along with the other materials made available.

7.In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner/management, this Court is given to understand that on an assault charge not only a criminal case was registered by the management in the Devala police station in Crime No.578/92, but also a domestic enquiry has been conducted by the management. It is relevant to consider that on the counter complaint given on the part of the respondents 2 to 4 also a criminal case was registered against the complainant in the other case. But, the police have chosen to charge sheet the case registered by the management which ended in acquittal of these respondents 2 to 4 and the fate the other case registered on the complaint of these respondents as it comes to be seen is that it has been referred as `Mistake of Fact'. Further as argued on the part of the learned counsel for the petitioner/management herein that the result of any criminal case registered might not have any bearing on the domestic enquiry, particularly, when the delinquents got acquitted in the criminal trial as it has been decided in the case reported in 1997 (11) SCC 239, the substance of which is extracted in para No.4 supra.

8.So far as the domestic enquiry held on the part of the disciplinary authority, it is the admitted case on the part of the petitioner that following the procedures established by law, a full enquiry has been held in the manner required in such cases with the full cooperation of the respondents 2 to 4. But, it is painful to note that the enquiry officer came forward to report that he had lost the enquiry papers during transit from Coimbatore to Coonoor and therefore, the management had required the respondents No.2 to 4 to face a fresh enquiry as though on the part of the respondents they have shirked responsibility. The arguments of the respondents 2 to 4 is to the effect that it is not on account of their irresponsibility they were required to face a second enquiry, but they would suspect sabotage on the part of the management since the result of the enquiry was very well in their favour. Under such a confused situation, the second enquiry had been conducted without participation of the respondents No.2 to 4 and it has been held the charges proved against the respondents, ultimately, the disciplinary authority dismissed the respondents 2 to 4 on such proved charges.

9.It could again be seen that based on the finding of the enquiry officer, the second show cause notice has not been served on the respondents/workmen and so far as this point is concerned, the learned counsel for the petitioner would rely on a decision reported in 1994 I LLJ 162, wherein, the Hon'ble Apex Court has held that the nonfurnishing of the report might not prejudice the delinquents gravely and there could be no difficulty to the ultimate punishment awarded and therefore, according to this judgment to direct reinstatement of the employees with backwages in all cases is to reduce the rules of justice to a mechanical ritual.

10.So far as this proposition held by the Hon'ble Apex Court is concerned, this was the judicial thinking in mid-nineties, but, later the trend has changed and in many of the Apex Court judgments, it has been concluded that the second show cause notice based on the enquiry report with the service of the copies of the enquiry report on the delinquents for their explanations to be offered is a mandatory requirement of law and hence, the

judgments cited on the part of the petitioner could only be held no longer a good law.

11.In the decision reported in 1999 (7) SCC 739 YOGINATH D.BAGDE V. STATE OF MAHARASHTRA AND ANOTHER in para 31 it has been held as follows: `So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about closure of enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the 'right to be heard' would be available to the delinquent upto the final stage. This being a constitutional right of the employee, cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

12.Coming to the main subject, the enquiry officer on facts and in the enquiry held by him arriving at the conclusion to hold that the charges proved, needless to mention, that it was a second enquiry since the full enquiry conducted by the enquiry officer had been withdrawn on the part of the disciplinary authority - the management on the ground that in transit, the enquiry officer has lost the enquiry papers which cannot be held to be proper so as to order a second enquiry as though the disciplinary authority is at liberty to order a second enquiry, particularly, when the disciplinary authority has not cited any law or proposition held by the upper forums thereby empowering the disciplinary authority to resort to a second enquiry while the fault of the losing of the enquiry papers was wholly on the part of the enquiry officer and not on an iota of contribution made on the part of the delinquents.

13.In the above scenario, the Labour Court on a lengthy discussion held on the subject would find that having failed to conduct a fare and free enquiry twice before only on the third enquiry held, that too, without participation of the respondents 2 to 4 in which the enquiry officer conducting an exparte enquiry has held the charges proved. Not only the decision arrived at by the enquiry Officer, but the manner in which such a decision has been arrived at has not been accepted by the Labour Court and therefore, deciding the first point framed by the Labour Court whether the enquiry report and findings are correct is answered in the negative further stating that it is not correct on the part of the enquiry officer to have concluded that the charges framed against the respondents 2 to 4 were proved thereby dismissing the document No.16 marked by the management pronouncing the decision of the enquiry officer as proved.

14.Dealing with the second point for consideration whether the dismissal of the respondents 2 to 4 is correct, even on this point having a wide discussion as it could be seen in paragraph 12 of the award by the Labour Court which would validly arrive at the conclusion that it is not on the part of the management to have ordered dismissal of the respondents 2 to 4 as a result of which for the third point framed as to what shall be the relief that could be granted as prayed for in the petition before the Labour Court, the

Labour Court would find that the respondents 2 to 4 have also been responsible for an early enquiry and report so as to take a decision immediately by getting stay orders in the High Court, and therefore would ultimately conclude that so far as the backwages are concerned they would not be entitled to the full backwages but only 50 % of the same thus, ultimately passing its award reinstating the respondents 2 to 4 with continuity of service and 50% of the backwages and without costs.

15.It is not only the decision made on the part of the Labour Court passing an award reinstating the respondents 2 to 4 with continuity of service and with 50% of backwages, but also the manner in which it conducted a thorough enquiry into the facts and circumstances pleaded by parties, framing its own points for consideration and having its own discussions and in full appreciation of the evidence placed on record following the procedures established by law, a valid decision has been arrived at by the Labour Court and therefore, this Court is not able to see any patent error or perversity in approach or any legal infirmity or unconstitutionality to have crept into the award of the Labour Court so as to warrant interference by this Court into the same. In short, there is absolutely no room for this Court to cause its interference into the well considered order passed by the Labour Tribunal below in a merited manner and hence the following order:

In result,
(i)The above Writ Petition does not merit acceptance, but only becomes liable to be dismissed and is dismissed accordingly.
(ii)The award dated 25.9.96 made in I.D.Nos.368 to 370 of 1994 by the Labour Court, Coimbatore is confirmed.
(iii)No costs.

Index:Yes
Internet:Yes

sal

To

1.The Presiding Officer
Labour Court
Coimbatore

□