

MANAGEMENT OF BHARAT HEAVY ELECTRICALS LTD.

v.

M. MANI

(Civil Appeal No.10766 of 2013)

NOVEMBER 09, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Service Law – Dismissal – For commission of theft while on duty – Enquiry officer held both the respondents were involved in commission of theft – Appellant accepted report and dismissed the respondents from service – This gave rise to filing of two cases – One u/s. 379 IPC in the court of Magistrate and other by the respondents against the appellant in Labour Court challenging legality of their dismissal orders – Magistrate acquitted the respondents from the charge u/s. 379 IPC – Labour Court held the departmental enquiry was properly held, however, since the criminal case resulted in acquittal of the respondents, the departmental enquiry stood vitiated and therefore, ordered reinstatement of respondents in service with payment of full back wages – Aggrieved, appellant filed writ petition – Single judge of High Court set aside the award of the Labour Court and remanded the case to Labour Court for deciding both matters afresh – Division Bench set aside the order of the writ Court and directed reinstatement of the respondents – On appeal, held: Labour Court rightly held that the departmental enquiry conducted by the appellant was legal and proper – However, it committed an error in holding that the departmental enquiry got vitiated due to criminal court's order which had acquitted the respondents from the charge of theft – There was no occasion for the Labour Court to examine this issue once the departmental enquiry was held legal and proper – Insofar punishment imposed by the appellant to the respondents is concerned, an act of theft committed by an employee while on duty is a serious charge – Having regard to the nature of charge which stood proved in the enquiry, the order of dismissal from service was the appropriate punishment – Therefore, the impugned judgment set aside and the orders of dismissal held as legal and proper – Industrial Dispute Act, 1947 – s.11A.

A *Enquiry – Departmental enquiry and Criminal proceedings –*
Held: Where the enquiry has been held independently of the criminal
proceedings, acquittal in criminal Court is of no avail – Even if a
person stood acquitted by the criminal Court, domestic enquiry can
still be held - the reason being that the standard of proof required
 B *in a domestic enquiry and that in criminal case are altogether*
different – In a criminal case, standard of proof required is beyond
reasonable doubt while in a domestic enquiry, it is the
preponderance of probabilities.

Allowing the appeals, the Court

C **HELD: 1. The Labour Court held that, firstly, the**
departmental enquiry was properly held; secondly, the employer
instead of holding an enquiry should have stayed it awaiting the
outcome of the criminal case; thirdly, since the criminal case
 D **resulted in the acquittal of the respondents, the departmental**
enquiry stood vitiated as violating the principle of natural justice;
fourthly, since the employer did not lead any evidence in support
of the charge, the charge remained unproved; and lastly, the
dismissal orders are bad in law in the light of the four grounds
and, therefore, the respondents be reinstated in service with
payment of full back wages by the appellant. [Para 10] [940-C-D]

E **2. The Labour Court, having held and indeed rightly that**
the departmental enquiry conducted by the appellant was legal
and proper committed an error in holding that the departmental
enquiry got vitiated due to criminal court’s order which had
acquitted the respondents from the charge of theft. There was
 F **no occasion for the Labour Court to examine this issue once the**
departmental enquiry was held legal and proper. The Labour
Court, committed yet another error in holding that since the
appellant failed to lead any evidence to prove the charge in Labour
Court, therefore, the dismissal orders of respondents are liable
to be set aside. This finding, was again not legally sustainable.
 G **[Para 16] [941-E-F]**

H **3. Once the Labour Court upheld the departmental enquiry**
as being legal and proper then the only question that survived
for consideration before the Labour Court was whether the
punishment of “dismissal” imposed by the appellant to the

respondents was legal and proper or it requires any interference in its quantum. [Para 17] [941-G-H] A

4. The Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Dispute Act, 1947 and the law laid down by this Court in the case of The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors. It was, however, not done thereby rendering the order of Labour Court legally unsustainable. [Para 18] [942-A-B] B C

5. Similarly, the Labour Court failed to see that the criminal proceedings and departmental proceedings are two separate proceedings in law. One is initiated by the State against the delinquent employees in criminal Court and other, i.e., departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees. [Para 19] [942-C] D

6. The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal Court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case. [Para 20] [942-D-E] E

7. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal Court is of no avail. It is held that even if a person stood acquitted by the criminal Court, domestic enquiry can still be held - the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. [Para 21] [942-E-F] F G

8. In the light of this settled legal position, the Labour Court was not right in holding that the departmental enquiry H

A should have been stayed by the appellant awaiting the decision of the criminal Court and that it is rendered illegal consequent upon passing of the acquittal order by the criminal Court. This finding of the Labour Court is, therefore, also not legally sustainable. [Para 22] [942-G-H]

B 9. This is a clear case where the departmental enquiry was held legal and proper. On going through the record of the case, the departmental enquiry was properly held and was, therefore, legal and proper. So far as the quantum of punishment imposed on the respondents is concerned, having regard to the nature of charge which stood proved in the enquiry, the order of dismissal from service was the appropriate punishment. It was commensurate with the charge. [Para 28] [943-G-H; 944-A]

C 10. An act of theft committed by an employee while on duty is a serious charge. This charge once proved in enquiry, the employer is justified in dismissing the employee from service. [Para 29] [944-B]

D 11. In the case on hand, the appellant (employer) had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the Enquiry Officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employees was proved. This finding was based on preponderance of probabilities and could be recorded by the Enquiry Officer notwithstanding the order of criminal Court acquitting the respondents. [Para 32] [944-F]

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The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management & Ors. (1973) 1 SCC 813 : [1973] 3 SCR 587 ; Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao (2012) 1 SCC 442 : [2011] 14 SCR 1089 ; Shankar Chakravarti v. Britannia Biscuits Co. Ltd. & Anr. AIR 1979 SC 1652 : [1979] 3 SCR 1165 – referred to.

Case Law Reference

[1973] 3 SCR 587	referred to	Para 18
[2011] 14 SCR 1089	referred to	Para 21
[1979] 3 SCR 1165	referred to	Para 25

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10766 of 2013.

From the Judgment and Order dated 16.04.2007 of the High Court of Judicature at Madras in Writ Appeal No. 3790 of 2003

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WITH

Civil Appeal No.10767 of 2013.

P. S. Patwalia, Sr. Adv, B. K. Satija, Dhruv Sheoran, Ms. Natasha Vinayak, Advs. for the Appellant.

D

M. A. Chinnasamy, Ms. C. Rubavathi, P. Raj Ram, V. Senthil Kumar, M. K. Parvez (for Dr. Kailash Chand), Advs for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals are filed against the common final judgment and order dated 16.04.2007 passed by the High Court of Judicature at Madras in Writ Appeal Nos.3789 of 2003 and 3790 of 2003 whereby the High Court allowed the appeals filed by the respondents and directed the appellant to reinstate the respondents with continuity of service and other attendant benefits but without payment of back wages.

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2. In order to appreciate the issues involved in these two appeals, it is necessary to set out the facts in detail.

3. The appellant in both the appeals is a Public Sector undertaking known as-Bharat Heavy Electricals Ltd.(BHEL). It has a plant at Ranipet in District Vellore, Tamil Nadu. M. Mani-Respondent in Civil Appeal No.10766/2013 and T.A. Mathivanan(since dead) and represented by his legal representatives-respondent in connected Civil Appeal No.10767/2013 were the employees of BHEL at all relevant time and were working as Driver Grade II in the plant.

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A 4. On 17.02.1991, both the respondents were on duty in the night shift in the Plant. They were supposed to remain present all the time in the Transport Department of the Plant so that on receiving the call they would attend the place of call with their respective vehicles.

B 5. It was, however, noticed by the officials concerned on duty that both the respondents were not found present on their respective seats and instead were found driving one forklift FLV in another shop floor. It was also noticed that they both had unauthorizedly removed one heavy machine called-"Face Milling Cutter of 500 diameter" from one shop floor and kept it on forklift and loaded in company's ambulance, which was being driven by T.A. Mathivanan. Both of them then managed to take the said machine in ambulance outside factory premises through South gate.

C 6. The officials, who witnessed the incident, reported the incident to the appellant (Management). The appellant took up the matter with seriousness and issued charge-sheet to both the respondents. They were asked to submit their explanation. Both denied the charges. The appellant, therefore, appointed Enquiry Officer for holding regular departmental enquiry. Both the respondents participated in the enquiry proceedings. The Enquiry Officer recorded the evidence of the witnesses and submitted his report. The Enquiry Officer, on evaluation of the evidence, held the charges as proved against both the respondents. He held that both the respondents were involved in committing theft of "Face Milling cutter" and were caught in the factory premises while on duty. The appellant accepted the report and dismissed the respondents from service on 31.08.1991. Against their dismissal order, the respondents filed departmental appeals. The appeals were dismissed.

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F 7. This event gave rise to filing of two cases. One was by the State in the Court of Magistrate seeking prosecution of the respondents under Section 379 of the Indian Penal Code, 1860 (in short "IPC") and the other was by the respondents against the appellant (employer) in Labour Court challenging legality of their dismissal orders (ID Nos. 801 and 839 of 1993). So far as the criminal case was concerned, the Magistrate, by his order dated 24.11.1992, acquitted the respondents from the charge.

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H 8. As regards the cases before the Labour Court out of which these two appeals arise, the Labour Court framed three issues, first, whether the enquiry conducted by the Enquiry Officer was legal and

proper; second, whether the findings of the Enquiry Officer holding the charge as proved against the respondents are correct; and third, whether these two employees are entitled to claim the relief of reinstatement with back wages? A

9. By Award dated 06.08.2001 (Annexure-P-9), the Labour Court answered the reference in favour of the employees by recording the following findings: B

“Hence it can not be said that there has been denial of reasonable opportunity during the enquiry.”

and then in Para 7, it was held that,

“it can not be considered that the departmental enquiry has not been held properly.” C

and then in Para 8 it was held that,

“till the disposal of the criminal case, the Management ought to have stayed the departmental enquiry and they should have passed the order only after the conclusion of the criminal proceedings.” D

and, in the same Para 8, it was held that,

“Therefore, the object of this provision is that till proceedings of criminal court, the departmental enquiry should not be initiated. Therefore, the respondent ought not to have appointed enquiry officer to conduct the enquiry in respect of same charge which has been pending before the Criminal Court. Such an enquiry held is contrary to principles of natural justice. On this ground, I hold that departmental enquiry is held not in accordance with principle of natural justice” E F

and in last line of Para 8, it was held that,

“it is for this reason the removal of the employee from service is not justified.” G

The Labour Court then lastly in para 9 held that,

“Having held that the departmental enquiry has not been conducted according to principle of natural justice, it has to be decided whether the finding of the Enquiry Officer H

A that the charge against the petitioner is correct. When the
 criminal case has been pending the finding of the Enquiry
 Officer that the petitioner is guilty of the charge is not
 correct. Further the petitioner has been acquitted by the
 criminal court. Hence when in the criminal proceedings,
 B the petitioner has been found not guilty, I hold that the
 findings of the Enquiry Officer that the charge against the
 petitioner had been proved, is not correct.”

10. To sum up, the Labour Court held that, firstly, the departmental
 enquiry was properly held; secondly, the employer instead of holding an
 enquiry should have stayed it awaiting the outcome of the criminal case;
 C thirdly, since the criminal case resulted in the acquittal of the respondents,
 the departmental enquiry stood vitiated as violating the principle of natural
 justice; fourthly, since the employer did not lead any evidence in support
 of the charge, the charge remained unproved; and lastly, the dismissal
 orders are bad in law in the light of the four grounds and, therefore, the
 D respondents be reinstated in service with payment of full back wages by
 the appellant.

11. The appellant, felt aggrieved, filed writ petitions in the High
 Court. The Single Judge, by order dated 31.07.2003(Annexure-P-11),
 allowed the writ petitions, set aside the award of the Labour Court and
 remanded the case to the Labour Court for deciding both the matters
 E afresh. The Single Judge held that when the Labour Court held the
 departmental enquiry to be legal and proper then the only question that
 remained for the Labour Court to decide was as to whether the
 punishment imposed on two employees, i.e., “dismissal” was just, legal
 and proper or it required any interference in its quantum and, if so, to
 F what extent. Having observed this, the writ Court remanded the cases
 to Labour Court to decide the cases afresh on merits. This is what the
 learned Single Judge in concluding para held,

“10. Keeping in view of all these aspects, I think interest
 of justice would be served by quashing the awards in both
 G the cases and directing both the matters are to be
 considered afresh by the Labour Court. It goes without
 saying that both the matters should be taken up for hearing
 together and shall be disposed of. Since the matter is pretty
 old, the Industrial Disputes are to be decided as
 expeditiously as possible, preferably within a period of six
 H months from the date of receipt of a copy of this order.”

12. Felt aggrieved, the respondents filed intra court appeals in the High Court before the Division Bench. By impugned judgment, the Division Bench allowed the appeals, set aside the order of writ Court and directed reinstatement of the respondents by restoring the order of the Labour Court to this extent but declined to award to them any back wages except continuity of service and other attendant benefits to the respondents.

13. Felt aggrieved by the judgment of the Division Bench, the appellant(employer) has filed these appeals by way of special leave before this Court.

14. Heard Mr. P.S. Patwalia, learned senior counsel for the appellant and Mr. M.A. Chinnasamy and Mr. M.K. Perwez, learned counsel for the respondents.

15. Having heard learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned judgment and uphold the dismissal order of the respondents as legal and proper.

16. To begin with, when we examine the legality and the correctness of the Awards of the Labour Court, we are of the considered opinion that the Labour Court, having held and indeed rightly that the departmental enquiry conducted by the appellant was legal and proper committed an error in holding that the departmental enquiry got vitiated due to criminal court's order which had acquitted the respondents from the charge of theft. In our opinion, there was no occasion for the Labour Court to examine this issue once the departmental enquiry was held legal and proper. The Labour Court, in our opinion, committed yet another error in holding that since the appellant failed to lead any evidence to prove the charge in Labour Court, therefore, the dismissal orders of respondents are liable to be set aside. This finding, in our opinion, was again not legally sustainable.

17. In our opinion, once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of "dismissal" imposed by the appellant to the respondents was legal and proper or it requires any interference in its quantum.

A 18. In other words, the Labour Court should have then confined
its enquiry to examine only one limited question as to whether the
punishment given to the respondents was, in any way, disproportionate
to the gravity of the charge leveled against them and this, the Labour
Court should have examined by taking recourse to the provisions of
B Section 11-A of the Industrial Dispute Act, 1947 (in short “the Act”) and
the law laid down by this Court in the case of **The Workmen of M/s
Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The
Management & Ors.**, (1973) 1 SCC 813. It was, however, not done
thereby rendering the order of Labour Court legally unsustainable.

C 19. Similarly, in our considered view, the Labour Court failed to
see that the criminal proceedings and departmental proceedings are two
separate proceedings in law. One is initiated by the State against the
delinquent employees in criminal Court and other, i.e., departmental
enquiry which is initiated by the employer under the Labour/Service
Laws/Rules, against the delinquent employees.

D 20. The Labour Court should have seen that the dismissal order
of the respondents was not based on the criminal Court’s judgment and
it could not be so for the reason that it was a case of acquittal. It was,
however, based on domestic enquiry, which the employer had every
right to conduct independently of the criminal case.

E 21. This Court has consistently held that in a case where the
enquiry has been held independently of the criminal proceedings, acquittal
in criminal Court is of no avail. It is held that even if a person stood
acquitted by the criminal Court, domestic enquiry can still be held - the
reason being that the standard of proof required in a domestic enquiry
and that in criminal case are altogether different. In a criminal case,
F standard of proof required is beyond reasonable doubt while in a domestic
enquiry, it is the preponderance of probabilities. (See **Divisional
Controller, Karnataka State Road Transport Corporation vs. M.G.
Vittal Rao-(2012) 1 SCC 442**)

G 22. In the light of this settled legal position, the Labour Court was
not right in holding that the departmental enquiry should have been stayed
by the appellant awaiting the decision of the criminal Court and that it is
rendered illegal consequent upon passing of the acquittal order by the
criminal Court. This finding of the Labour Court is, therefore, also not
legally sustainable.

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23. Now coming to the order of writ Court (Single Judge) though, A
in our opinion, the Single Judge rightly held the departmental enquiry as
being legal and proper but committed an error in remanding the case to
the Labour Court without precisely saying as to what the Labour Court
has to decide after remand and why writ Court cannot decide such
issues in the writ petition. We find that the Single Judge, in concluded B
para of the order, remanded the whole case afresh for its decision on
merits.

24. In our considered view, the Single Judge (Writ Court) having C
held the enquiry to be legal and proper instead of remanding the case to
the Labour Court should have himself examined the short question which
had survived for consideration in the writ petition, namely, whether the
punishment of dismissal was commensurate with the charges or it required
any interference by the Court under Section 11-A of the Act.

25. In other words, the remand to the Labour Court in this case D
by the Single Judge was not called for. It would have become necessary,
if the Single Judge had come to a conclusion that the departmental enquiry
is illegal. In such situation, the question would have arisen as to whether
the employer should now be given an opportunity to prove the charge
before the Labour Court on merits by adducing evidence provided such
opportunity had been asked for in any form by the employer (See-
Shankar Chakravarti vs. Britannia Biscuits Co. Ltd. & Anr. - AIR E
1979 SC 1652).

26. However, this occasion did not arise because, as observed
supra, the enquiry was held legal and proper by the Labour Court and
Single Judge.

27. Now coming to the legality of the impugned judgment, in our F
considered opinion, there was absolutely no justification on the part of
the Division Bench to have allowed the appeals of the respondents and
restored the order of the Labour Court by setting aside the dismissal
order. The Division Bench, in our view, did not take note of correct legal
position, which we have discussed above.

28. In our opinion, this is a clear case where the departmental G
enquiry was held legal and proper. We also, on going through the record
of the case, hold that the departmental enquiry was properly held and
was, therefore, legal and proper. So far as the quantum of punishment
imposed on the respondents is concerned, having regard to the nature of H

A charge which stood proved in the enquiry, in our view, the order of dismissal from service was the appropriate punishment. It was commensurate with the charge.

29. An act of theft committed by an employee while on duty is a serious charge. This charge once proved in enquiry, the employer is justified in dismissing the employee from service.

30. We are not impressed by the submission urged by the learned counsel for the respondents (employees) when he urged that once the respondents (employees) were acquitted from the charge of theft by the criminal Court, the dismissal orders deserve to be set aside entitling the employees to seek reinstatement in service. Learned counsel read the entire criminal Court's order to show that it was an honorable acquittal of the employees from the charge of theft.

31. The answer to the aforementioned submission lies in the law laid down by this Court in the case of **Karnataka SRTC** (supra). At the cost of repetition, we may say that in the case on hand, the dismissal orders had not been passed on the basis of employees' conviction by the criminal Court which later stood set aside by the superior Court. Had it been so, then the situation would have been different because once the conviction order is set aside by the superior Court, the dismissal order which was solely based on passing of the conviction order also stands set aside. Such was not the case here.

32. In the case on hand, the appellant (employer) had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the Enquiry Officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employees was proved. This finding was based on preponderance of probabilities and could be recorded by the Enquiry Officer notwithstanding the order of criminal Court acquitting the respondents.

33. In view of the foregoing discussion, the appeals succeed and are allowed. Impugned judgment is set aside. As a consequence thereof, the dismissal orders of the respondents herein are held legal and proper and accordingly upheld.