Supreme Court of India
Andhra Scientific Co. Ltd. vs A. Seshagiri Rao And Anr. on 13 December, 1960
Equivalent citations: AIR 1967 SC 408, (1961) IILLJ 117 SC
Author: K Dasgupta
Bench: P Gajendragadkar, K Wanchoo, K Dasgupta
JUDGMENT K.C. Das Gupta, J.

1. This appeal by special leave is against an order of the High Court of Andhra Pradesh refusing to interfere under Art. 226 of the Constitution with the award of the Labour Court, Andhra Pradesh, Guntur, in an industrial dispute referred to that Court under S. 10(1)(c) of the Industrial Disputes Act. The dispute referred was stated in the order of reference in the following words:--

"Whether the suspension of Shri A. Seshagiri Rao from 28th April, 1956, and his subsequent dismissal from 16th March 1957, is justified? If so, to what relief is he entitled?".

2. A. Seshagiri Rao has been in the employment of the appellant concern, the Andhra Scientific Co., since 1927 and continued in service even after it was converted into a public limited company. From 1927 to 1930 he was the office Manager of the company in its Madras Branch. In 1930 he was brought to the Head Office at Masulipatam and was made the Manager of the General Stores Department. He continued to be in charge of the Stores Department from 1930 to April 25, 1956, when he was transferred to the Quotations Department. Three days later he was placed under suspension by an order of the Director Shri K. Ramanatha Babu and a chargesheet containing numerous charges under eight heads was communicated to him on that very day. The first charge which stated that his handling of the stores had throughout been most reckless and inefficient and his work was always unsatisfactory mentioned three instances of bad work under heads (a), (b) and (c). The third charge which alleged that in day to day handling of the stores he was very careless mentioned instances of such carelessness under heads, A. B. C. D and E. The 8th charge contained four sub-heads. Shri A. Seshagiri Rao denied all the charges but after an enquiry which was commenced on September 3, 1956, and closed on March 16, 1957, he was found guilty of the charges and dismissed.

3. The Labour Court rejected the preliminary objection raised on behalf of the company that Seshagiri Rao was not a "workman" within the meaning of the Industrial Disputes Act. It held that the rules of natural justice had been violated in holding the enquiry inasmuch as the General Manager who presided over the enquiry in its initial stage was later examined as a witness and Shri Ramanatha who was looking after the enquiry on behalf of the company, presided over the enquiry in the later stage and gave the final decision. On an examination of the evidence adduced before him the Labour Court held that the charges other than la and 8 had not been made out; that the charges la and 8 had only been partially made out and that the laches in respect of these charges were not so grave as to justify dismissal. He held, therefore, that the dismissal was unjustified but the workman deserved some punishment. Considering a suspension from service for a period of one year from March 16, 1957, the date of dismissal as proper and sufficient punishment he ordered reinstatement at the rate of Rs. 250 from March 16, 1958, till the date of reinstatement and subsistence allowance during the pendency of the departmental enquiry at the rate of half of the pay from April 28, 1956,

till March 16, 1957.

4. This award was given on March 11, 1958. On April 28, 1958, the appellant company made an application to the High Court of Andhra Pradesh under Art. 226 of the Constitution praying that the records referring to the award of the Labour Court should be called for and the award quashed by the issue of a writ of certiorari or other appropriate writ, order or direction. The three grounds on which this prayer was based was: (1) that Shri Seshagiri Rao was a person employed in managerial and administrative capacity and was not a "work-man" within the meaning of the Industrial Disputes Act and that the Labour Court had erred in holding otherwise; (2) the Labour Court erred in holding that the inquiry was vitiated by violation of rules of natural justice; and (3) the Labour Court after holding that some of the charges at lease were made out acted wrongly in substituting for the punishment of dismissal one of punitive suspension and directing reinstatement.

5. The High Court agreed with the Labour Court that Shri Seshagiri Rao was a "workman" and also that the enquiry was vitiated by violation of the rules of natural justice. As regards the contention that the Labour Court having found that the charges la and 8 had been partially proved it had no jurisdiction to set aside the dismissal and direct reinstatement, the High Court held that there was nothing like "partially proved" and that the charges la and 8 should be deemed to have been not proved at all. In the circumstances, the High Court held that there was no ground for interference with the order made by the Labour Court and rejected the application under Art. 226.

6. The correctness of the conclusions of the High Court on all the three grounds was challenged before us in appeal. In deciding whether Seshagiri Rao was a "workman" or not the High Court considered the functions assigned to him as Stores Manager as specified in the office order, dated December 31, 1949, and also the oral evidence and recorded its conclusion thus:-

"We are of opinion that even on the assumption that the functions assigned to and exercised by the 1st respondent a Stores Managers are not entirely lacking in the elements of initiative, command and control, they are essentially supervisory in character. Under the office order, dated 31st December 1949, he had to be in charge of the maintenance of General Stores, packing and despatching, stock accounts and effective check over them and in charge of stock requisitions. His functions being supervisory in character, and inasmuch as he was on the material date not receiving a salary of more than Rs. 500, 1st respondent would be a workman within the meaning of the 1st limb of proviso IV of S. 2(s) of the Industrial Disputes Act."

7. What functions were actually being performed by the employee is a question of fact and the High Court has rightly pointed out that when the Labour Court has on a consideration of the evidence come to a conclusion as regards these functions and has on the basis thereof held that the employee comes within the definition of work-man in S. 2(s) of the Act the High Court would not interfere under Art. 226 except in cases where there is clear error on the face of the record. The High Court, however, proceeded to consider the evidence itself and held that the correct picture of the functions that were being performed by Shri Seshagiri Rao was afforded by Ex. A-10 in these terms:--

"Maintenance of general stores-packing and despatching stock-accounts and effective check over them-stock equisitions."

8. The learned Judges also pointed out that according to the evidence of the General Manager himself Seshagiri Rao could not make any appointment in his department, could not suspend or dismiss any employee under him, could not grant leave independently without the General Manager's sanction, that he was not consulted when retrenchment in the Stores Department took place and that he never imposed any fine on any employee. They pointed out further that in the staff regulations and the Various memoranda issued from time to time by the Company the work of the Stores Manager had been divested of all elements that make for control or command. But even assuming that the functions assigned to and exercised by him as Stores Manager were not entirely lacking in the elements of initiative, command and control they also held as pointed out above that these functions were essentially supervisory in character. The learned Attorney-General was unable to lay his finger on any infirmity in this finding. The contention that the High Court erred in refusing to interfere with the conclusion reached by the Labour Court that Shri Seshagiri Rao was a "workman" at the relevant time cannot therefore succeed.

9. Equally untenable, in our opinion, is the ground that the High Court should have held that the inquiry held by the management was not vitiated by violation of rules of natural justice. The sole purpose of rules of procedure which are referred to as rules of natural justice is to ensure fairplay. Let us, therefore, see what happened in this case during the inquiry. The inquiry was commenced by the General Manager himself and when five witnesses had been examined, Ramanatha Babu took over the enquiry and examined the General Manager as a witness. This gentleman has been frank in disclosing the reasons for this unusual conduct. "I did not decide," he says in his evidence, "as to who should be witnesses when the inquiry began. General Manager came as a witness in the inquiry. I wanted General Manager to be a witness towards the end. So I took up the inquiry myself. I did not know at the beginning that the General Manager should be a witness. It was at last I decided that he should be a witness. While going through the evidence and perusing the records I decided that the General Manager should depose as a witness". Quite apart from the incongruity, therefore, of the person who was at the initial stage presiding over the enquiry stepping into the witness-box at the later stage, we have here the serious position that Ramanatha Babu who was clearly in charge of the prosecution and was active in securing proper evidence to establish the charges, took over the inquiry and gave the decision in the case. It is true, as stressed by the learned Attorney-General that the ultimate decision was not by the General Manager, and so inform, what happened here is different from what happened in State of Uttar Pradesh v. Muhammad Nooh, where the District Superintendent of Police, presided over the enquiry except when he himself was examined as a witness, and also gave the decision, in an inquiry against a police constable. In substance, however, there is hardly any difference. One can see that in the facts of this case the General Manager and Ramanatha Babu formed practically one entity, with two bodies. At one stage, the first acts as a judge; at a later stage, he steps down as a witness; and the second becomes a judge. There is the further fact here that the person who gave the actual decision had actively been procuring the evidence, with the avowed motive of securing a conclusion against the workman. These being the facts, the manner in which the inquiry was conducted in this case can hardly be said to have insured fairplay which rules of natural justice require. The conclusion of the High Court that no proper

enquiry had been held in the present case, and so the Labour Court was justified in considering on the evidence whether the workman was guilty of any of the charges is, therefore, correct.

10. This brings us to the main contention urged in appeal that once the Labour Court found that two of the allegations mentioned in the charge had been proved it had no jurisdiction to consider the question whether the order of dismissal made by the management was excessive. It is settled law that where the conclusion reached by the management as regards the guilt of the accused of the misconduct urged against him remain undisturbed the Industrial Tribunals will not ordinarily interfere with the punishment imposed.

11. There can be no doubt, however, that when the acts in respect of which the workman is ultimately found guilty do not amount to misconduct at all under the Standing Orders of the employer the Tribunal not only can but should consider the question what punishment should be inflicted on the altered finding of guilt. The Labour Court held that charges other than la and 8 had not been made out, and the charges la and 8 had only been partially made out. Charge la alleged that the items in the stores were never arranged properly and were never labelled. Charge 8 also related to the want of proper arrangement of the articles kept in the Stores Department. It appears that on finding that the stores were being kept in a confused manner the managing agents held an inspection in September 1955 and at the request of the Stores Manager Shri Seshagiri Rao, gave him time upto October 17, 1955, for arranging the items in order and fixing up labels, and the work was not completed even though the time was extended more than once. In view of this the Labour Court found that charges under la and 8 had been established. The reason why the Labour Court said that the charges were only partially established appears to be its finding that though the work of arranging and labelling was not completed the major portion of it was done. We do not think, therefore, that that the High Court was right in proceeding on the basis that these two charges "should be deemed to have been not proved at all". Proceeding, however, on the basis that these two charges, viz., la and 8 had been proved it is important to notice that the acts alleged in these charges do not constitute misconduct under the "Industrial Employment Standing Orders Rule" which govern the workmen. Rule 19 of this rule specified in 14 clauses-(a) to (n) -acts or omissions which shall be treated as misconduct. The learned Attorney General tried to convince us that the acts alleged in charges la and 8 come within Clause (a) or Clause (1) of Rule. 19. Under Clause (a) wilful insubordination or disobedience of any lawful or reasonable order of a superior amounts to misconduct. There was no charge, however, of any wilful insubordination or disobedience but only of negligence. The acts of which the workman has been found guilty do not amount to wilful insubordination and disobedience. Nor do these acts amount to habitual negligence of work, which under Clause (1), amounts to misconduct. Before a person can be said to be guilty of habitual negligence ft has to be shown that he has been guilty of negligence on several occasions so as to show mat this is his habit. The negligence charged here of which the workman was found guilty was in connection with one single matter, viz., the proper arrangement and labelling of stores and was alleged to have been committed on one single occasion. The fact that the negligence continued over several months does not make it habitual negligence.

12. It is quite clear, therefore, that even on the assumption that the two charges, viz., charges la and 8 have been proved the workman was not guilty of any 'misconduct'. That being the position the

order of dismissal passed against him on the basis that he was guilty of "misconduct" could not be allowed to stand and the Labour Court had to consider for itself what punishment, if any, should be imposed.

13. We, therefore, hold that the High Court was right in refusing to interfere with the order passed by the Labour Court modifying the punishment imposed by the management, though we do not agree with the High Court's reasoning that the charges la and 8 "should be deemed to have been not proved at all".

14. In the result, the appeal is dismissed with costs.