

1971

Present : Wijayatilake, J.,

**PANAWAL KORALE MULTI-PURPOSE CO-OPERATIVE
SOCIETIES UNION LTD., EHELIYAGODA, Appellant, and
P. R. HERATH, Respondent**

S. C. 104/70—Labour Tribunal Case R/2191

Industrial dispute—Misconduct of workman—Punishment inflicted on him after a domestic inquiry—Whether he can be punished again, after an interval, for the same misconduct.

After a domestic inquiry was held in regard to the misconduct of a workman, the workman was punished but was allowed to continue in employment. Nearly two years later the workman was dismissed on the ground that the employer was not satisfied with the decision taken at the domestic inquiry and the quantum of punishment inflicted on the workman.

Held, that the order of dismissal from service was neither just nor equitable. It is a well known principle that no man can be punished twice for the same offence.

¹ (1954) 56 N. L. R. 243.

APPPEAL from an order of a Labour Tribunal.

F. N. D. Jayasuriya, with *C. Sithamparapillai*, for the employer-appellant.

K. Vaikunthavasan, for the applicant-respondent.

July 20, 1971. WIJAYATILAKE, J.—

It would appear that the applicant was appointed as temporary manager of the Textile Department of the Appellant Society on the 24th of April, 1964. Thereafter, during the period 24th August, 1964 to 23rd September, 1964, it is alleged that the applicant had sold to private traders stocks of khaki and blue drill without obtaining the prior sanction of the management. A domestic inquiry had been held in regard to the allegation and the President of the Co-operative Societies had informed the applicant by his letter produced marked R 24 dated 20.10.1964 that a total sum of Rs. 991/20 should be paid by the applicant to the society in respect of this transaction. The applicant has also been informed by this letter that the confirmation at the end of his two years' service has also been extended for another six months. The applicant had paid this sum of money and not questioned in any way the Order made by the Committee.

Thereafter, nearly two years later on the 12th of November, 1966, the Deputy Commissioner of Co-operative Development, Kegalle by his letter R 28, has informed the Divisional Inspector of Co-operative Development who is the President of this Society, that he is not satisfied with the decision taken by the Committee in the matter and the *punishment* inflicted on him. He further states that he has received orders from the Registrar/Commissioner of Co-operative Development to instruct the Committee to dismiss the employee from service. He adds that in accordance with this he anticipates necessary action and to report the situation. The appellant Society had accordingly terminated the services of the applicant on 26.11.1966. On application made to the Labour Tribunal, the learned President ordered that the applicant be re-employed.

Mr. Jayasuriya, learned Counsel for the appellant Society, submits that the learned President has misdirected himself in regard to the powers of the Deputy Commissioner in this transaction, and thereby he has wrongfully held in favour of the applicant. As it appears to me, the facts in this case give rise to a question of fundamental importance. The applicant, who had to face a domestic inquiry in October, 1964 had been dealt with and he had complied with the Order of the Committee without question. In these circumstances, would it be just and equitable for a Registrar or Commissioner of Co-operative Development to reagitate

the matter after a period of two years and seek to impose a further penalty? Mr. Jayasuriya very strenuously submits that in the Order made by the Committee there was no penalty as such and that it was tantamount to the collection of a civil debt. He relies on the South African case reported in *1914-25 Natal Report 413*, where it was held that the collection of a civil debt is no bar to criminal proceedings. In my opinion, that case can be clearly distinguished from the facts in the present transaction. In fact in the letter R 28, the Deputy Commissioner himself has understood the earlier order of the Committee as a *punishment*, and he has so stated in this letter. The fact that the confirmation at the end of two years has been extended by a period of 6 months would amount to a penalty as it is in addition to the collection of the civil debt Mr. Jayasuriya has stressed. It is a well known principle that no man can be punished twice for the same offence. This is just what the employer has sought to do and that too after a period of over two years. In the light of these observations, in my opinion neither the Registrar nor the Commissioner of Co-operative Society had the power to pursue this matter; so that any order amounting to a penalty by either of them would be neither just nor equitable; and the communication of that Order to the Committee would be of no avail. I would accordingly dismiss the appeal.

Mr. Vaikunthavasan has referred me to the Order of the learned President where he has directed the workman to report for duty on 1.6.70 upon certain conditions. It would appear that this workman had so reported, but the Society had refused to permit him to resume work. If so, in these circumstances, the workman would be entitled to the remuneration and other benefits he would ordinarily have received from that date.

The appeal is dismissed with costs fixed at Rs. 350.

Appeal dismissed.
