

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

OP(LC).No. 1373 of 2012 (O)

ID 24/2006 of LABOUR COURT, ERNAKULAM

PETITIONER :

**NAYARAMBALAM SERVICE CO-OPERATIVE BANK LTD.
NO.E92, NAYARAMBALAM-682 509
REPRESENTED BY ITS PRESIDENT,
SRI.P.K.RAJEEV., AGED 43 YEARS**

**BY ADVS.SRI.N.RATHEESH
SMT.SUMA RATHEESH
SRI.S.K.MADHU**

RESPONDENTS :

**1. C.V. RAMACHANDRAN
CHEMBAKASSERY HOUSE, NAYARAMBALAM-682 509.**

**2. LABOUR COURT,
ERNAKULAM-682 025.**

**R1 BY ADVS. SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.K.V.GEORGE**

**THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1: PHOTOCOPY OF THE LETTER WRITTEN BY THE 1ST RESPONDENT TO
 THE SECRETARY OF THE BANK DATED 06/10/2003.
- EXT.P2: PHOTOCOPY OF THE MEMO OF CHARGES DATED 26/3/2004.
- EXT.P3: PHOTOCOPY OF THE INQUIRY REPORT DATED 04/10/2004.
- EXT.P4: PHOTOCOPY OF THE ORDER OF DISMISSAL DATED 23/11/2004.
- EXT.P5: PHOTOCOPY OF THE ORDER PASSED BY THE BOARD OF DIRECTORS
 DATED 04/06/2005.
- EXT.P6: PHOTOCOPY OF THE ORDER OF THE 2ND RESPONDENT
 DATED 29/02/2012.

RESPONDENTS' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. Vinod Chandran, J.

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O.P.(LC)No.1373 of 2012

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Dated this the 10th day of February, 2015.

JUDGMENT

1. Petitioner management is aggrieved with the preliminary order passed by the Labour Court, Ernakulam at Ext.P6. The first respondent, who was Accountant of the management establishment, was initially appointed as a Clerk in 1982 and after two promotions, appointed as an Accountant in the year 2001. In 2003, the first respondent was suspended and charge-sheet issued alleging manipulation of interest application in loans. The allegation was to the effect that, such manipulation caused undue advantage to the loanees and consequent loss to the management.

2. An enquiry was initiated and an advocate appointed as the Enquiry Officer. Based on the enquiry report, the first

respondent was dismissed from the services of the management.

An appeal from the order of the sub committee against the dismissal order at Ext.P4 was rejected by Ext.P5. A reference made had resulted in the preliminary order, which is impugned herein.

3. By the preliminary order, the Labour Court set aside the enquiry itself, finding that, there is clear violation of the principles of natural justice. In fact, the Labour Court, after examining the Enquiry Officer as M.W.1, looking at his depositions as also the enquiry files, found that, many adjournments made by the Enquiry Officer, on the request of the presenting officer, were not duly intimated to the delinquent employee or his counsel. Such instances have been elaborately discussed by the Labour Court. No substantive prejudice can be found out, when there were no effective proceedings in the enquiry. However, two instances have been specifically noticed by the Labour Court

which is of significance, insofar as considering the contention of violation of the principles of natural justice.

4. The Labour Court found that, the proceedings recorded by the enquiry officer were not completely signed by the workman or his counsel. Admittedly, the enquiry was concluded in the absence of the workman and his counsel. On 17.7.2004, the workman is said to have objected to the acceptance of additional documents, produced on the side of the management. However, despite his objections, it was alleged that, the Management Witness No.1 was examined in chief and there was a recording of no objection in the proceedings by the enquiry officer. It was specifically noticed by the Labour Court that, despite the proceedings recording the objection, the enquiry report went on the premise that, there was no objection raised on the marking of documents or examination of M.W.1. The apparent disparity in the proceedings and enquiry report was found to be a compelling

circumstance to find out violation of the principles of natural justice.

5. However, one other compelling ground was the manner in which a specific enquiry into the software employed by the management bank was considered and eventually concluded by the enquiry officer. The charges, as was noticed above, were regarding the manipulation of interest application on the loan account. The specific contention raised by the workman before the enquiry officer was that, there was defect in the software installed in the respondent bank and the defective interest application was on account of the defective software and not due to any wilful or deliberate conduct or omission on the part of the delinquent employee.

6. It is seen from the enquiry report itself that, on 18.9.2004, the presenting officer, as also the delinquent employee along with his counsel were present. The objection with respect to the

software was noticed along with other objections. The Bank, though contested the appointment of an expert to verify the software, that was overruled by the enquiry officer and both sides were directed to suggest a panel of experts, having accreditation either of the Government of India or the Government of Kerala. The matter was posted to 22.9.2004. On 22.9.2004, the presenting officer expressed his helplessness in getting the names of such experts. The delinquent employee and the counsel were absent and hence the matter was stated to have been posted to 23.9.2004 and then to 24.9.2004. It was held that, the delinquent employee was seeking to protract the enquiry and hence, the evidence was closed and the matter proceeded with, finding the worker guilty on the basis of the evidence adduced till then.

7. The delinquent employee or the learned counsel for the delinquent employee were not heard, when evidence was

adduced. If the absence had been deliberate and wilful, then, probably, there could be no violation of principles of natural justice. In the present case, what assumes significance is the posting on subsequent dates and the closing of the enquiry on the next day. On 22.9.2004, admittedly, the workman and the counsel were not present. However, Ext.W1 dated 22.9.2004 indicated that, the counsel had communicated his inability for the day since he was engaged in another matter. True, the said letter was not received by the enquiry officer on 22.9.2004. The enquiry officer's acknowledgment of the letter was found to be on 24.9.2004, as available from the records. Hence, though on 22nd and 23rd, the enquiry officer was not aware of such a prayer for an adjournment, definitely, on 24th, when the proceedings were concluded, the enquiry officer surely was aware of the inconvenience of the counsel, who could not appear on 22nd. Hence, it would have been proper that, the enquiry officer issued

a further notice, posting the case for hearing. The fact, that the enquiry was posted on subsequent dates without notice to the delinquent employee itself, eminently establish grounds of violation of the principles of natural justice.

In such circumstances, this Court does not find any reason why Ext.P6 preliminary order should be disturbed, in any manner. The preliminary order of the Labour Court is upheld and the writ petition is dismissed. The Labour Court shall take up the proceedings, in accordance with law. No costs.

K. Vinod Chandran, Judge.

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