

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

O.P.(L.C).No.1322 of 2010 (O)

AGAINST THE AWARD IN I.D.2/2007 OF INDUSTRIAL TRIBUNAL, KOLLAM
DATED 12-03-2010

PETITIONER(S):-

THE PRESIDENT,
MAYYANADU REGIONAL CO-OPERATIVE BANK LTD.NO.94,
MAYYANADU.P.O.

BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY.

RESPONDENT(S):-

SRI.L.NASEER,
AYIRAMTHENGU, KOOTIKADA, KOLLAM - 691 303.

BY ADVS.SMT.A.K.PREETHA
SMT.VK.REMASMRITHI.

THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD ON
03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

OP(LC).No.1322 of 2010 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXHIBIT P1 TRUE COPY OF THE AWARD OF THE LABOUR COURT
IN I.D.NO.2 OF 2007.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

O.P(LC) No.1322 of 2010-O

Dated this the 3rd day of March, 2015

JUDGMENT

The petitioner in the above Original Petition, is the management and the respondent is the workman. The dismissal of the workman from the management was the issue referred for adjudication. The domestic enquiry conducted by a Sub Committee found the workman guilty of the charges and dismissed him from service. The domestic enquiry was found to be vitiated by a preliminary order. Since the management had not sought for an opportunity to adduce fresh evidence to sustain the charges, on the enquiry being found vitiated; the dismissal was set aside and reinstatement was ordered with entire backwages. Though multifarious grounds are raised in the Original Petition, what is relevant for consideration is only the sustainability of the preliminary order and whether the management had to be given an opportunity to substantiate the charges by adducing fresh evidence.

2. On the second aspect, it has been unequivocally declared in ***Shambhu Nath Goyal v. Bank of Baroda* [(1983) 4 SCC 491]** and ***Karnataka State Road Transport Corporation v. Lakshmiddevamma* [(2001) 5 SCC 433]** that the opportunity to adduce fresh evidence, has to be sought at the first instance by the management. Hence, when a disciplinary enquiry is held and the punishment therein is subject to challenge under the Industrial Disputes Act, 1947 [for brevity "ID Act"], the management ought to specifically seek an opportunity for adducing fresh evidence, before the Tribunal/Court; in the event of a finding that the enquiry is vitiated. In view of the unequivocal declaration of the Hon'ble Supreme Court in the afore-cited decisions, no legal issue has to be looked at on this aspect. Hence, when it is found that there is no such prayer made in the written statement, the management would be disentitled from later-on praying for an opportunity to adduce evidence to sustain the charge. In the present case, admittedly there is no prayer in the written statement and the management only sought to sustain the

dismissal on the basis of the domestic enquiry conducted and the evidence thereon.

3. Now, the question of sustainability of the preliminary order, with respect to the violation of principles of natural justice assumes significance. The Tribunal has gone at length regarding the various contentions of both sides as also its findings, on a perusal of the enquiry file. From a perusal of the day-to-day proceedings, as revealed from the enquiry file, it is revealed that no notice of enquiry was issued to the delinquent employee; nor was the charge read over to the delinquent. MW1, one of the members of the Sub Committee, in cross examination admitted that the charge was not read over to the workman. It is also pertinent that there was no presenting officer appointed by the Bank and the Sub Committee proceeded by itself in examining witnesses, marking documents and so on and so forth. The Sub Committee at its first sitting on 25.06.2002, in the absence of the delinquent, scrutinised the files and marked document Nos.I to XVI. A decision was taken to examine certain

witnesses. There was no list of documents nor list of witnesses given to the workman. The marking of documents were not through any witness and the Sub Committee did it by themselves. The documents marked by the Sub Committee were also not served on the delinquent.

4. Subsequently, the witnesses were called and examined again behind the back of the delinquent. Statements were recorded from the witnesses and no opportunity was afforded to the delinquent to cross-examine them. MW1 also admitted to the aforesaid fact of the delinquent not being informed as to who are the witnesses to be examined. The interpolations made in the enquiry file, as found by the Tribunal, has to be looked at, in the background of such admission. According to the Tribunal, the enquiry files reveal that there was some interpolations made as to the delinquent having refused to cross-examine the witnesses; whose chief examination was taken by the Sub Committee.

5. In the context of the admission made as to the delinquent not being even informed of the witnesses to be

examined, the interpolations made definitely reveal the bias of the Sub Committee. The Tribunal also looked at the deposition and found that the Sub Committee had spoken harshly and remonstrated a witness with a warning for not deposing in favour of the Bank and against the delinquent. This further indicates the bias of the Sub Committee.

6. The enquiry files also reveal that, the delinquent was called before the Sub Committee on 10.07.2002 to record his statement after all the witnesses were examined. It was the Sub Committee itself which questioned the delinquent.

7. The Tribunal also considered the authority of the Secretary to suspend the workman and the allegation of *mala fides* on account of a son of the Sub Committee member being given appointment as Peon in the vacancy that arose on the dismissal of the delinquent. The Tribunal also considered the issue of dismissal, which was made by the Sub Committee itself. It was clearly found that Rule 198(3) of the Kerala Co-operative Societies Rules, 1969 was not followed insofar as the dismissal made, since only the Managing Committee

had such power; as the appointing/disciplinary authority. The Sub Committee, hence, was found to have exceeded the brief of an Enquiry Committee, by punishing the workman with a dismissal. These findings may not be very relevant in considering the issue of violation of principles of natural justice in the domestic enquiry. But, they too go to the root of the matter and the punishment awarded has to be found to be without jurisdiction.

8. On a consideration of the aspects as noticed by the Tribunal in its preliminary order, this Court is not inclined to interfere with the preliminary order. Definitely the enquiry was vitiated for violation of principles of natural justice. The Sub Committee appointed to conduct the enquiry followed absolutely no principle and the fair procedure, mandated in the domestic enquiries conducted by the managements, were given a complete go-by. There was clear bias, which further vitiated the enquiry conducted by the Sub Committee. The preliminary order having been thus sustained, nothing remains to be considered, since the findings at the enquiry cannot be

looked into by the Tribunal or by this Court and the management having forsaken its opportunity to adduce evidence, only for the reason of not asking for it at the appropriate time; the final order setting aside the dismissal and ordering reinstatement with full backwages is a necessary consequence. The punishment awarded is also found to be without jurisdiction.

The writ petition would stand dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]