

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 27TH DAY OF MAY 2015 /6TH JYAISHTA, 1937

WA.No.1314 of 2010

AGAINST THE JUDGMENT DATED 7.7.2008 IN W.P.(C)No.19342/2008
OF THIS COURT

APPELLANT/PETITIONER::

P.SHAJI,
PANDARA KANDI HOUSE,
CIVIL STATION, KOZHIKODE-10.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA

RESPONDENTS:RESPONDENTS :-

1. THE KOZHIKODE SARVODAYA SANGH,
KHADI GRAM, P.B.NO.216, KOZHIKODE-673 001,
REPRESENTED BY ITS SECRETARY.

2. THE LABOUR COURT, KOZHIKODE.

R1 BY ADV. SRI.V.V.SURENDRAN
R1 BY ADV. SRI.P.A.HARISH
BY GOVERNMENT PLEADER SRI.MOHAMMED SAVAD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

W.A.No.1314 of 2010

Dated this the 27th day of May, 2015

JUDGMENT

P.R.Ramachandra Menon, J.

Interference declined by the Single Judge with regard to the Award passed by the Labour Court, Kozhikode in I.D.No.2/2004 upholding the punishment of discharge imposed on the delinquent employee forms subject matter of the challenge in this appeal.

2. The appellant was working as an Assistant in the first respondent Sangh. While so, on coming across some serious misconducts, he was suspended from service as per Ext.P1 order, followed by Ext.P2 charge sheet. The main charges levelled against the delinquent employee were that, he had stealthily removed the attendance register and had temporarily misappropriated a sum of ₹.1,000/- belonging to a customer of the Sangh. There was also a charge of unauthorized absence for the period from 10.6.2001 to 11.9.2001.

3. An enquiry officer was appointed by the management to conduct a domestic enquiry. Management examined four witnesses as MW.1 to MW.4. The workman examined two witnesses as WW.1

and WW.2 (workman and his wife respectively). Documents were also produced by both the sides. On culmination of the proceedings, the Enquiry Officer arrived at the guilt of the delinquent employee and submitted Ext.P3 Enquiry Report before the management. After complying with the procedural formalities in compliance with the principles of natural justice, the proceedings were finalised by the management and inflicted the punishment of discharge from service, considering the gravity of the proven misconducts. This led to a dispute raised by the employee, leading to a reference to the second respondent Labour Court, where it was numbered as I.D.No.2/2004. Validity of the domestic enquiry was considered as the preliminary issue by the Labour Court. After considering the entire facts and figures, the Labour Court arrived at a finding that the enquiry was conducted by the management strictly in conformity with natural justice, holding it as valid and proper and not liable to be interfered.

4. After holding the enquiry as valid, the Labour Court proceeded with the next step, as to the proportionality of the punishment imposed, to see whether any interference was required by invoking the power under Section 11A of the Industrial Disputes

Act. After meticulous analysis, the Labour Court found that the punishment imposed by the management did not require any interference and it was accordingly that Ext.P5 Award was passed on 12.1.2006.

5. Pointing out that the worker did not get sufficient opportunity to vindicate the grievance and that the Award passed by the Labour Court was more or less an 'exparte award', a petition was filed as M.P.No.56/2006 before the Labour Court. The proceedings conducted before the Labour Court were specifically adverted to and referring to the various adjournments given and observing that the worker as well as the lawyer were absent, interference was declined and the M.P. was dismissed as per Ext.P6 order. The above proceedings were sought to be challenged by the writ petitioner before the learned Single Judge. After going through the pleadings and the materials produced, the learned Single Judge observed that, it was not a fit case to call for interference invoking the limited jurisdiction of this Court, thus dismissing the Writ Petition confirming Exts.P4 and P5. This is under challenge in this writ appeal.

6. The learned counsel for the appellant submits that the alleged offences, which are stated as proved, are of trivial in nature and that the punishment imposed is highly disproportionate to the gravity of the misconduct stated as proved. It is also pointed out that the petitioner/appellant was suffering some mental aberration and a petition was filed before the Labour Court to cause him to be examined by a Medical Board, which was not acceded to. It is contended that, this has resulted in substantial injustice and as such, it requires interference by this Court. With regard to the alleged disproportionality of the punishment, the learned counsel placed reliance on the verdict passed by the Apex Court in **Chairman cum Managing Director, Coal India Ltd. and another Vs. Mukul Kumar Choudhuri and others** [2010 KHC 6145].

7. After hearing the matter in detail and after considering the entire materials on record, this Court finds that the domestic enquiry has been conducted in an exhaustive manner as discernible from Ext.P3 Enquiry Report. As mentioned already, four management witnesses were examined as MW.1 to MW.4 and the said witnesses were cross-examined in detail from the part of the

worker. No particular material so as to contradict the said version could be brought out on record, by examining the worker as WW.1 and his wife as WW.2. Sanctity and relevance of the documents produced from the part of the management as Exts.M1 to M38 and the other documents forming part of the proceedings which are marked as Ext.1 to Ext.28 have been subjected to the analysis. The finding is well supported with reasons and it was accordingly, that the Labour Court reached the conclusion while considering the validity of the Enquiry Report by passing Ext.P4 order and the final award passed vide Ext.P5. Absolutely no irregularity, illegality or such other adverse aspect is discernible, in respect of the proceedings and nothing is brought to the notice to this Court to brand the same as wrong or perverse in any manner. As alerted by the Apex Court on many an occasion, interference with the awards passed by the Labour Court/Industrial Tribunal is never to be as a matter of course, but a seldom exercise.

8. There is a case for the petitioner/appellant that the punishment is disproportionate to the gravity of the misconduct proved. The petitioner/appellant also seeks to expose his position with reference to the allegedly deranged mental equilibrium in this

regard. But the fact remains that the writ petition and the appeal have been preferred by the worker himself and he is not represented through a best friend or guardian, if his mental position was in such a state preventing him from taking a conscious decision. That apart, it is also brought out that the worker had submitted Ext.M5 apology before the management conceding the guilt and it was accordingly, that the matter was finalised. The factum of temporary misappropriation of ₹.1,000/-, itself is adequate enough, to sustain the punishment imposed. Over and above this, the second charge with regard to unauthorized absence for nearly 'three months' also stands proved. It is to be borne in mind, that the punishment imposed by the management is not dismissal, but 'discharge' and as such, this Court finds it difficult to hold that the punishment imposed is disproportionate to the gravity of the proven misconduct.

9. Coming to the adequacy of evidence, there is a case for the worker that there is no direct evidence and nobody has seen the incident particularly with regard to the temporary misappropriation. This Court is not impressed with the said proposition. It is settled law, that in disciplinary proceedings, the degree of proof required is

entirely different from civil or criminal proceedings. Misconduct does not require to be proved beyond any reasonable doubt. Preponderance of probability is the norm. There is no allergy, even to 'hear-say evidence' as made clear by the Apex Court in **State of Haryana & another Vs. Rattan Singh** [1982 Vol.I LLJ Pg.46]. This Court finds that interference declined by the learned Single Judge with reference to the fact and figures as mentioned above in the light of the materials brought on record does not call for any interference.

The appeal stands dismissed accordingly.

P.R.RAMACHANDRA MENON, JUDGE

ANIL K.NARENDRAN, JUDGE

skj

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P.A to Judge