

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WA.No. 638 of 2011 IN OP(LC).1559/2011

AGAINST THE JUDGMENT IN OP(LC) 1559/2011 of
HIGH COURT OF KERALA DATED 29-04-2011

APPELLANT(S) /PETITIONER:

VIJAYA BANK, A BODY CORPORATE CONSTITUTED
AND FUNCTIONING UNDER THE BANKING COMPANIES ACT,
AT 41/2, M.R.ROAD, BANGALORE
REPRESENTED BY ITS REGIONAL MANAGER, REGIONAL OFFICE
VIJAYA BANK, JOS ANNEX, JOSE JUNCTION
M.G.ROAD, ERNAKULAM.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SMT.KVP.JAYALEKSHMY

RESPONDENT(S) /RESPONDENTS:

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1. THE JOINT SECRETARY,
VIJAYA BANK WORKERS ORGANISATION, 283, PYCROFTS ROAD
TRIPLICANE, MADRAS-05.
 2. THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, KARSHAKA ROAD
ERNAKULAM-682036, REPRESENTED BY ITS SECRETARY.

R,R1 BY ADV. SRI.B.ASHOK SHENOY
R,R1 BY ADV. SMT.LAKSHMI B.SHENOY
R BY GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

V.K.MOHANAN & P.D.RAJAN, JJ.

W.A.No.638 of 2011

Dated this the 13th day of January, 2015.

J U D G M E N T

Mohanana, J.

This is the second time, party to an industrial dispute, which arose during 1991, approaching this Court. The admitted facts involved in the above case are that, one T.S.Asok Kumar was a workman of the appellant Vijaya Bank and while he was working as clerk in Thiruvalla Branch of the said Bank, the appellant herein initiated disciplinary action against him by issuing a memo dated 2.2.1991, on the allegation that, he had misused a cheque leaf belonged to an officer of Insurance Company and the said T.S.Ashok Kumar is the member of the 1st respondent Union. The disciplinary action taken by the management resulted in imposing of punishment, by which three increments of the workman were barred permanently. The Union raised a dispute, which was referred to the Industrial

Tribunal, Kollam and it is subsequently transferred to the 2nd respondent Central Government Industrial Tribunal cum Labour court. Thus, the 2nd respondent had passed an award dated 23.12.1996 in I.D.No.19/95, which was challenged before this Court, resulted in Ext.P9 judgment. By Ext.P9 judgment, the learned Single Judge of this Court has found that the management has not granted the mandatory opportunity to the workman to offer his explanation on the recommendation of the domestic enquiry Officer, before the management accepting the enquiry report and the findings of the enquiry officer. Accordingly, this Court found the issue in favour of the workman relying upon the decision in reported in **Radhakrishnan Nair v. State of Kerala** (2005(3) KLT 1). Mainly on the above finding, the learned Single Judge has set aside Ext.P1 award and the matter was remitted back to the Tribunal-the 1st respondent in Ext.P9, directing to pass fresh award in accordance with law in I.D.No.21/94 (I.D.No.19/95 as shown in the prayer portion in the writ petition). It is

thereafter, the 2nd respondent issued Ext.P10 preliminary order on 16.6.2010, holding that the enquiry is invalid and vitiated for violation of the principles of natural justice and denial of reasonable opportunity to the charge sheeted employee. It is against the above order of the 2nd respondent, the management preferred O.P.(LC) No.1559/11. The learned Single Judge of this Court by judgment dated 29.4.2011 dismissed the writ petition filed by the management challenging Ext.P10 order of the 2nd respondent. It is against the above judgment of the learned Single Judge, the management preferred the present appeal.

2. We heard Sri.R.S.Kalkura, the learned counsel appearing for the appellant and Sri.Ashok B.Shenoy, the learned counsel appearing for the 1st respondent.

3. In view of the facts and circumstances involved in the case and especially in the light of the findings of the learned Single Judge of this Court as per Ext.P9 judgment, it can be seen that the learned Single has specifically found

that the management failed to furnish a copy of the enquiry report on the diligent employee before the disciplinary authorities accepting the findings of the said enquiry officer. Suffice to say that, the said findings in Ext.P9 became final, as the same was not challenged. The learned counsel for the appellant contended that as per Ext.P3, the management has forwarded the enquiry report to the workman, which is seen accepted by the workman as evident by Ext.P4. Therefore, the contention of the 1st respondent and the workman as well as the findings of the learned Single Judge are incorrect and against the factual input. On the other hand, the learned counsel appearing for the 1st respondent has pointed out that the finding of the 2nd respondent as per Ext.P10 is that, the workman was given a copy of the enquiry report at the stage when the management proposed to impose punishment and not before that stage. Thus, relying upon the observation and finding of the learned Single Judge of this Court as per Ext.P9 judgment, the learned Judge of the Tribunal has

found that the management has failed in furnishing copy of the enquiry report to the workman before accepting the finding of the enquiry officer and the enquiry report. Consequently, the learned Judge of the Tribunal, after following the findings of this Court as per Ext.P9, has held that the enquiry is to be set aside as the management has miserably failed in complying with the principles of natural justice and denied reasonable opportunities to the workman, without furnishing a copy of the enquiry report, before accepting the finding of the enquiry officer by the management. As rightly pointed out by the learned counsel for the 1st respondent, it is evident as per Ext.P3 that, the disciplinary authority had already accepted the findings of the enquiry Officer before furnishing copy of the enquiry report to the workman and it is thereafter, as per Ext.P3, the disciplinary authority furnished an opportunity to the workman to make his representation against the proposed punishment. So, we are of the view that, Ext.P3 document itself is sufficient to justify the findings of the 2nd

respondent that, no opportunity was given to the workman to offer his explanations about the findings of the enquiry officer, before accepting the same by the disciplinary authority.

4. In the light of the above facts and circumstances, we are of the view that, the learned Single Judge is right in dismissing the writ petition preferred by the appellant. Accordingly, we find that there is no merit in this writ appeal and hence the same is dismissed.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

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P.A.to Judge