

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WA.No. 1036 of 2015 () IN OP(LC).1373/2012

AGAINST THE ORDER/JUDGMENT IN OP(LC) 1373/2012 of HIGH COURT OF KERALA
DATED 10-02-2015

APPELLANT/PETITIONER:

NAYARAMBALAM SERVICE CO-OPERATIVE BANK LIMITED
NO. E 92, NAYARAMBALAM - 682 509
REPRESENTED BY ITS PRESIDENT, SRI.P.K. RAJEEV.

BY ADVS.SRI.GOVIND K.BHARATHAN (SR.)
SRI.C.P.KUNJHIKANNAN
SMT.TISSY ROSE K CHERIYAN

RESPONDENTS/RESPONDENTS:

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

2. LABOUR COURT,
ERNAKULAM - 682 031.

R1 BY ADV. SRI.B.ASHOK SHENOY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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W.A. No. 1036 of 2015

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Dated, this the 25th day of June, 2015

JUDGMENT

Ramachandra Menon J.

Interference declined by the learned single Judge in respect of the challenge raised against the 'Preliminary Award' passed by the Labour Court holding that the domestic enquiry conducted by the management was not valid or proper, is under challenge in this appeal.

2. Heard Sri. Govind K. Bharathan - the learned senior counsel appearing on behalf of the petitioner, Sri. B. Ashok Shenoy - the learned counsel appearing for the first respondent and the learned Government Pleader.

3. It is revealed from the materials on record that the appellant management proceeded against the first respondent in respect of some misconduct in connection with his service. An enquiry officer was appointed, who enquired into the delinquency and after completion of the proceedings, submitted report holding that delinquent was guilty. This was accepted by the management who

dismissed the first respondent from service, which led to I.D. No. 24 of 2006 before the Labour Court Ernakulam.

4. On completion of pleadings before the Labour Court, validity of the enquiry conducted by the management was considered as the preliminary issue. Referring to the facts and circumstances, the Labour Court arrived at a finding that there was violation of principles of natural justice and it was accordingly held that the domestic enquiry conducted by the management was not proper and invalid. Ext. P6 is the order passed in this regard, which was sought to be challenged by the management by filing OP (LC) No. 1373 of 2012.

5. The original petition was finally heard on 10.02.2015, when the learned single Judge observed that, in spite of the main insinuation made as to the manipulation/falsification of the accounts made by the first respondent (who was working as an Accountant) the matter was not caused to be examined by an expert and the petition filed by worker in this regard was vehemently opposed by the management. Though the enquiry officer had directed both the sides to suggest a panel of experts having accreditation of the Government, when the matter taken up on 22.09.2004, the presenting officer of the management

expressed helplessness in finding out 'experts', while the delinquent employee and his counsel were absent. Hence the matter was adjourned to 23.09.2004 and thereafter to 24.09.2004. It is revealed from the proceedings that an application for adjournment was filed by the counsel appearing for the delinquent employee on 22.09.2004, though the same was received by the enquiry officer only on 24.09.2004. But without any regard to the same, the enquiry was closed and the matter was finalized, without affording an opportunity of hearing, which in turn has been projected as an instance of violation of principles of natural justice. It was after considering the facts and figures, that the verdict was rendered by the Labour Court holding that the enquiry was vitiated. The observation of the learned Single Judge, as it appears from paragraphs 5 and 6 of the judgment dated 10.02.2015 are relevant, which read as follows :

"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 willful or deliberate conduct or omission on the part of the delinquent employee.

6. It is seen from the enquiry report itself that, on 18.09.2004, the presenting officer, as also the delinquent employee along with this 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 22.09.2004. On 22.09.2004, 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 23.09.2004 and then to 24.09.2004. It was held that delinquent employee was seeking to protract the enquiry and hence, the evidence was closed and the matter was proceeded with, finding the worker guilty on the basis of the evidence adduced till then.

It was accordingly, that interference was declined and the writ petition was dismissed, upholding the preliminary order passed by

the Labour Court.

6. After hearing both the sides, this Court doubted the very maintainability of the proceedings before the Writ Court challenging the preliminary order passed by the Labour Court. The legal position in this regard has been made clear by the Apex in **Cooper Engineering Ltd. Vs. P.P. Mundhe [(1975) 2 SCC 661]** observing that, if parties are permitted to challenge the preliminary order by approaching the writ Court, the proceeding may get stalled, even for decades, because of pendency of the matter at different levels. The Apex Court has held that the correctness and sustainability of the preliminary order could very well be challenged by the aggrieved party on culmination of the proceedings i.e. after passing the Award. This Court finds that the said course could be pursued in this case as well, as the main issue is pending consideration before the Labour Court.

In the above circumstances, we relegate the appellant to move the Labour Court where the industrial dispute is still pending and have the proceedings finalized, at the earliest, in accordance with law. All the issues including the correctness of the preliminary order passed by the Labour Court are left open. No opinion is expressed with regard to the merits involved and both

the sides are free to substantiate their contentions in accordance with law. The finding rendered by the learned single Judge upholding the validity of the enquiry with reference to the preliminary order passed by Labour Court will stand intercepted, to be considered at appropriate time, after finalization of the Award passed by the Labour Court. The verdict passed by the learned single Judge stands modified to the said extent.

The Writ Appeal is disposed as above.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

Sd/-

**BABU MATHEW P. JOSEPH,
JUDGE.**

kmd