

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WA.No. 2429 of 2015 () IN WP(C).18187/2012

AGAINST THE JUDGMENT IN WP(C) 18187/2012 DATED 5.8.2015

APPELLANT(S)/RESPONDENT NO.1 :-

THE MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.
NO. 4266, POONJAR, POONJAR THEKKEKARA P.O.
KOTTAYAM DISTRICT
REPRESENTED BY ITS GENERAL MANAGER, PIN - 686 582.

BY ADVS.SRI.GEORGEKUTTY MATHEW
SMT.SUMATHY DANDAPANI (SR.)

RESPONDENT(S)/PETITIONER AND RESPONDENTS 2 AND 3 :-

1. P.J.JOSE, MANAGER (TERMINATED)
THE MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.NO. 4266
POONJAR, POONJAR THEKKEKARA P.O., PIN - 686 582
RESIDING AT PURAYIDATHIL HOUSE, PANACHIPARA
POONJAR P.O., KOTTAYAM DISTRICT.
2. KERALA CO-OPERATIVE ARBITRATION COURT,
THIRUVANANTHAPURAM - 695 001.
3. KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM - 695 001.

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
BY SRI.P.RAVINDRAN (SR.)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

APPENDIX

APPELLANT'S EXHIBITS :-

ANNEXURE A :- TRUE COPY OF THE STATEMENT GIVEN BY THE 1ST RESPONDENT/WRIT PETITIONER BEFORE THE CHAIRMAN OF THE DISCIPLINARY COMMITTEE ON 16.3.2009 ALONG WITH ENGLISH TRANSLATION.

ANNEXURE B :- TRUE COPY OF THE APPEAL DATED 24.9.2009 FILED BY THE 1ST RESPONDENT/WRIT PETITIONER BEFORE THE APPEAL COMMITTEE OF THE BANK ALONG WITH ENGLISH TRANSLATION.

ANNEXURE C :- TRUE COPY OF THE DEPOSITION DATED 15.6.2009 GIVEN BY THE 1ST RESPONDENT/WRIT PETITIONER BEFORE TH APPEAL COMMITTEE OF THE BANK ALONG WITH ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2429 OF 2015

Dated this the 27th day of November, 2015

JUDGMENT

Shaffique, J.

The first respondent in W.P.(C) No.18187 of 2012 is the appellant who challenges the judgment dated 05.08.2015 by which the disciplinary action taken by the appellant has been set aside by the learned Single Judge.

2. The first respondent herein who is hereinafter is referred to as the petitioner filed the writ petition challenging the disciplinary action taken against him by the appellant Bank and also the orders passed by the Arbitration Court as well as the Co-operative Tribunal, while confirming the charges against him with reference to Charge Nos.2 and 4.

3. Short facts involved in the writ petition would disclose that, the petitioner, while working as Manager of the appellant Bank, was dismissed from service by the disciplinary authority after conducting enquiry. The allegation raised against the petitioner is that he rendered necessary support

and assistance to the cashier to commit fraud. The charge is that he acquiesced with the action of Cashier and Cashier has misappropriated large amounts of money from the Bank. An enquiry was conducted and on the basis of enquiry report, the disciplinary authority, after issuing show cause notice, imposed punishment of dismissal from service. The petitioner approached the Arbitration Court and as per Ext.P8 order dated 03.03.2011 the Arbitration Court confirmed the findings of the enquiry officer in so far as charge Nos.2 and 4 alone and other findings in the enquiry report were set aside. The Arbitration Court therefore found that the punishment given to the petitioner is not proportionate to the charges levelled and accordingly having set aside the punishment, the matter was remitted back to the Board of Directors to decide the proportionality of the punishment.

4. The petitioner challenged the said order by filing an appeal before the Co-operative Tribunal as Appeal No.14 of 2011. The appellate authority, after considering the entire factual circumstances involved in the matter, dismissed the appeal affirming the award of the Arbitration Court. It is against the

aforesaid findings W.P.(C) No.18187 of 2012 has been filed which resulted in filing of this appeal by the Bank.

5. The appellant Bank has filed counter affidavit supporting the stand taken by the disciplinary authority. The main contention urged by the petitioner was that the petitioner was not served with a copy of the enquiry report before the accepting the enquiry report by the disciplinary authority. This, according to the petitioner, was contrary to the constitution Bench judgment of the Supreme Court in **Managing Director ECIL v. B. Karunakar** [(1993) 4 SCC 727]. It is also contended that if the enquiry report was supplied to the petitioner before issuing the show cause notice by the disciplinary authority, the petitioner could have clarified the entire factual circumstances in the matter. That apart the Arbitration Court had found that only charge Nos. 2 and 4 were proved and no other charges were proved. The Arbitration Court has remitted back the matter to the Board of Directors to consider the question of proportionality of the punishment.

6. Learned Single Judge after elaborately considering the factual issues in the matter came to a finding that there is violation of principles of natural justice in so far as the enquiry report was not furnished to the petitioner and no opportunity was given to the petitioner to controvert the enquiry report before the disciplinary authority accepting the enquiry report. On this finding, the learned Single Judge set aside the orders passed by the Arbitration Court and Co-operative Tribunal and the matter was remitted to the disciplinary committee for fresh orders with reference to the two charges. It was further observed that the respondent Bank was free to conduct enquiry from the stage of furnishing of enquiry report, if it is permissible under law.

7. Heard learned Senior Counsel Smt.Sumathi Dandapani on behalf of the appellant and Sri.P. Ravindran, learned Senior Counsel appearing on behalf of the 1st respondent.

8. The main contention urged on behalf of the appellant is that the disciplinary sub-committee had issued Ext.P3 along with domestic enquiry report and once such copy had been furnished to the petitioner and the petitioner had given a detailed

explanation in terms of Ext.P4 with reference to the findings in the enquiry report as well, and the disciplinary authority has taken a decision after considering the objections raised, even assuming that B. Karunakar's case(supra) squarely applies in this case, no prejudice has been caused to the petitioner. That apart, reference has been made to Rule 198(2) to contend that the appellant had complied with the provisions of Sub-Rule 2 of Rule 198 and therefore the learned Single Judge was not justified in interfering with the finding of the Tribunal and the Arbitration Court.

9. On the other hand, learned counsel appearing on behalf of the 1st respondent submits that substantial prejudice has been caused to the petitioner by not supplying the copy of the enquiry report. It is stated that even the Arbitration Court had come to a finding that most of the charges levelled against the petitioner were not proved. That apart, to Ext.P3 show cause notice, petitioner has filed a detailed reply, Ext.P4 and the finding of the disciplinary authority (Ext.P5) does not contain

consideration of factual circumstances and legal issues raised by the petitioner.

10. Having heard learned counsel appearing on either side and having perused the impugned judgment, we do not find any error in the judgment of learned Single Judge. The learned Single Judge had gone into the entire matter in detail and came to a finding that non-supply of copy of the enquiry report before the disciplinary authority accepting the report has caused prejudice to the petitioner. A perusal of Ext.P3 show cause notice issued by the disciplinary authority would indicate that the disciplinary sub-committee has taken a view that the findings of the enquiry officer is true and correct. The explanation offered by the petitioner(Ext.P4) would indicate that substantial challenge has been made to the findings in the enquiry report. A perusal of Ext.P5 would indicate that all the contentions urged on behalf of the petitioner had not been considered, whereas they have indicated that the findings in the enquiry report have been accepted by the disciplinary authority and thereafter the show cause notice has been issued. In fact it is indicated that there

was no challenge to the findings in the enquiry report, but on a perusal of the order passed by the Arbitration Court would indicate that most of the charges were not proved. Under such circumstances, we are of the view that learned Single Judge was justified in allowing the writ petition.

We do not find any ground to interfere with the judgment of learned Single Judge and accordingly the Writ Appeal is dismissed. It is also made clear that the Bank is permitted to take further proceedings as directed, in accordance with law.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**