

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 3232 of 2011 (D)

AGAINST THE AWARD IN ID 51/1996 of LABOUR COURT, KANNUR DATED 05-06-2009

PETITIONER(S):

**THE GENERAL SECRETARY,
WAYANAD ESTATE LABOUR UNION (CITU), VYTHIRI P.O.
WAYANAD DISTRICT.**

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENT(S):

**THE MANAGER,
KOLERI ESTATE, P.O.MEPPADI, WAYANAD DISTRICT
PIN - 673 577.**

**BY ADVS. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.
SRI.PANUPAMAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 3232 of 2011 (D)

APPENDIX

PETITIONERS EXHIBITS

**EXHIBIT P1 : TRUE COPY FO THE AWARD OF THE LABOUR COURT KANNUR
IN ID 51/96 DATED 05.06.2009**

**EXHIBIT P2 : TRUE COPY OF THE HONOURABLE COURT'S JUDGMENT IN
O.P. 2235/2000 DATED 03.12.2007**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 3232 of 2011

Dated this the 16th day of January, 2015

J U D G M E N T

The petitioner-Union impugn Ext.P1 award of the Labour Court, passed in remand, on behalf of a dismissed workman. The issue arose in an incident in which the workman was alleged to have attempted to commit theft of 35 Kgs of coffee from the estate of the management.

2. The management conducted an enquiry and finding the workman guilty, he was dismissed from service. A dispute was raised before the Labour Court as to the dismissal. An award was passed holding the enquiry to be proper as also finding the guilt of the workman. The punishment was held to be proportionate to the gravity of the offence.

3. The Union was before this Court challenging the said award, which was set aside by Ext.P2 judgment. By Ext.P2 judgment, this Court had ordered a remand only on two grounds; which were directed to be considered by the Labour Court. Hence, it has to be understood that the enquiry was found to be proper and held in compliance with the principles of natural justice. The re-consideration by the Labour Court was confined to two specific issues which were raised as glaring discrepancies by the Union, on which the remand was made.

4. The incident, as alleged by the management and spoken to by the management witnesses, was that the petitioner was found with a gunny bag and the security guards, on examination of the same, found it to contain 35 kilograms of coffee beans. The petitioner was apprehended, taken to the Office and a criminal case was also registered. Disciplinary proceedings were initiated and the workman

produced one document which was marked as Ext.W1 wherein one C.V. George, an officer of the Management, is said to have written to another employee Chandy; the execution of which was denied by C.V. George. The discrepancy pointed out by the Union was that the Labour Court failed to compare the signature in Ext W1 with that of the very same person, in Ext.W2.

5. The other discrepancy is with respect to the specific case of the management being the workman having been caught red handed with 35 kilograms of coffee, while the search report - Ext.W2, prepared by the Police, reveals the seizure of the coffee beans from the residence of the father of the delinquent employee. The Labour Court, after remand, considered the two specific issues and negatived both, again upholding the punishment of dismissal.

6. With respect to Exhibits W1 and W2 and the signature thereon, it was categorically found that there is no similarity in signature. Further, it was found that Ext.W1 was alleged to be a communication from one employee of the management to another seeking to make good the shortfall of 4.5 kilograms of coffee beans, in the gunny bag allegedly seized from the workman and kept in the Police Station. The Labour Court found the letter (Ext.W1) itself to be a concocted one and not having been established by proper evidence. The Union's contention before the Labour Court was that the said letter was handed over to the Union by Chandy, the person to whom it was addressed. None was examined before the Labour Court to establish it. Also finding the signature to be not similar, the Labour Court refused to interfere with the findings in the Enquiry on the basis of Ext.W1.

7. The next contention, according to the learned counsel for the petitioner, assumes significance since the Labour Court has imported the principles that a judgment in a criminal case, cannot be relied on in a disciplinary enquiry proceedings. Ext.W2 search report having specifically disclosed that the seizure was made from the house of the delinquent's father, the consistent case of the management that he was caught red-handed stood demolished. There could be no finding of guilt, since the very basis of the allegation stood effaced for reason of the said glaring inconsistency, is the argument raised before this Court. The learned counsel for the respondent - Management, however refutes the same contending that, in fact, the workman himself had admitted before the Management that he had committed such theft, on a show cause notice being issued.

8. Essentially it is to be noticed that entire reliance is placed on Ext.W2, which is a search report prepared by the Police. The management had a consistent case that the workman was caught red-handed in the show cause notice issued, before the enquiry officer and the management witnesses also, who apprehended the workman with the contraband, deposed in accordance with such case. The Union, representing the delinquent employee, relied on the seizure report to challenge the case of the management. It is to be specifically noticed that the Labour Court has answered the question in Ext.P1 award, finding that the discrepancy, if any, in a search report of the Police could only be urged in the criminal case.

9. Further, it is to be noticed that Ext.M7 statement, marked before the Labour Court clearly admitted that the workman was carrying the alleged stolen goods, when he was caught. Ext.M7 was the statement made by the

workman before the authorities that he was carrying the sack of coffee, which he had seen, left unattended in the estate and that he was carrying the same to entrust the same to the Management. Hence, the specific case of the workman was that he had been carrying the bag containing the coffee beans and that his intention was to entrust the same to the Management. This Court does not find any inconsistency which would commend interference in a punishment which has been imposed pursuant to a disciplinary enquiry. The misconduct alleged is also one of theft which, as has been consistently held, is an offence which warrants dismissal. The prerogative of the management to dismiss a workman who has committed or attempted theft of the property of the management, cannot be lightly interfered under Section 11A of the Industrial Disputes Act. Section 11A, as is trite, can be invoked only when the punishment is shockingly disproportionate to the

gravity of the offence; that too only with sufficient compelling reason shown. This Court does not discern any reason to cause such interference.

For the above reasons, this Court does not find any infirmity in Ext.P1 award. The Writ Petition will stand dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj