

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WP(C).No. 881 of 2014 (I)

AGAINST THE ORDER/JUDGMENT IN RP 13/2013 of KERALA CO-OP.TRIBUNAL,
THIRUVANANTHAPURAM. DATED 23-08-2013

PETITIONER:

INDIA COFFEE BOARD WORKERS CO-OPERATIVE SOCIETY LTD.
NO.4227, THRISSUR, P.B.NO.184
PIN-680 001, REPRESENTED BY ITS SECRETARY, VARGHESE
S/O.THOMAS.

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
DEPARTMENT OF CO-OPERATION, SECRETARIAT
THIRUVANANTHAPURIAM-695 001.

2. M.S.BIJEESH
S/O.SHANMUGHAN, MANATHARA HOUSE, PATTANAM KARA
AVADAKKEKARA VILLAGE, VADAKKEKARA P.O.
PARAVUR TALUK.

3. KERALA CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURIAM-695 001
REPRESENTED BY ITS SECRETARY.

R2 BY ADV. SRI.DILEEP VARGHESE
R2 BY ADV. SMT.TESMY VARGHEESE
R BY GOVERNMENT PLEADER SHRI NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1.TRUE COPY OF LETTER SUBMITTED BY THE HEAD BEARER OF KADAVANTHRA GANDHI NAGAR BRANCH OF COFFEE HOUSE BEFORE THE MANAGER DATED 21/8/2008.

EXHIBIT P2.TRUE COPY OF THE LETTER SUBMITTED BY THE HEAD BEARER AND COUNTER CLERK OF KADAVANTHRA GANDHI NAGAR BRANCH OF COFFEE HOUSE BEFORE THE MANAGER DATED 21/8/2008.

EXHIBIT P3.TRUE COPY OF THE NOTICE ISSUED BY THE BRANCH MANAGER OF KADAVANTHRA GANDHI NAGAR BRANCH OF INDIAN COFFEE HOUSE TO THE 2ND RESPONDENT ON 23/8/2008.

EXHIBIT P4.TRUE COPY OF THE EXPLANATION SUBMITTED BY THE 2ND RESPONDENT BEFORE THE MANAGER OF INDIAN COFFEE HOUSE ON 24/8/2008.

EXHIBIT P5.TRUE COPY OF THE LETTER ISSUED TO THE 2ND RESPONDENT BY THE SECRETARY OF THE PETITIONER ON 5/9/2008.

EXHIBIT P6.TRUE COPY OF THE PETITION FILED BY THE 2ND RESPONDENT BEFORE THE PRESIDENT OF THE PETITIONER ON 18/9/2008.

EXHIBIT P7.TRUE COPY OF THE LETTER SENT BY THE PRESIDENT OF THE PETITIONER SOCIETY TO THE 2ND RESPONDENT ON 27/9/2008.

EXHIBIT P8.TRUE COPY OF THE LETTER SUBMITTED BY THE 2ND RESPONDENT BEFORE THE PRESIDENT OF THE PETITIONER SOCIETY DATED 4/5/2009.

EXHIBIT P9.TRUE COPY OF THE LETTER SUBMITTED BY THE 2ND RESPONDENT BEFORE THE SOCIETY OF THE PETITIONER ON 24/7/2009.

EXHIBIT P10.TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT ON 27/8/2009.

EXHIBIT P11.TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT ON 1/10/2009.

EXHIBIT P12.TRUE COPY OF THE LETTER SENT BY THE 2ND RESPONDENT TO THE PETITIONER ON 15/10/2009.

EXHIBIT P13.TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT ON 23/10/2009.

EXHIBIT P14.TRUE COPY OF THE NOTICE ISSUED TO THE 2ND RESPONDENT BY THE PETITIONER ON 14/12/2007.

EXHIBIT P15.TRUE COPY OF THE NOTICE ISSUED TO THE 2ND RESPONDENT BY THE PETITIONER ON 5/2/2008.

EXHIBIT P16.TRUE COPY OF THE AWARD OF ARBITRATION COURT KOZHIKODE IN ACR 116/2011 DATED 30/07/2012.

EXHIBIT P17.TRUE COPY OF THE ORDER OF 3RD RESPONDENT IN RP 13/13 DATED 23/8/2013.

EXHIBIT P18.TRUE COPY OF THE ATTACHMENT SCHEDULE FILED BY THE 2ND RESPONDENT ON 26.2.14 BEFORE THE 3RD ADDITIONAL MUNSIF'S COURT, THRISSUR IN E.A.602/14 IN E.P.489/14 IN A.R.C.116/11.

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: 2 :

EXHIBIT P19.TRUE COPY OF THE ATTACHMENT ORDER ISSUED BY THE 3RD
ADDITIONAL MUNSIFF'S COURT IN E.A.602/14 IN E.P.489/14 IN
A.R.C.116/11 DATED 20.06.14.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.881 of 2014-I

Dated this the 12th day of June, 2015

JUDGMENT

The challenge in this Writ Petition is against Ext.P16 award passed by the Co-operative Arbitration Court, Kozhikode in A.R.C No.116 of 2011 and Ext.P17 order passed by the Co-operative Tribunal in Revision Petition No.13/2013 .

2. A.R.C No.116/2011 was filed by one Mr.M.S.Bijeesh, the 2nd respondent herein, who was working as Head Assistant Bearer in the Indian Coffee House, Kadavanthra, Gandhi Nagar Branch. The petitioner - India Coffee Board Workers Co-operative Society Ltd. (hereinafter referred to as the `Society') is carrying on the business of conducting coffee houses, restaurants, canteens etc, in the name and style "Indian Coffee House" in various districts throughout the State of Kerala. The 2nd respondent was employed under the society and he was a member of the society as in the case of all other employees

under the society. The ARC was filed under the following circumstances.

3. The Manager of the Indian Coffee House, Kadavanthra issued Ext.P3 memo dated 23.8.2008, directing the 2nd respondent to furnish explanation within 24 hours as to the complaint of the counter clerk Sri C.Ravidasan Pillai and the section senior Sri M.R.Ravindran Nair, as to the obstruction caused by him to the conduct of the business in the coffee house on 20.8.2008 evening, since he left the shop without intimation in the counter as well as section when there was heavy rush in the shop.

4. Thereupon the 2nd respondent submitted his explanation Ext.P4 on 24.08.2008, denying any action on his part to cause obstruction or leaving without intimation. He explained the circumstances under which he had to leave the shop on receipt of a phone call from his brother in law by 8.45 p.m on 20.08.2008, informing the requirement of blood for his sister who was in intensive care unit in a hospital at Angamali, consequent to a bus accident, in which he had already lost one of his sisters. He stated that when another call came by 9 p.m, he left about 10 minutes thereafter giving due intimation and

obtaining permission from the Counter as well as section; and entrusting the tables in his charge to another. He pointed out that he did not do anything deliberately so as to cause any loss to the business in the branch. He also requested to condone the lapses if any on his part.

5. Thereafter, the petitioner Society issued Ext.P5 letter dated 5.9.08 (A5), directing the 2nd respondent to remit a sum of Rs.1,000/- immediately to the Manager, towards the loss caused to the business of the coffee house, at his instance, on 20.8.2008, since he left the shop on his own without getting any permission when there was heavy rush of customers in the shop. The 2nd respondent was also warned that stringent proceedings will be initiated in the event of any repetition of such acts.

6. On 17.09.2008 when the 2nd respondent reported for duty, the Manager did not allow him to enter the coffeehouse without paying the fine of Rs.1,000/-. The 2nd respondent did not have any funds with him to remit the same and the manager did not allow him to work. Thereupon he approached the President with a representation on 18.09.2008, explaining his inability to remit the fine because of financial difficulties and requesting to review the decision to impose fine on him and allow him to

perform duty.

7. But the decision was not revised. By Ext.P7 letter dated 27.9.2008 (A6), the President directed him to remit the Rs.1000/- within 3 days and to join duty, failing which it would be presumed that he was no more interested in continuing in service.

8. Thereafter even though the 2nd respondent as per Ext.P8 representation (A7) requested the President to permit him to join duty, remitting the amount under protest so as to enable him to file an appeal against the decision under Rule 198 (4), his request was not acceded to. Thereafter Ext.P9 representation dated 24.7.09 was sent to the President (A9) explaining the attitude towards him when he appeared before the managing committee on 29.05.2009 with his grievances on account of non-employment. He requested for an early decision in his case.

9. Thereafter the Society, as per Ext.P10 letter dated 27.8.2009 (A10), directed the 2nd respondent to join duty after remitting the fine along with the amount towards various funds due upto that period. By Ext.P11 (A12) the society furnished the details of a sum of Rs. 14,666/- towards the dues under various

funds such as DRBF, VV fund, Send off fund, Kshemanidhi, Share loan, Share interest, ECF loan, ECF interest, gratuity, CUC etc. 2nd respondent thereupon by Ext.P12 (A13), requested the President of the society, to realise the amount from his salary after re-instating him, explaining his incapacity to pay the amount. By Ext.P13 letter dated 23.10.2009 (A14), the President of the society informed him that his request cannot be acceded to and that he can join duty as and when he remits the amount. The 2nd respondent submitted another representation before the society on 10.12.2009 requesting them to permit him to join duty. Then the Secretary by Ext.P14 dated 14.12.2009 directed him to appear before the Manager, CUV Coffee House.

10. It was in the above circumstances that the 2nd respondent filed the A.R.C 168/2009 before the Co-operative Arbitration Court challenging the orders passed by the Secretary of the petitioner Society on 5.9.2008 and 27.8.2009 and the order passed by the President on 23.10.2009 and for a direction to re-instate him in service as Head Assistant Bearer along with back wages. The society had filed written statement, in which they stated that the 2nd respondent was given notice since there was gross misconduct on his part; the manager of the Coffee

House had issued an explanation letter to the 2nd respondent to which he submitted a reply; the Manager intimated the same to the Head Office and after examining the documents it was decided to impose a fine of Rs.1000/-and that the said amount was to be recovered towards the loss caused to the society. Further it was stated that the 2nd respondent was unauthorisedly absent from service from 17.09.2008 onwards. The 2nd respondent kept himself away from duty despite the direction issued to him to join duty after paying the sum of Rs.1,000/-. It was further stated that the fine was imposed in order to keep discipline among the employees.

11. Before the Arbitration Court the 2nd respondent adduced evidence by examining himself as PW1 and marking Exts.A1 to A15 documents. At the same time, no evidence was adduced on the part of the society.

12. The Arbitration Court considered two main issues - whether the plaintiff was entitled to get an award to set aside the orders dated 5.9.08 and 27.08.09 of the society or not: and whether he was entitled to be reinstated in service.

13. The Arbitration Court found that the fine was imposed without conducting any proper enquiry and without

giving any opportunity to the 2nd respondent to defend. It was also found that the petitioner society refused to re-instate the employee despite his repeated requests. It was found that the Society did not adduce any oral and documentary evidence to show that punishment was imposed after conducting any proper enquiry. Therefore it was held that the punishment awarded to the 2nd respondent was illegal and therefore he was liable to be reinstated in service with all service benefits. The orders passed by the society in Exts.A4, A6 and A10 (Ext P5, P7 and P10) were set aside accordingly. It was therefore directed that the 2nd respondent should be reinstated in service as Head Assistant Bearer with all service benefits, including 50% back wages.

14. The petitioner society took up the matter in Revision Petition No.13/13 before the Co-operative Tribunal. In the judgment dated 23.10.2013, the Tribunal found that there was nothing wrong in the judgment of the Arbitration Court. It was further found that in the reply submitted by the 2nd respondent, ie. in Ext.A3, he had categorically stated that on 20.08.08, he had left the workplace only after obtaining permission from the concerned authority and that the show cause notice was issued

to him at the instance of Sri C.Ravidasan Pillai who was in inimical terms with the 2nd respondent. It was further found that the said C.Ravidasan Pillai was employed in the society itself and the 2nd respondent filed Ext.A2 complaint against him in respect of his misconduct. The Tribunal found that the society did not issue a memo of charges or conduct any enquiry in respect of the incident pointed out by the 2nd respondent as against Sri C.Ravidasan Pillai. At the same time, action was taken against the 2nd respondent on the basis of the complaint of Sri C.Ravidasan Pillai. It was further found that the society did not pay any heed to the request of the 2nd respondent to remit the amount of fine even under protest despite his request and therefore the action of the society in not accepting the amount even under protest and in not allowing his request to recover it from his salary revealed its intention to deny employment to the employee for which they issued the impugned orders Exts.A4, A6 and A10. It was further held that in case the contentions of the society were correct, they would have allowed him to join duty at least for the purpose of recovering the amount from the salary. Accordingly the award passed by the Arbitration Court was upheld.

15. It is in this background that petitioner has filed this Writ Petition.

16. I heard the learned counsel appearing for the petitioner society as well as that of the 2nd respondent. The learned Counsel submitted that the objection raised as to the maintainability of ARC before the Arbitration Court is not pressed. According to the petitioner the Arbitration Court as well as the Tribunal arrived at the finding on totally incorrect appreciation of evidence and the orders are perverse, which require to be set aside. The learned Counsel submitted that the documents produced by the 2nd respondent himself was sufficient to prove his indiscipline and therefore there was no necessity for the petitioner to adduce evidence. It was also argued that it was not necessary to conduct an inquiry in the matter since there was admission on the part of the employee that he left the coffee house without permission or intimation. It is further argued that the punishment was not one issued under co-operative Societies Rules; but it is only a general principle that the loss caused has to be recovered. It is further argued that the direction to pay back wages is also unsustainable. The learned counsel for the 2nd respondent supported the award relying on Rule 198 of the co-

operative Societies Rules.

17. On consideration of the pleadings and the rival contentions, it is seen that it is an admitted case that the 2nd respondent, an employee under the Society, was awarded a punishment of fine and this punishment was for an alleged misconduct. The punishment is awarded by the society based on a letter from the Manager of the Coffee house, as seen from the pleadings and impugned orders. The Manager of the Coffeehouse, where the 2nd respondent was working, had only called for an explanation, with respect to the statements received from 2 other employees. Admittedly no memo of charges were issued intimating even any proposal to initiate disciplinary action and not even an intimation as to the proposal to award a punishment is stated to be issued towards the misconduct committed by the employee and it is stated to be to enforce discipline. As rightly pointed out by the learned counsel for the 2nd respondent, the recovery/imposition of fine are punishments enumerated under Rule 198 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as the 'Rules'). Fine is a punishment enumerated under Rule 198(b) of the Rules; recovery from pay is another punishment under rule

198(e). As per Rule 198(2) of the Co-operative Societies Rules, no punishment shall be awarded except after a notice with grounds on which the action is proposed against him and a personal hearing. Rule 198 (2) reads as follows:

“198. Disciplinary Action:-(1) xxx xxxx xxxx xxxx

(2) No kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing to defend himself. Every order awarding punishment shall be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded.

[(2A) The committee of a society shall constitute a disciplinary sub-committee consisting of not more than three of its members, of whom one shall be designated as Chairman, but the President of the committee of the society shall not be a member in the disciplinary sub-committee.

(2B) The disciplinary sub-committee so constituted shall inquire into the charges against the employee either by themselves or by engaging an external agency.]

18. Similarly Rule 198(4) provides for an appeal against the orders awarding punishment. In this case it is seen that the 2nd respondent was denied the opportunity to file an appeal

before the Board of management, under Rule 198(4) after remitting the fine covered by the order of punishment, despite his request to receive the same under protest. It is settled law that no punishment can be awarded except in accordance with rules and in accordance with prescribed procedure.

19. But the case of the society is that the recovery was ordered not by way of punishment, but only as a general rule.

20. When the society is governed by statutory rules in respect of the discipline to be enforced in the society, it is not expected to be heard to contend that it cannot follow the procedure under rules before awarding punishment and/or that it can only go by the general principles, as pointed out by the learned counsel for the society. When certain procedures are prescribed under the Statute, it is for the society to discharge the same strictly. Herein, there is no case for the society that they have followed any procedure prescribed under the rules before imposing the punishment. Moreover the 2nd respondent was kept out of service for non payment of the fine imposed illegally, that too for a very long period, by adopting an unknown procedure. Therefore denial of employment to him on the basis of such punishment is arbitrary and without any authority. The

normal consequence flowing from such illegal punishment is reinstatement with back wages. Only 50% of wages alone is allowed in this case. The 2nd respondent has time and again approached the respondents for allowing him to join duty. He has requested them to permit him to join duty and to realise the fine amount from his salary or to allow him to remit the same under protest. The society had been adamant throughout to see that the employee makes the payment, not only of the amount covered by the fine, but also the statutory payments due for the period he was kept out of service. Therefore it was quite legal and proper that the Arbitration Court set aside the impugned orders imposing fine, and directed reinstatement along with 50% back wages. It is equally legal for the Tribunal to uphold the award in the Arbitration Court. It is argued for the petitioner that the 2nd respondent kept silence for a period of 7 months from 27.08.08 to 4.5.09. As the Arbitration Court has awarded only 50% back wages, it does not require any interference, even assuming that the 2nd respondent kept silence over the issue for 7 months, as against the adamant attitude of the Society to keep the employee out of service till the fine was remitted, which they could have recovered from his salary. In this case the petitioner

illegally awarded 2 punishments without following any procedure. Therefore, I do not find any circumstance warranting interference with the impugned orders under Article 226 of the Constitution of India.

The Writ Petition fails and is accordingly dismissed.

Sd/-

(P.V.ASHA, JUDGE)

rtr/