

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 11108 of 2006 (V)

PETITIONER :

**N.M. MATHEW,
NANGARATTU HOUSE,
THIRUVANCHOOR.**

BY ADV. SRI.LIJI J.VADAKEDOM

RESPONDENT(S) :

- 1. THE KOTTAYAM GOVERNMENT EMPLOYEES
CO-OPERATIVE BANK LTD.NO.47, KOTTAYAM-2
REPRESENTED BY ITS SECRETARY.**
- 2. THE INDUSTRIAL TRIBUNALS,
REPRESENTED BY ITS SECRETARY
OFFICE OF THE INDUSTRIAL TRIBUNAL, IDUKKI.**

R1 BY ADVS. SRI.V.K.SUNIL

SRI.AJEY THOMAS

R2 BY GOVT. PLEADER SRI. T.J. MICHAEL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE MEMO OF CHARGES ISSUED BY THE PRESIDENT OF
THE RESPONDENT BANK.
- EXT.P2 COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER AS A
REPLY TO THE CHARGES.
- EXT.P3 COPY OF THE ORDER OF DISMISSAL PASSED BY SUB COMMITTEE
OF THE 1ST RESPONDENT BANK.
- EXT.P4 COPY OF THE AWARD DATED 30.3.2005.
- EXT.P5 COPY OF THE DIRECTION ISSUED BY THE BANK DTD 12.12.2005.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J

W.P(C) No.11108 of 2006

Dated this the 06th day of January, 2015

J U D G M E N T

Petitioner is an employee of the first respondent, who was proceeded against for unauthorized absence and dismissed from service. The dismissal was the subject matter of an industrial dispute which concluded with Ext.P4 award, wherein the punishment was modified to discharge. The petitioner has challenged Ext.P4 award insofar as the Management has interpreted Ext.P4 to have confirmed the retrospectivity in Ext.P3 order thus making the discharge to be retrospective from 21.11.1996.

2. The brief facts leading to the above dispute are that the petitioner had absented himself from duty with effect from 08.11.1996. The petitioner had also made an application for leave on medical grounds supported by a medical certificate. However, the leave granted stood expired on 28.11.1996 and the absence from that date, was treated as unauthorized absence. A reading of Ext.P4 award would indicate that the petitioners explanation was that he had

suffered a motor accident and was laid up due to the disability caused from the said accident and was also under treatment for a very long period. However, that is not a reason for the petitioner to have not applied for further leave on medical grounds with supporting medical certificate. It is also pertinent that no evidence was led to substantiate such plea.

3. In any event, the petitioner remained on unauthorized absence from 28.11.1996. The petitioner was issued with a notice and then, not having responded to the same, was issued with a memo of charges. A domestic enquiry was conducted, in which the petitioner/workman was found to have been unauthorizedly absent. On the basis of findings in the enquiry report, the management imposed punishment of dismissal by Ext.P3 order. However, while imposing such punishment, the management treated the dismissal to have retrospective effect from 29.11.1996 and by Ext.P6 sought for refund of the subsistence allowance paid during the period the petitioner remained under suspension when the domestic enquiry was conducted.

4. The learned counsel for the petitioner would rely

on **Parappuram Milk Producers Co-operative Society v Deputy Director, Dept. of Dairy Development [1999 KHC 60]** to contend that there could be no retrospective dismissal and the Labour Court award also indicate discharge only from the date of Ext.P3 order. To assail Ext.P6, the learned counsel for the petitioner places reliance on **Shanmukhan v. Joint Registrar [2004 (2) KLT 1015]** wherein it was found that even when proceedings are initiated against the employee for misconduct of misappropriation of funds, that could be no ground to deny subsistence allowance, even when there is a compulsory dismissal order issued. Hence, in any event, the claim for refund of the subsistence allowance paid, cannot be sustained; is the contention. **Philipose v. State Bank of Hyderabad [2001(3) KLT 378]** was also relied on to contend that there could be no retrospective dismissal order passed.

5. The learned counsel for the respondent relies on **L& T Komatsu Ltd. v. N. Udayakumar [2008(1) SCC 224]**, wherein it is found that the offence of unauthorized absence cannot be treated as an offence which does not warrant dismissal of service. The Hon'ble Supreme Court clearly held

that unauthorized absence has to be treated as a misconduct resulting in gross violation of discipline.

6. Admittedly, the petitioner had been unauthorizedly absent from 29.11.1996. The challenge made against the sustainability of the enquiry on grounds of violation of principles of natural justice was found against the petitioner by the Labour Court. Having perused the enquiry files as also the deposition of the enquiry officer, the Labour Court found that there was nothing to hold that the enquiry was not conducted in a proper manner or that the petitioner was not granted sufficient opportunity to controvert the allegations raised against him. This Court does not find any warrant to interfere with such findings of the Labour Court.

7. The Labour Court invoking the powers conferred under Section 11A of the Industrial Disputes Act, 1972 considered the gravity of the punishment and interfered with the same and converted the order of dismissal to one of compulsory discharge from service. There is no challenge by the management against the said interference under Section 11 A. What now survives for consideration is as to the date of such

discharge as ordered by the Labour Court.

8. The learned counsel for the respondent would contend that the same has to be from the date of dismissal passed by Ext.P3; which had retrospective effect from 29.11.1996. The said issue has to be looked at in the perspective of the binding precedents in **Parappuram Milk Producers Co-operative Society** (supra) and **Philipose** (supra). When the management has proceeded with the enquiry alleging misconduct of unauthorized absence and has found the employee guilty of such offence, the punishment imposed cannot have any retrospective effect and has to be definitely prospective in nature. **Parappuram Milk Producers Co-operative Society** (supra) relied on a decision of the High Court of Calcutta in **Sudhir Ranjan Halder v. State of W.B and another [1961 II LLJ 283]** to find that though an order passed imposing dismissal retrospectively would not be void as such, the same would be effective only from the date of such order. The Labour Court award at Ext.P4 is, in fact, in consonance with the said declaration of this Court. The Labour Court has directed the management to pay

the workman his terminal benefits "treating that the workman was retired from service from the date on which he was dismissed."(sic.) That clearly indicates that the date of discharge would be effective from the date of dismissal, i.e, the date of Ext.P3 order. In such circumstance, there could be no refund of the subsistence allowance paid by the management to the workman also. It is so declared.

Writ petition is allowed with the above clarification.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge