

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 11573 of 2006 (C)

PETITIONER:

**A.ANZAR, SAFTY OFFICER,
KERALA MINERALS AND METALS LTD., SANKARAMANGALAM
CHAVARA - 691 583, KOLLAM.**

**BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.
SRI.P.N.SANTHOSH
SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN**

RESPONDENTS:

- 1. THE KERALA MINERALA AND METALS LTD.,
SANKARAMANGALAM, CHAVARA - 691 583, KOLLAM
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. THE MANAGING DIRECTOR,
KERALA MINERALA AND METALS LTD., SANKARAMANGALAM
CHAVARA - 691 583, KOLLAM.**
- 3. THE JOINT GENERAL MANAGER (P&A),
KERALA MINERALS AND METALS LTD., SANKARAMANAGALAM
CHAVARA - 691 583, KOLLAM.**
- 4. SRI.A.N.KUTTAN, ADVOATE,
AMRUTHA, SASTHA TEMPLE ROAD, KALOOR
KOCHI - 682 017. (ENQUIRY OFFICER).**
- * 5. K.M.M.TITANIUM EMPLOYEES UNION (CITU), (CORRECTED)
SUSHEELA GOPALAN BHAVAN, TITANIUM JUNCTION
SANKARAMANGALAM, CHAVARA, KOLLAM - 691 583.**
- ** 6. KERALA LOK AYUKTA, THIRUVANANTHAPURAM. (CORRECTED)**

- * 5. K.M.M. TITANIUM EMPLOYEES UNION (CITU),
REPRESENTED BY ITS GENERAL SECRETARY
SUSEELA GOPALAN BHAVAN, TITANIUM JUNCTION
SANKARAMANGALAM, CHAVARA, KOLLAM- 691 583.**
- ** 6. KERALA LOK AYUKTA, REPRESENTED BY ITS REGISTRAR,
THIRUVANANTHAPURAM**

*** 5 & **6 THE CAUSE TITLE IS CORRECTED VIDE ORDER IN I.A. NO.9492/2006
DATED 10.7.2006**

**R1 TO R3 BY ADVS. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN
R5 BY ADVS. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR
R6 BY ADVS. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
BY GOVERNMENT PLEADER SRI. T.R. RAHESH
BY M/S.B.S.KRISHNAN ASSOCIATES, SC. KMML**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF THE VERSION GIVEN BY MR. O. JOY ON 3.9.2004**
- P2: TRUE COPY OF REPORT GIVEN BY THE ASTO MR.K.SANKARAN TO THE DUTY OFFICER ON 3.9.2004**
- P3: TRUE COPY OF THE STATEMENT GIVEN BY THE SECURITY GUARD MR. N. MADHAVAN TO THE DUTY OFFICER ON 3.9.2004**
- P4: TRUE COPY OF THE NOTE PREPARED BY THE DUTY OFFICER MR.N. JAYAKUMAR ON 4.9.2004**
- P5: TRUE COPY OF ORDER DATED 4TH SEPTEMBER, 2004 ISSUED BY THE 1ST RESPONDENT**
- P6: TRUE COPY OF MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS DATED 15.9.2004 ISSUED TO THE PETITIONER**
- P7: TRUE COPY OF EXPLANATION DATED 5.10.2004 SUBMITTED BY THE PETITIONER**
- P8: TRUE COPY OF REPRESENTATION DATED 18.10.2004 FILED BY THE PETITIONER O THE JOINT GENERAL MANAGER (P&A)**
- P9: TRUE COPY OF ORDER DATED 27.10.2004 ISSUED BY THE 3RD RESPONDENT**
- P10: TRUE COPY OF REPRESENTATION DT.6.11.2004 FILED BY THE PETITIONER TO THE 3RD RESPONDENT**
- P11: TRUE COPY OF CIRCULAR DATED 30TH NOVEMBER, 2001 ISSUED BY THE 1ST RESPONDENT**
- P12: TRUE COPY OF ENQUIRY REPORT SUBMITTED BY THE 4TH RESPONDENT - ENQUIRY OFFICER ON 5TH AUGUST, 2005**
- P13: TRUE COPY OF COMMUNICATION DT. 9.8.2005 ISSUED BY THE GENERAL MANAGER (P&A)**
- P14: TRUE COPY OF STATEMENT FILED BY THE PETITIONER DATED 16TH MAY, 2005 TO EXT.P12**
- P15: TRUE COPY OF ORDER DATED 26.9.2005 ISSUED BY THE 2ND RESPONDENT**
- P16: TRUE COPY OF APPEAL PETITION DATED 9.10.2005 FILED BY THE PETITIONER TO THE BOARD OF DIRECTORS**
- P17: TRUE COPY OF ORDER DATED 16.1.2006 ISSUED BY THE 1ST RESPONDENT**
- P18: TRUE COPY OF COMPLAINT NO.209/2006 FILED BY THE 5TH RESPONDENT BEFORE THE 6TH RESPONDENT**

- P19: TRUE COPY OF ORDER DATED 15TH MARCH, 2006 PASSED BY THE LOK AYUKTA IN COMPLAINT NO.209/2006
- P20: TRUE COPY OF COMMUNICATION DATED 25.3.2005 SENT BY MR.R.BABU TO THE ENQUIRY OFFICER
- P21: TRUE COPY OF COMMUNICATION DATED 7.4.2005 ISSUED BY THE 1ST RESPONDENT
- P22: TRUE COPY OF THE MINUTES OF THE ENQUIRY OF THE ENQUIRY OFFICER HELD ON 30.11.2004
- P23: TRUE COPY OF THE ORDER DATED 10.11.2006 CONFIRMING SRI.N.MADHAVAN AS SECURITY GUARD GRADE I
- P24: TRUE COPY OF THE CERTIFICATE OF REGISTRATION IN RESPECT OF THE VEHICLE KL-02/P-9408
- P25: TRUE COPY OF THE SIGNATURE AFFIXED BY N.MADHAVAN STATING THAT HE HAS CHECKED THE VEHICLE
- P26: TRUE COPY OF THE JUDGMENT DATED 12.8.2014 IN C.C.NO.562/2005 OF THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST CLASS, KARUNAGAPPALLY

RESPONDENT'S EXHIBITS

- R1(A): TRUE COPY OF THE ORDER DATED 27.10.2004 ISSUED BY THE COMPANY REJECTING THE OBJECTIONS OF THE PETITIONER

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P(C). No.11573 of 2006

Dated this the 12th day of November, 2015.

JUDGMENT

The petitioner, who was the Chief Security Officer of the 2nd respondent, assails Exts.P9, P12, P15 and P19 in the above writ petition.

2. Ext.P9 is an order of the respondent Company rejecting the claim of the petitioner to change the Enquiry Officer, appointed to conduct an enquiry into the charges levelled against him on the ground that the Enquiry Officer is biased against the petitioner. Ext.P12 is the enquiry report and Ext.P15 is the order passed by the disciplinary authority imposing the punishment of discharge. Ext.P19 is an order of the Lok Ayukta wherein the petitioner was

directed to be impleaded, in a petition filed by a Union of workers of the 2nd respondent, against the petitioner's reappointment; which was ordered by the Board of Directors as per Ext.P17.

3. One has to first deal with the contention with respect to Ext.P19 order and whether the Lok Ayukta had jurisdiction to proceed with the complaint raised by the respondent Union. The complainant before the Lok Ayukta is the 5th respondent herein. A learned Single Judge of this Court had, by order dated 10.7.2006 stayed the proceedings before the Lok Ayukta. The learned Single Judge had considered the issue elaborately and held that prima facie the 6th respondent Lok Ayukta, does not have the jurisdiction to investigate into Ext.P16 complaint; referring to **Kerala State Civil Supplies Corporation v. Kerala Lok Ayukta - 2006 (1) KLT 692.**

4. Useful reference can be made to paragraphs 4 & 5 of the interim order dated 10.7.2006, which is extracted hereunder:

"4. *It may be contended in support of the order under challenge in this Writ Petition that the petitioner's case comes under the category called 'claims which arise on termination of service'. But it is doubtful whether, discharge from service as penalty will fall within the above clause, though termination simpliciter may come within the purview of that clause. The former is the result of disciplinary action. Discipline is a service condition outside the purview of the Act. Learned counsel for the petitioner has drawn my attention to the meaning of the words, 'action' as well as 'grievance' as defined in Section 2 (a) and (h) of the aforesaid Act. It is contended that a Trade Union, 5th respondent herein, is the complainant before the 6th respondent and as held by the Hon'ble Supreme Court, it has no locus standi to maintain a complaint in respect of matters*

relating to disciplinary action and appointment of employees. Only those who are directly affected have got locus standi. Counsel submits that the question of maintainability of the complaint as also that of jurisdiction were specifically raised for the consideration of the 6th respondent. But the 6th respondent turned down the plea without reference to relevant provisions of the Act, so much so, it is difficult to understand how the 6th respondent came to the conclusion that the objections raised by the petitioner regarding jurisdiction were not sustainable. Reference is made to the judgment of a Division Bench of this Court in Kerala State Civil Supplies Corporation v. Kerala Lok Ayukta (2006 (1) KLT 692).

5. *According to the counsel for the 5th respondent what was impugned before the Lok Ayukta was reappointment consequent on removal from service by way of disciplinary action, and therefore, the 6th respondent has got the power to investigate into the complaint. Learned counsel is not in a position to point out, based on pleadings in the complaint, any*

allegation of mismanagement or mal-administration attributable to the first or the second respondent."

This Court is in respectful agreement with the observations made therein that the Lok Ayukta does not have jurisdiction to proceed with the complaint so filed by the 5th respondent. Hence, it is declared that the Lok Ayukta does not have power to proceed with Complaint No.209/2006.

5. The first contention raised against the enquiry is the bias alleged against the Enquiry Officer. The bias is alleged on two counts. One, that the Enquiry Officer had been a regular person conducting domestic enquires in the Company and second, that his illegal request for vehicles were turned down by the petitioner, who was in charge of the vehicles of the Company.

6. The learned counsel would specifically point to Ext.P9, wherein it has been stated by the Company that the

Security Officer is not the officer sanctioning the use of vehicles to controvert the same, reliance is placed on Ext.P11 circular, which puts the Deputy Manager (Security) in charge of the vehicles and makes him the authority to approve requisition of vehicles by the officers of the Company. The contention raised is that the plea of bias and the prejudice so caused to the petitioner was not properly considered in Ext.P9. The learned counsel would also place reliance on ***S. Parthasarathi v. State of Andhra Pradesh - (1974) 3 SCC 459 and Union of India and others v. Sanjay Jethi and another - (2013) 16 SCC 116*** to contend that the grounds of bias raised against the Enquiry Officer are palpable and real and the same should have persuaded the Company to change the Enquiry Officer.

7. Yet another ground of bias, is the fact that the Enquiry Officer had made some observations in another

enquiry conducted against one of the employees, wherein, the petitioner had appeared as a defence witness and produced some confidential documents, which could not have been produced. It is also contended that the rejection order at Ext.P9, directed the petitioner to raise such contentions before the Enquiry Officer itself, which does violence to the adjudicatory process, since one cannot be a judge of one's own cause. The Enquiry Officer could not have decided whether he is biased or not, is the argument.

8. As to the contention that the petitioner was relegated to raise the contention of bias before the Enquiry Officer itself, a reading of Ext.P9 order does not indicate the same. Ext.P9, after discussing the grounds raised by the petitioner, found that there are no reasonable grounds to come to a conclusion that the Enquiry Officer will not conduct a fair and impartial enquiry. The grounds of bias levelled against the Enquiry Officer having been rejected,

what was indicated in Ext.P9 is that the Enquiry Officer, who is an experienced Advocate, would afford the petitioner all reasonable opportunity to put forward the petitioner's defense against the charges. That is not to say that the Enquiry Officer was given the authority to decide on the specific charge of bias raised against him.

9. However, it is to be noticed that the Enquiry Officer has gone to great length, to discuss on the grounds of bias raised, which are of no consequence. He could have recused himself or could have continued with the enquiry on the basis of the rejection made by the disciplinary authority. This Court would totally eschew the consideration by the Enquiry Officer, of the bias alleged against him.

10. The law on the subject is fairly clear. **Parthasarathi** (supra) specifically held that the Court, on a contention of prejudice being raised on a ground of bias, would not go into the issue of whether the delinquent officer

was really prejudiced or not, but only would look at whether a reasonable man would think that on the basis of the pleaded circumstances, there is likelihood of prejudice being caused. In **Sanjay Jethi** (supra) the issue was whether technical members who had been participated in the collection of evidence and arraignment of charges against a delinquent army officer, could also be made members of the Court of Enquiry constituted. The said proposition would not apply here, since it is not on the same set of facts or on the very same enquiry that the enquiry officer is said to have made observations against the petitioner.

11. A reading of Ext.P9 order would reveal that, in an enquiry conducted against another employee of the Company, the conduct of the petitioner was frowned upon by the Enquiry Officer and certain observations were made against the petitioner, who was a witness for the defence in the said enquiry proceedings. It is revealed that on the

basis of such observations, the petitioner was charge sheeted and enquiry was conducted by another Advocate, in which the petitioner was found guilty and was awarded a punishment.

12. To look into the question of bias raised, the declaration of their Lordships in **Sanjay Jethi** (supra) assumes significance. The Hon'ble Supreme Court held that in the event of allegations of bias, it is to be seen whether there is substantial possibility of bias animating the mind of Judge, against the aggrieved party and that such reasonable apprehension is based on cogent materials and would persuade a reasonable man to find such bias. It was categorically laid down that the said principle cannot be attracted in a vacuum and in dealing with the plea of bias, every Court is required to adopt a rational approach, keeping in view the basic concepts regulating the procedure since the challenge of bias, when sustained makes the

whole proceeding or order in question, a nullity. On a deliberate and logical assessment of the grounds raised by the petitioner, this Court is unable to come to a reasonable apprehension of the petitioner's grounds of bias being sustained as one reasonable and probable.

13. The first ground raised was that the Enquiry Officer had been making illegal demands, for use of vehicles to the petitioner. It is to be noticed that the petitioner does not point out even one instance where the petitioner complained of such illegal acts to his superior officers. Only when the Enquiry Officer was appointed to conduct the enquiry, did the petitioner raise such an allegation.

14. The further allegation is on the basis of some observation made against the petitioner, which culminated in a charge sheet which eventually led to the petitioner being punished for his conduct. The mere fact that the Enquiry Officer had conducted an earlier enquiry with

respect to different charges or had made observations against a witness, who is proceeded against for a totally different charge, cannot be raised as a ground of bias against the Enquiry Officer. If that be so, one judge who hears a case against a litigant and finds against him, cannot thereafter hear any other case in which the same litigant is a party. It is also to be emphasised that on a departmental proceeding against a misconduct, the findings of the Enquiry Officer is not final.

15. Further, it is to be noticed that the enquiry report, Ext.P12, elaborately deals with the various issues and discusses the evidence threadbare. There is absolutely no plea raised of violation of principles of natural justice. The petitioner himself does not have a contention that he had been prejudiced, by the conduct of the Enquiry Officer, at the enquiry or the Enquiry Officer had in any manner denied a fair and reasonable opportunity, to put forward his case.

At the enquiry the charges were read over to the petitioner, the list of documents and list of witnesses handed over, the witnesses permitted to be cross examined and the petitioner also permitted to bring in defence evidence. It was after such elaborate procedure that the Enquiry Officer found the petitioner guilty of the charges alleged.

16. As was earlier found, the findings of the Enquiry Officer does not, at all, regulate the decision of the Disciplinary Authority. It is trite that the Disciplinary Authority has to look into the evidence adduced at the enquiry and either concur with the findings of the Enquiry Officer or differ from the same. Hence, eventually, it is the disciplinary authority who has to take a final call, on whether the petitioner is guilty and as to the punishment, which is to be imposed, considering the gravity of the offences proved. The issue of bias raised against the enquiry officer hence is found to be not reasonable or sustainable on

the grounds projected by the petitioner.

17. The charges levelled against the petitioner are found in Ext.P6 charge sheet, issued to him and allegations are with respect to the 200 bags of cement of the Company being diverted. On 03.09.2004, the respondent Company received 200 bags of cement purchased from M/s.Malabar Cements, at the Titanium Di-oxide Pigment Unit at about 11.30 hours. The Civil Department of the Company received the same by a Material Issue Note (MIN) at 4.45pm and the same was directed to be unloaded at the contractor's godown, which is within the premises of the Company. The usual practice was for one of the store employees to accompany the load and supervise the unloading at the contractor's site. Here, one Joy, Worker Grade-II of the Store Section had followed the lorry load, but on his reaching the contractor's site, he was informed that the lorry had left the site after unloading. He is said to have

enquired with the representative of the contractor at the site and the Security Guard one N. Madhavan, who had vouched that the unloading was carried out and the lorry had left the premises.

18. The worker, however suspicious of the same, had immediately informed his Superior Officer one Sankaran, Assistant Stores Officer (ASTO). The ASTO, along with the worker, approached the Security Guard and he did not give a clear indication as to what transpired and hence they approached the petitioner herein, who was the Chief of Security, who directed them to hush up the issue and not report it to the higher officers.

19. The petitioner, though was present in the premises of the Company till 6.45, did not report the issue to either his Superior Officers nor to the Police. On the next day, a subordinate of the petitioner drew up a statement and filed an FIR before the jurisdictional Police. The petitioner hence

was proceeded against on the following charges:

"1. Theft, fraud or dishonesty in connection with the company's property or business or property of another person within the premises of the company (Rule 5.1 of the CDA Rules).

2. Acting in a manner prejudicial to the interest of the company (Rule 5.6 of the CDA Rules).

3. Commission of any act subversive of discipline or good behaviour (Rule 5.20 of the CDA Rules).

4. Instigation or abetment of or attempt at abetment of any acts which amounts to misconducts (Rule 5.22 of the CDA Rules).

5. Acting in a manner likely to bring discredit or disrepute to the company or its management (Rule 5.23 of the CDA Rules).

6. Pursuance of conduct unbecoming of an officer of the company (Rule 5.24 of the CDA Rules).

7. Breach of any law or rules of the company or orders/ instructions issued by the company from time to time (Rule 5.35 of the CDA Rules).

8. Wilful acts or omission causing damage or loss to the company (Rule 5.38 of the CDA Rules) and

9. Breach or violation of duties and obligations provided in Rules 4.1, 4.3

and 4.4 of the CDA Rules (Rule 5.40 of the CDA Rules)."

20. The jurisdiction of this Court under Article 226, examining an order of punishment imposed by the Disciplinary Authority after an enquiry, is well-established and needs no reiteration. This Court would not attempt a re-appreciation of the evidence and what is to be looked into is whether the Disciplinary Authority has come to the conclusion of guilt on the basis of acceptable evidence and not based on any extraneous considerations. A reading of the Enquiry Report would in fact show the evidence, which is relied on in the enquiry report, upon which reliance was placed by the Disciplinary Authority also.

21. The Security Guard at the gate, one N.Madhavan, who was proceeded against simultaneously by the Company, had categorically stated before the Enquiry Officer (paragraph 18.06 of the Enquiry Report) that the

petitioner had ordered him, over telephone, to allow one load of cement meant for the M.S unit of the Company, along with the Supervisor of M/s.Vijaya Construction (Contractor) to be permitted to go out, without the gate-pass. The petitioner is said to have offered the reason of no worker being available after 5pm, to unload the cement. It was also assured that the vehicle pass would be issued shortly from the Materials Department. When no gate pass was forthcoming, Sri. Madhavan suspected foul play and refused to allow the empty vehicle, which had subsequently come to the gate of the Company, to enter the premises of the Company. Sri. Madhavan also deposed that when he refused the lorry entry into the premises of the Company, he had seen the Supervisor of the Contractor, who was in the vehicle, contacting somebody over telephone, upon which the petitioner again called him.

22. A reading of the Enquiry Report would indicate that there were two gates, through which there was ingress and egress into the Company, one called the Ilminite Gate and the other called the Material Gate. Ilminite and Rutile, the minerals produced by the Company were only transported through the Ilminite Gate and all other materials coming into the Company and going out of the Company had to pass through the Materials Gate. Sri. N. Madhavan was in charge of the Ilminite Gate and it was through this gate that the petitioner directed the loaded lorry to be sent out of the premises of the Company. The lorry presumably unloaded the cement outside the Company and came back to the premises of the Company, where the petitioner was waiting. By which time, the foul play was detected and there was a commotion in the Company. It is also an admitted fact that 200 bags of cement was detected and recovered from outside the Company in a third party's premises.

23. The evidence of Sri.N.Madhavan alone could not have found the petitioner guilty, since for all purposes, he is the Security Guard, who permitted the loaded lorry to go out of the premises of the Company. But what clinches the complicity of the petitioner is the evidence of the other witnesses. Sri. Sankaran, the ASTO, had deposed (paragraph 19.10 of the Enquiry Report) that he had met the petitioner in his room, as required by the Security Inspector and had informed him about the probable diversion of the 200 bags of cement. It was the specific statement of Sri.Sankaran that when he saw the petitioner in his room, the petitioner questioned him as to whether the matter was reported to the Duty Officer. Sankaran replied that he had informed the Store Officer, but not to the Duty Officer. The petitioner thus got the number of the Store Officer, one Raghudas from Sankaran and called him over the mobile phone. Sri.Sankaran, who heard the

conversation, deposed that the petitioner had told the Store Officer over telephone to hush up the matter and not to report the incident to the Superior Officers. The same request was made to Sankaran also. While Sankaran was being cross-examined, the only question put to Sankaran on the specific statements made by him was whether it was proper for him to use the Mobile Phone inside the Company premises. Further, in addition to Sankaran's deposition, the Stores Officer Sri.Raghudas (again paragraph 19.10 of the Enquiry Report) confirmed the fact the petitioner had called him over Mobile and asked him to hush up the issue. The evidence of Sankaran and Raghudas remained uncontroverted.

24. The petitioner offered an alibi to refute Madhavan's claim of his having called Madhavan around 5pm. He contended that at that time he was in his cabin having discussions with the Security Officer Ramadasan. He

categorically stated that the diversion of 200 bags of cement was informed to him only at 6.15pm, when he was in the Security Inspector's cabin. The petitioner's version was that he had entrusted the Security Inspector to trace out the goods and he left the Company. He confirmed the theft only at 8pm when he contacted the ASTO, after reaching home. It was also contended that one peon, Sasidharan saw the petitioner and the Security Officer in the cabin of the petitioner. Both Ramadasan and Sasidharan deposed against this and denied the assertion of the petitioner [paragraph 19.06 of the Enquiry Report]. The Security Inspector, one John, also a witness asserted that the petitioner had come to the security cabin only at 7pm [paragraph 19.06 of the Enquiry Report]. The alibi hence stood demolished; which further points a finger at the petitioner. Further, even going by the petitioner's statement, he left the Company even after being notified of the missing cement bags, which by

itself is a highly suspicious conduct, on the part of the Chief Security Officer.

25. The petitioner, who is the Chief of Security, also contends that he was not available in the Company when the incident was detected and that he had left the premises, just prior to the lorry being detained at the Materials Gate. He also contends that he was informed of the same over the telephone that an incident of a theft of 200 bags of cement of the Company was detected. This is contrary to his own version, referred to above. Be that as it may, the petitioner would also contend that he informed the matter to his Higher Officers and did not do anything further in the matter. The petitioner also has a contention that he could not have filed a complaint by himself before the Police Station, unless he got sanction from the higher authorities. This Court is unable to countenance such contention. The fact that he kept away from the premises of the Company

after detection of the theft itself, points at his involvement in the incident.

26. It was also brought out on evidence that the petitioner, though checked out at 5pm when the duty hours end; was remaining in the premises of the Company, allegedly to check the overstayal of any other employee. The Security Officer, a witness, clearly deposes that there is no requirement for such checking, since any overstayal could be detected from the records of the time office and never was there a practice of such checking being done in the Company. It is evident that the petitioner had been waiting for the vehicle to come back after unloading the cement. In such circumstance, this Court is unable to find any reason to interfere with the findings of the Disciplinary Authority.

27. One other contention raised by the petitioner's counsel is that the criminal case, in which the petitioner was

arrayed as an accused, had ended in the acquittal of the petitioner and the same would have relevance while considering findings of guilt, in a domestic enquiry, on the very same set of facts, as has been held by the Hon'ble Supreme Court in ***G.M Tank v. State of Gujarat and Others [(2006) 5 SCC 446]***. A reading of the said decision would indicate that the Hon'ble Supreme Court in the said case was concerned with a case where the employee was honourably acquitted in the criminal trial during the pendency of proceedings, challenging dismissal. Here, it is to be noticed that Ext.P26 order of the Judicial Magistrate, Karunagappally does not indicate such honourable acquittal. From the order it is seen that the Assistant Public Prosecutor had filed an application for withdrawal of the complaint, since there was no sufficient material collected to prove the allegation of criminal breach of trust as well as misappropriation. The learned Magistrate found no reason to

decline sanction for withdrawal, since on such withdrawal, there could be occasioned no adverse consequence, to the public interest.

28. The learned counsel appearing for the respondent Company would in fact contend that the respondent Company had raised an objection to the said withdrawal. Whatever that be, Ext.P26 does not indicate any honourable acquittal. The learned counsel for the petitioner would in fact refer to the findings in Ext.P26 about the tug of war among the employees of the Company and the workmen's organisations, upon which several false cases were booked.

29. This Court does not find any such finding in Ext.P26. The learned Magistrate had merely referred to the said contention raised in the petition for withdrawal. The learned Magistrate also found that the cement bags were recovered and that no monetary loss has been sustained to the Company; as grounds for sanctioning the withdrawal.

These are not sustainable reasons when considering the allegations levelled against the employee in a properly constituted disciplinary enquiry.

30. One other plea urged was that contract between the Company and the contractor had come to an end; as per the terms of the agreement. It cannot be ignored that there are many instances where the contract is extended on mutual agreement, even beyond the periods specified. Further that is not a reason for the Management to shut its eyes to the blatant theft of 200 bags of cement from its premises; from under the nose of the Chief Security Officer.

31. The petitioner, the Chief of Security, was proceeded for active connivance in the theft of 200 bags of cement of the respondent Company. The evidence of the witnesses in the enquiry proved the involvement of the petitioner. This Court does not find any reason to interfere with the punishment of discharge from service, considering

the nature of the charges and the position of trust occupied by the petitioner as the Chief of Security of the respondent Company nor is this Court inclined to exercise any discretion in the matter of punishment imposed, since it cannot be said to be incommensurate with the gravity of the offence.

For all the above reasons, the writ petition would stand partly allowed, declaring that the proceedings in complaint No.562 of 2005 cannot be continued, but however upholding the punishment. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE.

jjj/sp