

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 6425 of 2009 (W)

ID. NO.1/2007 OF INDUSTRIAL TRIBUNAL, ALAPPUZHA.

.....

PETITIONER(S):

**THE EXECUTIVE DIRECTOR,
M/S.M.G.F. MOTORS LIMITED, MATTANCHERRY HALT,
WILLINGDON ISLAND, KOCHI-692 029.**

**BY ADVS.SRI.JOSEPH KODIANTHARA,
SRI.TERRY V.JAMES.**

RESPONDENT(S):

**SRI.GABRIEL S.VARUVA, MALIYECKAL HOUSE,
BOLGATTY, MULAVUKAD P.O., KOCHI-682 504.**

**BY ADVS. SRI.A.JAYASANKAR,
SRI.MANU GOVIND.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 SERIES COPY OF THE SHOW CAUSE CUM NOTICE OF SUSPENSION DATED 05/11/2005.
- EXT.P2 COPY OF THE NOTICE DATED 06/04/2006 ISSUED BY THE PETITIONER TO THE RESPONDENT.
- EXT.P3 COPY OF THE LETTER DATED 05/05/2006 OF THE RESPONDENT GIVEN TO THE ENQUIRY OFFICER.
- EXT.P3A COPY OF THE LETTER DATED 12/05/2006 OF THE RESPONDENT GIVEN TO THE ENQUIRY OFFICER.
- EXT.P4 SERIES COPY OF THE PROCEEDINGS OF THE ENQUIRY 05/05/2006, 12/05/2006 AND 16/05/2009.
- EXT.P5 COPY OF THE REPORT DATED 19/05/2006 OF THE ENQUIRY OFFICER.
- EXT.P6 COPY OF THE SHOW CAUSE DATED 23/05/2006 ISSUED TO THE RESPONDENT.
- EXT.P7 COPY OF THE REPLY OF THE RESPONDENT DATED 12/06/2006 TO THE SHOW CAUSE.
- EXT.P8 COPY OF THE DISMISSAL NOTICE DATED 20/06/2006 ISSUED TO THE RESPONDENT.
- EXT.P9 COPY OF THE CLAIM STATEMENT DATED 31/01/2007 OF THE RESPONDENT IN I.D. NO.1/2007.
- EXT.P10 COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN I.D. NO.1/2007 DATED 28/05/2007.
- EXT.P10A COPY OF THE ADDITIONAL AFFIDAVIT STATEMENT FILED BY THE PETITIONER IN I.D. NO.1/2007 DATED 23/01/2008.
- EXT.P11 COPY OF THE PRELIMINARY AWARD DATED 31/07/2008 OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA IN I.D. NO.1/2007.
- EXT.P12 COPY OF THE AWARD DATED 29/09/2008 OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA IN I.D. NO.1/2007.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

K.VINOD CHANDRAN, J

W.P.(C).No. 6425 of 2009

Dated 21st January, 2015

JUDGMENT

The petitioner/Management challenges Ext.P12 Award of the Industrial Tribunal (for short 'the Tribunal') directing reinstatement with full back wages, continuity of service and all other attendant benefits. The 1st respondent herein was admittedly the workman who was dismissed from service allegedly on the basis of an enquiry, in which the allegations were said to have been proved. Admittedly, the workman had raised serious contentions against the validity of the enquiry in the Claim Statement itself. The Management did not have a prayer for opportunity to adduce fresh evidence, in the event of the enquiry being found to be not valid, in the written statement.

2. The Tribunal, by Ext.P11 preliminary

order, set aside the enquiry and there being no prayer for adducing fresh evidence at the first opportunity, declined the subsequent prayer made and passed Ext.P12 Award which is impugned herein.

3. A reading of Ext.P11 would indicate that the respondent was employed as a Painter in the service of the Management and he was confirmed in service w.e.f 01.12.2002. It was alleged by the workman that, on 03.09.2005, the workman was directed to resign from the service of the Management and on his refusal, he was denied employment. The respondent admittedly had filed a complaint before the District Labour Officer, Ernakulam, aggrieved by the said denial of employment. The District Labour Officer had also initiated conciliation proceedings on 22.09.2005 and in response to a notice, Management had, by letter dated 05.11.2005,

intimated the District Labour Officer that the workman was kept out of the employment pending disciplinary proceedings.

4. The respondent then, intimated his willingness to rejoin duty as per his letter dated 10.11.2005 and reported on 14.11.2005. Again, on refusal to permit resumption of duty, the respondent brought the same to the notice of the District Labour Officer. It was then the Management issued a suspension order dated 05.11.2005 alleging that there were some complaints received from the co-employees based on which the suspension order-cum-show cause notice was issued. The Management then appointed an Enquiry Officer who is said to have conducted the enquiry and arrived at a finding of guilt based on which the dismissal was effected.

5. The Labour Court levelled charges against the delinquent employee, by the show cause notice/suspension order which is extracted in the preliminary order of the Labour Court. A reading of the same would indicate that despite there being a conciliation proceeding pending before the District Labour Officer, the Management had alleged in the show cause notice that after 02.09.2005 the respondent had not turned up for work. It was alleged hence, that there is a presumption that he is not interested in continuing in the service of the Management.

6. In addition to that, the allegations raised in the complaints which were said to have been enclosed along with the suspension order, was noticed and a charge of dishonesty in connection with the work and disorderly behaviour towards the subordinate workers was

made. One other specific allegation was that, after abandoning the work, the respondent had threatened the subordinate workers/complainants of dire consequences. The allegation of denial of employment which was pending conciliation before the District Labour Officer was also noticed in the show cause notice. It was on these allegations in the show cause notice that the enquiry proceedings were first initiated.

7. The Labour Court essentially found that the charges were vague and the respondent could not have defended himself properly on the aforesaid allegations which was very general in nature. Neither was a specific instance of dishonesty referred to in the show cause notice or the charge sheet. Subsequently a charge sheet is seen to have been issued on 06.04.2006 wherein it was alleged that in one of the Sections of the establishment the respondent had

been resorting to illegal activities against co-workers including distortion of money. Threats levelled against the subordinate workers was also alleged against the workman. It is to be specifically noticed that, the charge sheet issued on 06.04.2006 which has also been extracted in Ext.P11 order, substantially differs from the allegations raised in the show cause notice. The Labour Court found that the charges were vague and that no person could have defended the same in a domestic enquiry. The findings of the Enquiry Officer were also found to be vague for reason of the show cause notice and charge sheet being not in definite terms.

8. In addition to the aforesaid contentions, the workman had two other contentions with respect to the validity of the enquiry; one, the ground of the petitioner

having not been permitted to obtain assistance of a lawyer to defend him and then, the workmen having not been paid subsistence allowance while the disciplinary proceedings were pending in the Tribunal. On the ground of non-payment of subsistence allowance the Labour Court refused to interfere in the enquiry proceedings. With respect to the other ground, the Tribunal however, found the same to be in violation of the principles of natural justice.

9. The learned counsel for the petitioner/Management would argue that going by the established position no workman has a right to be represented by a lawyer, unless the Management engages a lawyer to present their case. This aspect was not taken note of, by the Tribunal, is the argument. It is to be emphasized that merely on such ground being raised, the Tribunal has not found the same to

be a reason to hold that there is violation of principles of natural justice. The Tribunal in fact considered the circumstance in which the petitioner, a Painter who was merely a matriculate, was pitted against the General Manager of the Company, the latter of whom was appointed as a Presenting Officer. The workmen in fact had specifically filed a representation before the Enquiry Officer contending that none of his co-workers were willing to represent him and it was in such circumstance, that a request for permitting the delinquent employee to be represented by a lawyer, was made. The said request made by the workman was found to have been acknowledged by the Enquiry Officer on 05.05.2006. However, the Enquiry Officer refused to consider the same and desisted from making any orders on that count rejecting the request made.

10. In the facts which come to fore in the above circumstance, this Court is not inclined to interfere with the finding since the fact situation would commend this Court to agree with the Labour Court that the non-consideration of the application made by the workmen for the effective defence of his case before the Enquiry Officer, was refused to be considered by the Enquiry Officer. It is not the issue of denial of permission to be represented by a lawyer that was found to be vitiating the enquiry; but the factum of denial of effective defence.

11. The aforesaid reasoning adopted by the Labour Court, is perfectly in order. This Court does not find any reason to interfere with the preliminary order. The preliminary order having set aside the enquiry, definitely the petitioner/Management could have been permitted to adduce evidence; only if the Management had a

prayer in the written statement. [President, Edayar Ksheerotpadana Sahakarana Sangham v. Industrial Tribunal, Alappuzha (2007 (2) KHC 200), Shambhu Nath Goyal v. Bank of Baroda and Others [(1983) 4 SCC 491] and Karnataka State Road Transport Corpn. v. Lamshidevamma (Smt) and Another [(2001) 5 SCC 433].]

12. As a consequence of the aforesaid findings supported by the afore cited precedents, Ext.P12 Award, granting reinstatement of the workman with continuity of service with full back wages, has to be allowed.

The writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

//True Copy//