

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 6076 of 2010 (H)

PETITIONER:

**K.BHASKARAN,
SENIOR ASSISTANT, REGIONAL OFFICE
KERALA WATER WAREHOUSE CORPORATION, ALUVA.**

BY ADV. SRI.M.S.UNNIKRISHNAN

RESPONDENT(S):

- 1. CHAIRMAN,
KERALA STATE WAREHOUSING CORPORATION
PANAMPILLY NAGAR, ERNAKULAM.**
- 2. KERALA STATE WAREHOUSING CORPORATION,
REP. BY ITS MANAGING DIRECTOR, PANAMPILLY NAGAR
ERNAKULAM.**

**R1 & 2 BY ADV. SRI.MAJNU KOMATH, SC, K.S.W.C.
R1 & R2 BY ADV. SRI.E.K.NANDAKUMAR
R1 & R2 BY ADV. SRI.K.JOHN MATHAI
R1 & R2 BY ADV. SRI.P.BENNY THOMAS
R1 & R2 BY ADV. SRI.P.GOPINATH
R1 & R2 BY ADV. SRI.S.RAMU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE INSPECTION REPORT PREPARED BY THE CHAIRMAN**
- P2 : TRUE COPY OF THE PROCEEDINGS OF THE REGIONAL MANAGER, KSWC PALAKKAD DATED 14.2.2007**
- P3 : TRUE COPY OF THE COPY OF THE MEMO OF CHARGES DATED 24.4.2007**
- P4 : TRUE COPY OF THE REPLY TO THE MEMO OF CHARGES DATED NIL**
- P5 : TRUE COPY OF THE COUNTER STATEMENT DATED 7.12.2007**
- P6 : TRUE COPY OF THE REPORT SUBMITTED BEFORE THE RESPONDENT BY ENQUIRY OFFICER**
- P7 : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 29.2.2008 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER**
- P8 : TRUE COPY OF THE REPLY TO THE SHOW CAUSE NOTICE DATED 12.3.2008**
- P9 : TRUE COPY OF THE PROCEEDINGS DATED 28.5.2008 ISSUED BY THE MANAGING DIRECTOR OF THE RESPONDENT**
- P10 : TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
- P11 : TRUE COPY OF THE ORDER DATED 13.11.2008**
- P12 : TRUE COPY OF THE PROCEEDINGS OF THE MANAGING DIRECTOR OF THE RESPONDENT DATED 26.4.2006**
- P13 : TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DATED 27.4.2006**
- P14 : TRUE COPY OF THE LETTER ISSUED BY THE DEPUTY SUPERINTENDENT OF POLICE, KANNUR ON 13.7.2006**
- P15 : TRUE COPY OF THE RELEVANT ENTRY IN THE MOVEMENT REGISTER**

- P16 : TRUE COPY OF THE PAGE 15 OF THE ATTENDANCE REGISTER**
- P17 : TRUE COPY OF THE CERTIFICATE DATED 2.5.2007 ISSUED BY THE RR
MODERN RICE MILL PALAKKAD**
- P17(A) : TRUE COPY OF THE CERTIFICATE DATED 02.5.2007 ISSUED BY
SNEHAM RICE MILL, PALAKKAD**
- P18 : TRUE COPY OF THE RELEVANT EXTRACT OF REGISTER OF
INSECTICIDES AND FUMIGANT**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 6076 of 2010 (H)

Dated this the 15th day of September, 2015

J U D G M E N T

The petitioner, an employee of the 2nd respondent Corporation, is aggrieved by the punishment imposed pursuant to a disciplinary enquiry on an allegation of commission of mis-conduct.

2. The allegation of mis-conduct arose from an inspection report of the 1st respondent, Chairman of the 2nd respondent Corporation. The petitioner, at that point of time, was working as the Assistant Manager at the State Warehouse, Muthalamada, Palakkad District. When the Chairman reached the Warehouse at 3.30 p.m., the Assistant Manager was absent and it was informed to him that he had gone outside, to hire private godowns, in connection with additional demand of storage space for paddy. On enquiry, a Class-IV employee present at the godown informed the Chairman that the Assistant Manager

had gone at 12.00 noon;, but the movement register showed the Manager having left at 2.00 p.m. No attendance was also marked in the afternoon session. The Chairman immediately contacted the Regional Manager, who informed him that the Assistant Manager had not sought his permission to be absent in the afternoon session or proceed outside on duty. A verification disclosed that the Warehouse floor was infected with termites and there was possibility of causing damage to the tobacco leaves and paddy stored therein.

3. A further enquiry made by the Regional Manager at the Muthalamada Warehouse confirmed the termite attack inside the godown, but however, it was also reported by Ext.P2 that there was no damage to stock caused. It was also informed that there was laxity insofar as taking timely termite control measures and it was also detected that Chlorphyriphos, an insecticide, was available at the Warehouse since 10.11.2006. On the basis of the inspection

as also the report of the Regional Manager, Ext.P3 memo of charges was issued for unauthorised absence in the afternoon of 9.2.2007 and for laxity in taking periodical ante-termite measures. A disciplinary enquiry was held, the enquiry report of which is produced at Ext.P6.

4. At the enquiry, with respect to the first charge of unauthorised absence, the delinquent employee contended that he had gone out on duty in search of godown premises for stocking paddy which was expected to arrive shortly. The absence of the delinquent employee at the time of the inspection of the Chairman was unequivocally proved. The Class-IV employee, who had informed the Chairman that the delinquent employee had left the Warehouse at 12.00 noon changed the version, at the time of evidence and contended that the delinquent employee had only left by 1.15 p.m. However, the delinquent employee had in the movement register recorded that he has left only by 2.00 p.m. The superior officer of the delinquent employee also deposed at

the enquiry that no permission was sought, for leaving the Warehouse premises. The Regional Manager, immediate superior of the delinquent employee, was on leave on that day, but then the delinquent employee could have contacted either the Zonal Manager or the General Manager at the Head Office to seek permission to leave his designated post, was the finding. The delinquent employee also had a contention that in an emergency the delinquent employee could leave the premises and get ratification of such action on the next day. Though such ratification was obtained, it was evident that the time recorded in the movement register was not correct and the reason for leaving the premises was also recorded in the attendance register subsequent to the inspection of the Chairman.

5. The delinquent employee having been issued with a copy of the enquiry report, his objections were also considered by the disciplinary authority as per Ext.P9. The disciplinary authority concurred with the findings of the

Enquiry Officer and deviating from the original proposal of dismissal from service, imposed a punishment of reversion to the post of Senior Assistant for a period of five years. In appeal, the Chairman interfered with the punishment and reduced the period of reversion to two years.

6. The misconduct having been proved, the only contention that could be usefully urged before this court under Article 226 of the Constitution of India is the question of the punishment having no nexus with the misconduct alleged. In this context, it has to be noticed that interference with the punishment under Article 226 of the Constitution of India can only be on the question of proportionality, as considered against the gravity of the offence. It has also been held in a catena of decisions that such interference would be possible only if there is clear perversity found and the punishment shocks the conscience of the Court. Useful reference can be made to the recent decision of the Hon'ble Supreme Court in **Union of India**

and others v. P. Gunasekaran - (2015) 2 SCC 610.

7. In **P.Gunasekaran** (supra), almost on similar set of facts, when the officer in the Central Excise was charged with unauthorised absence from office and for allegedly having left the office after signing the attendance register, was held to be an offence, which warrants discontinuance from service. Herein also, the issue was of unauthorised absence. Though the employee had an explanation of having gone in search of additional storage space, the same was done without informing the superior officers and without getting sanction for keeping away from the designated post. The records were also falsified insofar as there were different versions as to the time in which the petitioner left the Warehouse; while the attendance register showed it to be at 2.00 O'clock, before which the petitioner had left the office. Though the absence stood ratified, the petitioner's absence without sanction and without proper recording in the movement register, stood proved.

8. Coupled with this, the laxity in carrying out termite prevention measures also indicated a serious supervisory lapse on the petitioner, especially since food grains are stored in the godown. The petitioner's explanation that termite measures were not done for fear of affecting the food grains, cannot be fully appreciated since the measure should have been done in such a manner not to affect the food grains, but however, ensuring that no loss is caused to the stock, due to termite attack.

9. Though, punishment of dismissal was initially proposed, the disciplinary authority deviated from the proposal and imposed a punishment of reversion for a period of five years; which was again interfered by the appellate authority by reducing the term of reversion to two years. This Court does not find the punishment to be shockingly disproportionate to the gravity of the offences alleged and proved. This Court also would not attempt to interfere with the same on an equitable consideration,

since, then, this Court would be exceeding the powers conferred under Article 226 of the Constitution of India.

The Writ Petition hence would stand dismissed without costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE