

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

W.P.(C).No.6578 of 2010 (V)

[AGAINST THE THE AWARD DATED 09.11.2009 IN I.D.NO.18 OF 2007
OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNA-CUM-LABOUR COURT,
ERNAKULAM]

PETITIONER(S):-

THE CHIEF MANAGER, PUNJAB NATIONAL BANK,
CIRCLE OFFICE, GOVINDAPURAM, CALICUT.

BY ADV. SRI.P.RAMAKRISHNAN.

RESPONDENT(S):-

1. K.V.GOKULDAS,
KIZHAKKUVETIL HOUSE, THODUVATTI,
PUTHENKUNNU PO, SULTHAN BATHERY - 693 592.

2. THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
38/377, A-3, KARITHALA LANE,
KARSHAKA ROAD, KOCHI-16.

R1 BY ADVS. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.SOBHAN GEORGE
SRI.K.V.GEORGE.

R2 BY ASST.SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.6578 of 2010 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:- TRUE COPY OF CHARGE SHEET DATED 24.7.2004.
- EXT.P2:- TRUE COPY OF CORRIGENDUM DATED 21.10.2004.
- EXT.P3:- TRUE COPY OF ORDER DTD 14/06/05 PASSED BY
THE 1ST RESPONDENT.
- EXT.P4:- TRUE COPY OF PRELIMINARY ORDER DATED 27.07.09
PASSED BY THE 2ND RESPONDENT.
- EXT.P5:- TRUE COPY OF REVIEW PETITION DATED 7.11.2009.
- EXT.P6:- TRUE COPY OF AWARD DATED 9.11.09 IN I.D.NO.18 OF 2007.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

W.P(C) No.6578 of 2010-V

Dated this the 20th day of March, 2015

JUDGMENT

The petitioner is the Punjab National Bank, a management in a dispute; seeking the allegedly innocuous prayer of adducing evidence before the Central Government Industrial Tribunal-cum-Labour Court [hereinafter referred to as “the Tribunal”]; on the domestic enquiry being set aside for violation of principles of natural justice. Admittedly there was a prayer in the written statement for adducing evidence, if the enquiry is found to be vitiated. However, the question cannot be decided merely on the issue of such prayer having been made in the written statement. The conduct of the management-Bank in the proceedings before the Tribunal, as is revealed from the records, is significant in considering the issue.

2. The 1st respondent was working as a Clerk in the management-Bank when he was issued with Exhibit P1 and Exhibit P2 show cause notices. Not satisfied with the explanation given, an enquiry was initiated and by Exhibit P3, dismissal was effected. An appeal filed did not yield any result

and so was the fate of the writ petition filed before this Court. However, on the basis of the reservation made by this Court, the 1st respondent approached the appropriate Government for a reference of the dispute raised on the justifiability of denial of employment, which was referred to the Tribunal.

3. The Tribunal, by Exhibit P4 order, found that the enquiry is vitiated for violation of principles of natural justice. The said finding was on account of the fact that the workman was not granted any opportunity to examine the defence witnesses. Admittedly the workman had filed a list of witnesses he wanted to examine in defence. These were all employees of the management-Bank and the Enquiry Officer had issued notices to the said witnesses, directing them to appear in the enquiry on 12.01.2005. The notice itself was issued on 03.01.2005. On 12.01.2005, the workman sought for an adjournment, since many of the witnesses had not received the notices within time. He also requested for time to produce the witnesses. The Enquiry Officer, however, rejected these claims and closed the evidence. There was on record, request of adjournment of two witnesses, subsequent to the date of posting, for an opportunity to appear,

since they had received the notice belatedly and did not have time to make arrangements for their appearance. This was the aspect on which violation of principles of natural justice was found by the Tribunal. This Court does not find any reason to interfere with the same.

4. The entire controversy arose after that. Since the management had sought for opportunity to adduce evidence, having found the enquiry to be vitiated vide order dated 27.07.2009, the matter was posted for further steps to 18.08.2009, 26.08.2009 and 06.10.2009. On the later two days, the management sought for adjournment and the matter was adjourned for evidence. However, on 03.11.2009, the representative of the management submitted that there is no evidence for the management. Hence, the matter was posted on 09.11.2009. On 09.11.2009, there was an application filed to review the order which closed the evidence, recording the submission of the management that no evidence is to be adduced. The application was made on the ground that the representative of the management was not aware of the fact that, on the enquiry being vitiated, the evidence adduced at the

enquiry would not be looked into. The management, obviously, was not represented by a lawyer; but by a Deputy Manager (Law) of the management-Bank.

5. The said representation has a short history, which has to be noticed to understand the controversy in the aforesaid case, for which the records of the Tribunal were examined by this Court. When the matter was first taken up for adjudication before the Tribunal, an Advocate filed Vakalath, on behalf of the workman. However, the management, based on Section 36(4) of the ID Act, objected to the representation by an Advocate. The objection made by the management-Bank is available in page 24B of the records of the Tribunal, which indicate that the Officer-HRD one Prathibha Kumari P.P. was authorised to represent the Bank before the Tribunal and, hence, the representation by a counsel was objected to by the management. In such circumstances, the Tribunal refused to permit the lawyer to appear.

6. The Union then passed a resolution, by which the lawyer was co-opted to the Executive Committee and, hence he appeared as an Office bearer of the Union before the Tribunal. In

such circumstance, the management sought for appearance by a counsel [at page 34], which was objected to by the Union [at page 135]. That application was rejected by the Tribunal, since the consent required under Section 36(4) was absent. The prohibition is only with respect to an Advocate appearing for either of the parties and a person trained in law, definitely could represent the workman as an Office bearer of the Union. The Law Officer of the Bank had been representing the management. Hence, there could be no infirmity found in such rejection made by the Tribunal. The same was never called in question by the Bank. It is also to be noticed that the said controversy arose only on account of the Bank having objected to the workman being represented by a lawyer.

7. A Deputy Manager (Law) represented the Bank after that, as seen from Exhibit P5 affidavit. It is admitted that the management, through its representative, conceded before the Tribunal on 03.11.2009 that there is no further evidence of the management. In the affidavit along with the application at Exhibit P5, it is indicated that the same was on an inadvertent omission and a review was sought for in the said application. On

09.11.2009, the said review was dismissed by a detailed order, found in page 159 of the records of the Tribunal. It is pertinent to notice here that the said order has not been challenged by the management. The order also indicates the proceedings and paragraph 3 is extracted hereunder:-

“The order sheet reveals that the management had taken several adjournments even for production of the missing documents in the enquiry file. Thereafter for examination of the Enquiry Officer several adjournments were availed. A preliminary order was passed on 27.07.2009 finding that the enquiry is not valid. Thereafter the case was posted for further steps to 18.08.2009, 26.08.2009, 06.10.2009 and finally on 03.11.2009. On that day the representative of the management submitted that the management had no further evidence. Hence, the case was posted for hearing to this day. Now the management has come up with a petition to review the order of 03.11.2009. But even today not even a list of witnesses is filed. No witness is also present. The petitioner is not serious in prosecuting the case. Even now they have not decided whether someone should be examined and what are the documents to be relied on. The intention behind the petition is only to protract the proceedings and lacks merits. The way in which case was conducted so far indicates that even if the order is reviewed the management is not going to make any improvement in prosecuting the case. Hence the petition is dismissed as meritless”.

8. It was on such order being passed that the matter was taken for award and the award was passed at Exhibit P6. In the context of no other evidence led by the management before the Tribunal, the Tribunal had absolutely no option but to set aside the order of dismissal. This Court does not find any infirmity or illegality in the said award.

9. The petitioner-Bank had, definitely, sought for an opportunity for adducing evidence at the first instance, if the enquiry was found to be vitiated. However, though three postings were granted, the management did not adduce any evidence and on the fourth posting date, it was submitted that there is no evidence for the management. Later on, a review was sought, contending that in fact the submission made was on the belief that the evidence adduced at the enquiry would be looked into by the Tribunal. There is no warrant for such assumption when the enquiry itself stands vitiated. It cannot also be said that the representative who appeared for the Bank was not aware of the procedure, since the Bank had chosen to engage its own officer, that too a Deputy Manager (Law) to conduct the proceedings and had also, as a consequence, opposed the appearance of an

Advocate for the opposite party, the workman.

10. Then again, the order passed on 09.11.2009 in the review petition is not challenged till now. The above writ petition has been pending here for the last five years. It is only on the callous indifference of the officers of the Bank that such a situation has transpired. This Court is of the opinion that, in the context of the management having submitted that there is no evidence to be adduced, the Tribunal could not have but set aside the order of dismissal and directed reinstatement with full backwages. It is also pertinent that the Bank has not chosen to challenge the order which was passed in its review application.

Taking all the above circumstances into consideration, this Court is of the opinion that no interference can be caused to the award of the Tribunal. Writ petition would stand dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]