

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 6627 of 2010 (C)

PETITIONER:

**R.RAJAMANI, S/O.RAMASWAMY,
C/O.INDIAN CARDAMOM RESEARCH INSTITUTE,
MYLADUMPARA, KAILASANADU P.O., PIN - 685 553.**

BY ADV. SRI.RAJESH NAIR

RESPONDENT(S):

- 1. THE DIRECTOR,
INDIAN CARDAMOM RESEARCH INSTITUTE,
MYLADUMPARA, KAILASANADU P.O., PIN - 685 553,
IDUKKI DISTRICT.**
- 2. THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, ERNAKULAM.**

**R1 BY ADVS. SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH
R2 BY SRI.N.NAGARESH, A S G OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1 : PHOTOSTAT COPY OF THE PRELIMINARY AWARD DATED 20.7.2009
PASSED BY 2ND RESPONDENT.**

**EXHIBIT P2 : PHOTOSTAT COPY OF THE FINAL AWARD PASSED BY THE
2ND RESPONDENT ON 10.8.2009.**

**EXHIBIT P3 : PHOTOSTAT COPY OF THE ORDER PASSED BY THE ADDL. SESSIONS
COURT (ADHOC-I), THODUPUZZHA ON 24.6.2003.**

EXHIBIT P4 : PHOTOSTAT COPY OF THE ENQUIRY REPORT.

**EXHIBIT P5 : PHOTOSTAT COPY OF THE LETTER NO.160168/2275 DATED 19.2.2010
ALONG WITH ITS COVER ISSUED BY 1ST RESPONDENT TO THE
PETITIONER.**

**EXHIBIT P6 : PHOTOSTAT COPY OF REPORT (NO.RES./LIA/5(1)96/3412)
DATED 19.4.1996 ISSUED BY THE EXECUTIVE DIRECTOR TO THE
FIRST RESPONDENT.**

**EXHIBIT P7 : PHOTOSTAT COPY OF DISMISSAL ORDER (NO.FD/FAD/7/94/5411)
DATED 11.4.1997 DATED 11.4.1997.**

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

K.Vinod Chandran, J.

W.P.(C).No.6627 of 2010-C

Dated this the 08th day of January, 2015

JUDGMENT

The petitioner is a dismissed worker, who challenges Exhibits P1 and P2 orders of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam [hereinafter referred to as “the Tribunal”], who adjudicated the reference with respect to the dismissal of the workman. The dismissal, in fact, was effected of two workmen; but only the petitioner has challenged the order. Exhibit P1 is the preliminary order regarding the validity of the enquiry and Exhibit P2 is the award passed, rejecting the reference and holding the dismissal to be perfectly proper on the strength of the evidence recorded in the enquiry.

2. The learned counsel for the petitioner would contend that the entire incident occurred due to the shortage of water in the labour-lines and the refusal of the security personnel to permit the workers to collect water, from the well within the management-Institute. It is submitted that certain women folk from the labour-lines had approached the security personnel for keeping

the main gate open for easy ingress and egress, which request was declined by the security personnel. This resulted in a tussle, which eventually led to an altercation, of serious proportions; even resulting in the murder of an outsider. Though eight persons were proceeded against for alleged misconduct of riotous behaviour, only two out of the total eight were found guilty and dismissed from service.

3. The dismissal is stated to be an act of victimisation; for reason of the petitioner's refusal to join a particular trade union. The learned counsel for the petitioner also seriously assails the findings in the enquiry and the reliance placed on the identification of the petitioner, by certain witnesses. It is pointed out that there was no electricity supply in the vicinity and there was no possibility of the identification being accurately made. The petitioner-workman was the only person who had filed a reply to the show cause, clearly denying his participation in the incident. The learned counsel would urge that the findings of the Tribunal itself are perverse and no reliance could have been placed on the enquiry report. As an alternate contention, the learned counsel for the petitioner would

plead that the Tribunal, in any event, ought to have interfered with the punishment under Section 11A of the Industrial Disputes Act, 1947 [for brevity “the Act”]. To further buttress the said contention, the counsel relies on the decision of the Hon'ble Supreme Court in ***Palghat BPL & PSP Thozhilali Union v. BPL India Ltd. [(1995) 6 SCC 237]***.

4. The learned counsel for the 1st respondent, however, would contend that the incident in which the petitioner was involved was not merely a physical altercation; but a clear instance of riotous behaviour, which resulted even in the murder of one individual. The evidence recorded at the enquiry would clearly indicate that the petitioner was instrumental in causing destruction to the property of the management and the Hon'ble Supreme Court has time and again deprecated the practise of making interference under Section 11A of the Act merely on misplaced sympathy, without sound reasoning that the punishment imposed is shockingly disproportionate to the gravity of the offence alleged.

5. With respect to the preliminary order, the petitioner had raised four contentions, to challenge the validity of the enquiry.

Primarily the petitioner contended that the charges were vague and incomplete and not accompanied by a statement of allegations, which resulted in prejudice to the workman, as he was unable to set up a proper defence. It was also contended that the conduct of the Enquiry Officer was biased, insofar as the Enquiry Officer having not called for the complaint filed by the security personnel; regarding the incident and the failure to obtain the signature of the parties in every page of the enquiry files as also carrying on the proceedings in Malayalam, when the delinquent employees were admittedly Tamilians.

6. With respect to the charges being vague and incomplete, the Tribunal found that the charge memo, which is produced along with Exhibit M1 Enquiry File, clearly allege that the petitioner along with few colleagues as also some outsiders unauthorizedly entered into the ICRI farm and manhandled the security personnel of the management and caused considerable damage to the farm office building. The same was found to specifically fall under the misconducts as indicated in Clause 21(h), (i) and (r) of the approved Standing Orders of the management. The

requirement as to the statement of allegations, was found to be not a mandate as per the Standing Orders. The decisions relied on that count, were found to be inapplicable, since the dictum laid down therein, was on a specific mandate in the regulations therein, for, the charge memo to be accompanied with a statement of allegations.

7. As to the production of the alleged complaint made by the security personnel, it was found that the enquiry files did not disclose such a request having been made. Despite the assertion made before the Tribunal, at the time of hearing, no questions were put to the Enquiry Officer on that aspect also. The failure to obtain the signatures of parties in all the pages of the depositions and the enquiry file as also the proceedings having been carried out in Malayalam were also not objected to, before the Enquiry Officer. Cross-examination of the Enquiry Officer before the Tribunal also did not raise any suggestion or query on that count too. The grounds raised were specifically rejected by the Tribunal and according to this Court, for valid reasons. The findings of the Tribunal in the preliminary order cannot at all be faulted. There was no violation of principles of natural justice; nor any vitiating factor which would

enable the setting aside of the enquiry report.

8. As to the findings in the enquiry report, which eventually led to the dismissal of the petitioner, it is to be noticed that the Tribunal had elaborately considered the evidence adduced in the enquiry. MW2, a planter residing adjacent to the management-Institute; MW5, the Superintendent of MW2's Cardamom Estate and MW9 an employee of the management from 1984, clearly identified the petitioner herein. MW2 and MW5 specifically deposed that they saw the petitioner smashing window panes with stone. In fact the Enquiry Officer placed no reliance on the evidence of the security personnel, who were also involved in the incident.

9. The specific contention that none of the assailants could have been identified, for reason of there being no electric supply in the vicinity, was specifically considered by the Tribunal. The learned counsel for the petitioner would seriously assail such finding, on the ground that there is no ground for the assumption made by the Tribunal that the villagers are accustomed to poor light during night and, hence, identification would not have been difficult.

To sustain such a contention would be taking the statement of the Tribunal, out of context. The Tribunal in fact found that, admittedly there was no electric supply in the vicinity of the Institute at the time of the incident. However, the Tribunal found that the witnesses who deposed, identifying the assailants, were familiar with the assailants and hence could have identified them even in poor light.

10. Admittedly number of persons had gathered around the area and there were a series of altercations in the course of the same incident. It cannot be said that the mere fact of there being no power supply in the office premises would in fact speak totally against the identification made by various witnesses. This Court does not find any reason, hence, to interfere with the findings of the Tribunal regarding the identification and the involvement of the petitioner in the incident. The witnesses in the enquiry, had deposed the specific overt acts committed by the petitioner herein. This Court does not find any reason to hold the findings of the Tribunal to be perverse or not supported by evidence.

11. What remains is the consideration of the interference under Section 11A of the Act. **BPL India Ltd.** (*supra*) relied on by the

petitioner has to be noticed in the context of the incident which led to the dismissal of the workmen therein. The misconduct alleged in the said case was, causing grievous injuries to the officers of the management. The incident therein occurred in the course of a strike, started, on the management resiling from a conciliation settlement. The striking workmen had gathered together at a place, when the officers of the management, passed through that vicinity. The workmen were provoked into attacking them. The Hon'ble Supreme Court found that, in such circumstances the Labour Court was justified in making interference under Section 11A modifying the dismissal to one of reinstatement with a cut of 75% of backwages.

12. The interference if at all to be made under Section 11A, hence, has to be looked at, in the context of the misconduct alleged herein. The learned counsel for the petitioner would invite this Court's attention to Exhibit P6 report, which was part of the records of the Tribunal, to contend that the same would definitely commend interference under Section 11A of the Act. On a reading of Exhibit P6, this Court is not convinced that there is any mitigating circumstance warranting such interference. The report speaks of a

dispute between the workmen of the management who were operating the water pump which occasioned the disruption of water supply to the residences of the staff and labour of the management. The management is stated to have permitted the employees under it, as also the outsiders, to draw water from the well within the premises of the management-Institute. Exhibit P6 having noticed the said dispute and the complaint made by the management to the police; regarding the interference caused by the pump operators, finds that after the complaint was lodged there was no provocation till 6.30 p.m. on 30.03.1996 .

13. Prior to the incident, three women were collecting water from the well within the premises of the Institute. Some of the employees approached the security personnel, requesting that the main gate be kept open even after twilight. However, the security personnel expressed their inability to accede to such request and specifically pointed out that, the wicket gate would remain open, providing ingress and egress to the persons desirous of collecting water from the well. It is reported that this antagonized the residents in the labour-lines and they mobilised some outsiders also and came

to the gate of the Institute at about 7.30 p.m.; many armed with deadly weapons. The security personnel were attacked by the miscreants and the security personnel as also some outsiders were injured in the incident. The petitioner was one of the persons who had collected at the gate of the Institute, which occasioned the attack on security personnel and caused damage to the property of the management. Hence, even going by the report Exhibit P6 relied on by the petitioner, it was a deliberate attack with pre-meditation. The same cannot be said to be in any manner similar to the facts disclosed in ***BPL India Ltd. (supra)***.

14. The petitioner, an employee of the management, was an active participant in the incident and there was specific evidence to show that he had caused damage to the property of the management-Institute. The Hon'ble Supreme Court has held that the gravity of the offence which constitute gross act of indiscipline, cannot be lightly discounted to hold the punishment of dismissal to be shockingly disproportionate [***LIC of India v. R.Dhandapani, (2006) 13 SCC 613***]. In ***New Shorrock Mills v. Maheshbhai T.Rao [(1996) 6 SCC 590]*** the Hon'ble Supreme Court held that even use

of abusive language against a superior officer justifies punishment of dismissal, if proved. Noticing this, in ***L & T Komatsu Ltd. v. N.Udayakumar*** [(2008) 1 SCC 224], the Hon'ble Supreme Court held so:

“If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable”.

This Court is of the opinion that the Tribunal's finding, that, the dismissal was not shockingly disproportionate warranting interference under Section 11A, is perfectly in order.

In the result, the writ petition would stand dismissed.

Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

vkul/-

(true copy)