

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 13589 of 2006 (P)

PETITIONER :

**K.S.E.W. UNION (INTUC),
REG.NO.467/76, VANDIPERIYAR
REPRESENTED BY ITS PRESIDENT.**

BY ADV. SRI.M.R.RAJESH

RESPONDENT(S) :

- 1. THE INDUSTRIAL TRIBUNAL,
IDUKKI.**
- 2. THE MANAGING DIRECTOR,
PLACKADU ESTATE, VANDIPERIYAR.**

**R1 BY GOVT. PLEADER SRI. V.K.RAFEEK
R2 BY ADVS. SRI.JOSEPH KODIANTHARA
SRI.MITHUN MARKOS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 13589 of 2006 (P)

APPENDIX

PETITIONER'S EXHIBITS :

**EXT.P1 : COPY OF THE AWARD PASSED BY THE 1ST RESPONDENT IN
ID 26/2002 DATED 4.10.2005.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

K.Vinod Chandran, J.

W.P.(C).No.13589 of 2006-P

Dated this the 12th day of January, 2015

JUDGMENT

The petitioner, a representative Union, espouses the cause of a workman, who was dismissed from service, which punishment was converted by the Industrial Tribunal, Idukki [for brevity “the Tribunal”], to one of discharge.

2. Exhibit P1 award is impugned in the above writ petition, contending that in fact the enquiries proceeded against the workman were as a result of victimisation arising from a dispute raised by the workman for being engaged as a driver, which was settled on conciliation before the Labour authorities. There were two workmen involved in the dispute, one of whom has settled the matter and is, hence, no more interested in the issue.

3. The Union espouses the cause of one David, who was dismissed from service by the management pursuant to three enquiries conducted against him. The contention of the Union is that, the mere fact that the three enquiries were conducted in

tandem and the second enquiry relating to an earlier proceeding having been revived; clearly discloses the intention of the management to somehow sent the workman out of employment. The evidence led in the enquiry also is insufficient to sustain even a punishment of discharge, is the contention.

4. The enquiries proceeded against the workman by the management were with respect to three separate instances, two; of the delinquent employee having abused a co-worker and a Supervisor and the 3rd of theft having been committed when the delinquent employee was on duty. The 1st incident occurred on 15.05.1998, when the delinquent workman is alleged to have trespassed into the courtyard of another Estate staff and abused and threatened the staff and his family. A show cause notice was issued, with respect to the incident, on 19.05.1998. Despite a reply having been filed, the management had not taken any further proceedings with respect to the said incident.

5. Later, on 29.07.1998 there was yet another incident, in which the delinquent workman abused an Estate Supervisor and assaulted him. The Estate Supervisor filed a complaint and a second show cause notice was issued and

enquiry initiated. Simultaneously a notice was issued initiating enquiry, as against the earlier incident. While the said enquiries were proceeded with, a third notice was issued on 11.01.1999 regarding the theft of two trees from the Estate when the two workmen who were concerned in the dispute was standing guard over the properties of the estate.

6. With respect to the third enquiry, it is to be noticed that the Tribunal found that the enquiry was not proper for reason of violation of principles of natural justice. The management was permitted to adduce evidence and upon which, the Tribunal, having appreciated the evidence, found that the charges could not be sustained. The management having not challenged the aforesaid findings, the same has become final. In the present writ petition this Court is only concerned with the enquiry with respect to the allegation of using abusive language against a co-worker and family after trespassing into their staff quarters and the allegation of abuse of and assault on a Supervisor.

7. An explanation was offered by the management with respect to the 1st incident having been taken up, after initiation of the domestic enquiry with respect to the 2nd incident. A reading of

Exhibit P1 would indicate that, the 1st enquiry was not proceeded with since the Union leader had assured intervention of the Union, in settling the matter amicably with the co-worker. Though no proceedings were issued closing the enquiry as such, the same was merely kept in abeyance. However, on the 2nd incident with respect to the abuse and assault against a Supervisor, the management was of the opinion that even the 1st enquiry had to be proceeded with. This Court does not find any infirmity in the same, especially since there is no case that the 1st enquiry was closed and also considering the proximity in time of the two incidents, which happened within a span of two months.

8. As to the violation of principles of natural justice, though grounds were raised with respect to all the three enquiries, the Tribunal was inclined to find such violation only with respect to one of the enquiries. With respect to the two enquiries which are subject matter of the present writ petition, the Tribunal, having gone through the enquiry reports and the deposition of the Enquiry Officer, found that the workman had been conferred all opportunity to put forward his case and defend the case alleged against him. The delinquent worker was found to have been represented by the

Union representative, who had cross-examined all witnesses and who was also permitted to peruse the documents placed against the workman. The ground of the initiation of enquiry being bad for reason of it having been initiated by only a Field Officer of the Estate who was not competent to do so, was also negated by the Tribunal, since the Managing Director had deposed that it was on her authorisation such proceedings were initiated. The disciplinary authority, the Managing Director, has passed the order of punishment also. In such circumstances, the ground raised of violation of principles of natural justice has to be negated. The finding of the Tribunal that the enquiry was proper cannot at all be interfered with by this Court.

9. With respect to the allegation of victimisation, this Court does not find any reason to look into the same, since admittedly in the conciliation the management had agreed to provide the workman with the job of a worker for ten days in a month. The workman too had agreed to work as a Watchman for the balance days. No sustainable ground of victimisation could be brought out by the delinquent workman on the mere allegation that there was an earlier dispute raised.

10. The allegation of using abusive language against the co-worker and his wife was found proved. So was the allegation of abuse and assault against the Supervisor. There is no warrant for this Court to interfere with the findings of the Tribunal that the charges stood proved at the enquiry. The same has been found on the basis of the evidence adduced in the enquiry, which was found to be adequate to bring home the guilt of the delinquent employee.

11. The use of abusive language was not confined to one instance, but had been repeated by the delinquent workman. The delinquent workman, in the 2nd incident, had used abusive language and attempted assault on a Supervisor. 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”.

In the present case, it is to be noticed that the Tribunal has interfered with the punishment under Section 11A of the Act and has modified the dismissal to one of discharge. This Court does not find any grounds to interfere with Exhibit P1.

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

Sd/-
K.Vinod Chandran
Judge

vku/-

(true copy)