

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 3453 of 2015 (F)

PETITIONER :

**MUHAMMED SHAFI, AGED 46 YEARS,
S/O SHAHABUDEEN, RESIDING AT DOOR NO.6,
'MY HOME' APARTMENTS, CHATHOTH VAYAL,
KALPETTA, WAYANAD.**

**BY ADVS.SMT.MAJIDA.S
SRI.AJIKHAN.M**

RESPONDENT(S):

- 1. THE KERALA STATE FINANCIAL ENTERPRISES LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
BHADRATHA, MUSEUM ROAD,THRISSUR -680 020.**
- 2. THE ENQUIRY OFFICER,
K.V. HARSHAN, ADVOCATE, AYYANTHOLAE,
THRISSUR- 680 003**

**R1 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS
SRI.ALEXANDER.C.V., SC, KERALA STATE FINANCIAL ENT**
**R2 BY ADV. SRI.SHAJI P.CHALY
SRI.R.SANJITH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-03-2015, THE COURT 31-03-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE MEMO DATED 15.7.2014 ISSUED BY RESPONDENT COMPANY TO THE PETITIONER
- EXHIBIT P2: TRUE COPY OF THE STANDING ORDER OF KERALA STATE FINANCIAL ENTERPRISES.
- EXHIBIT P3: TRUE COPY OF THE REPRESENTATION GIVEN BY PETITIONER TO THE RESPONDENT DATED 30.7.2014
- EXHIBIT P4: TRUE COPY OF THE CHARGE MEMO DATED 5.11.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- EXHIBIT P5: TRUE COPY OF THE MEMO DATED 1.12.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- EXHIBIT P6: TRUE COPY OF THE EXPLANATION GIVEN BY THE PETITIONER TO THE 1ST RESPONDENT DATED 26.12.2014
- EXHIBIT P7: TRUE COPY OF THE MEMO DATED 17.1.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P8: TRUE COPY OF THE ORDER DATED 28/1/2014 OF THE 2ND RESPONDENT.
- EXHIBIT P9: TRUE COPY OF THE ORDER DATED 9/2/2014 OF THE 2ND RESPONDENT
- EXHIBIT P10: TRUE COPY OF THE ORDER DATED 10/2/2014 OF THE 2ND RESPONDENT
- EXHIBIT P11: TRUE COPY OF THE OBJECTION FILED BY 1ST RESPONDENT DATED 10/2/2014

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 3453 OF 2015

Dated this the 31st day of March, 2015

JUDGMENT

The petitioner is suspended pending disciplinary proceedings. The petitioner is serving with Kerala State Financial Enterprises Ltd., the first respondent herein. The 2nd respondent is the enquiry officer. The petitioner approached this Court seeking a direction to the respondents to permit the petitioner to appoint a legal practitioner for representing him in the domestic enquiry. As directed by this Court, the 2nd respondent enquiry officer considered the request of the petitioner and rejected the same as per Ext.P10. Following are the reasons stated in Ext.P10:

i). There is no question of law or complicated facts are brought.

ii). Employee failed to show that the management has allowed any other employee in the past to engage the counsel.

2. The learned counsel for the petitioner, after relying on

the several judgments of the Hon'ble Supreme Court including the recent judgment in **Ramesh Chandra (Prof.) v. University of Delhi and others (2015 (1) ILR 677)** submits that enquiry officer, being a legally trained officer, the employee is entitled for engagement of legal practitioner.

3. On the other hand, learned senior standing counsel appearing for the first respondent submits that regulations of the first respondent do not enable engagement of legal practitioner and also submits that there is no complicated fact and law involved in the matter. In the absence of any standing order or regulations, an employee cannot claim for engagement of legal practitioner.

4. As a matter of fact, this is purely a discretion of the enquiry officer after adverting to the relevant facts to permit the delinquent to engage a legal practitioner. Ext.P4 is a memo of charges. It details certain factual matters against the petitioner, which require a deep probe into the evidence to rope in guilt of the petitioner. In the absence of any Rules or Regulations, the enquiry officer has to exercise his discretion after adverting to the memo of charges laid against the petitioner. The enquiry officer did not advert to the nature of

probe in the matter. Essentially engagement of a lawyer is to ensure fullest opportunity to the delinquent in the disciplinary proceedings. The enquiry officer is a legal practitioner. Therefore, he may not have an impediment in legally trained person to be engaged by the delinquent depending upon the memo of charges. The fair play in that sense has to be understood the imbalance between the enquiry officer and the delinquent in the process of enquiry. The management is also not concerned to engage a legal practitioner or to present the case through a legally trained person. In **Board of Trustees of the Port of Bombay {1983} 1 Supreme Court Cases 124**}, it was held by the Supreme Court as follows:

“10. Even in a domestic enquiry there can be very serious charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum-Prosecuting Officer and an Enquiry

Officer a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay-rolls labour officers, legal advisers - lawyers in the garb of employees - and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now, if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so ? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere ? Domestic

enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge? The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemis for courts alone, it applies with equal vigour ad rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in *M.H.Hoskot v. State of Maharashtra* clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor,

accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation. :

5. In Ramesh Chandra(Prof.) case (cited supra), the Hon'ble Supreme Court followed the above judgment and held in para 30 as follows:

" 30. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner including a retired Hon'ble Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair. "

6. In view of the law declared by the Hon'ble Supreme Court, I am of the view that the petitioner's request for engaging the legal practitioner has to be allowed. However, this cannot be treated as precedent and this is only taking into account the fact that the enquiry officer, being a legally trained person and is also for the reason that the nature of charges against the petitioner requires deeper probe into the complicated issues relating to fact finding.

7. The writ petition is disposed of directing the first

respondent to permit the petitioner to engage an legal practitioner in enquiry proceedings.

The writ petition is disposed of as above. No costs.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/ PS to Judge.

