

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 8143 of 2012 (P)

AGAINST THE ORDER IN ID 31/2010 of INDUSTRIAL TRIBUNAL, PALAKKAD

PETITIONER(S):

**THE GROUP MANAGER AGED 38 YEARS
HARRISONS MALAYALAM LIMITED, MOOPLY VALLEY ESTATE
KARIKULAM, PALAPILLY P.O.
THRISSUR - 680304**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI**

RESPONDENT(S):

**1. THE PRESIDENT
KERALA STATE ESTATE AND PLANTATIN WORKERS UNION(TRADE UNION
CENTRE OF INDIA)HARRISONS MALAYALAM LIMITED
PALAPILLY, AROMA BUILDING II FLOUR, PUTHUKAD-680301**

**2. INDUSTRIAL TRIBUNAL,
PALAKKAD, O/O.THE INDUSTRIAL TRIBUNAL, OLAVAKKODE
PALAKKAD-678002**

**R1 BY ADV. SRI.P.RAMAKRISHNAN
BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1:- TRUE COPY OF THE ENQUIRY FILE WITH REPORT DTD 28/6/2007,**
- EXT.P2:- TRUE COPY OF THE COMPLAINT DTD 23/7/2009 FILED BY TH IST
RESPONDENT BEFORE THE DISTRICT LABOUR OFFICER,**
- EXT.P3:- TRUE COPY OF THE WIRTTEN STATEMENT FILED BY THE
PETITIONER, BEFORE THE 2ND RESPONDENT DTD 18/12/2010**
- EXT.P4:- TRUE COPY OF PERLIMINARY ORDER DTD 21/1/2012 PASSED BY THE
2ND RESPONDENT.**

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 8143 of 2012

Dated this the 19th day of January, 2015

J U D G M E N T

The petitioner, the Management in an industrial dispute, is aggrieved with Ext.P4 Order of the Industrial Tribunal, Palakkad, wherein the Industrial Tribunal, having set aside the enquiry as one held in violation of the principles of natural justice, found that there would be no purpose served in permitting the management to adduce evidence to substantiate the charge, for reason that the charges itself can be found to be unsustainable.

2. It is not disputed that the management had made a request in the written statement itself, for permission to adduce evidence to prove the misconduct, in the event of the Tribunal finding the enquiry to be defective. Though considerable arguments were addressed with respect to the sustainability of the charges, this Court at this stage is not inclined to go into the same, especially since the matter

would have to be considered by the Industrial Tribunal, after proper adjudication.

3. The learned counsel for the petitioner relies on **Bharat Forge Company Limited v. A.B.Zodge & Another - 1996 II LLJ 643** to contend that on the enquiry being found to be defective, whatever be the grounds on which such finding is entered, the management necessarily has to be afforded opportunity for adducing evidence; provided it has been sought for at the first opportunity. In the present case, there is no dispute that in the written statement itself the management had sought for opportunity to adduce evidence. The Tribunal, while considering the preliminary issue, ought not to have looked at the charges and found that they are unsustainable, especially since that could have been done after the evidence was adduced by the Management.

4. In such circumstances, Ext.P4 Order, insofar as the finding that the charges were unsustainable and the

finding that there would be no purpose in permitting the management to adduce evidence, is set aside. The matter is remanded back to the Tribunal. The Tribunal shall expedite the matter and dispose of the matter finally within a period of six months from the date of receipt of a copy of this judgment.

5. It is made clear that this Court has not looked at the sustainability of the preliminary order, which the management would be free to challenge at the time when the original award is challenged and this Court also has not looked at the maintainability of the charges, which the Labour Court would be entitled to look into, at the time of the final disposal.

The Writ Petition is disposed of accordingly.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj