

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No. 9241 of 2013 (E)

AGAINST THE ORDER/JUDGMENT IN APPEAL 32/2012 of KERALA CO-
OP.TRIBUNAL, THIRUVANANTHAPURAM. DATED 14-12-2012

PETITIONER:

P.RAJAN, AGED 62 YEARS
S/O. PADMANABHAN, ASSISTANT PROCUREMENT OFFICER
PROCUREMENT AND INPUT UNIT, MILMA, ANGAMALY
RESIDING AT EDAPUZHAVOR HOUSE, NANTHIATTUKUNNAM
NORTH PARAUR P.O., ERNAKULAM DISTRICT-683 513.

BY ADVS.SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SMT.V.BHARGAVI (PANANGAD)

RESPONDENT(S) :

1. MANAGING DIRECTOR
ERNAKULAM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD.
P.B.NO.2212, EDAPPALLY, KOCHI-682 024.

2. THE DIRECTOR OF DAIRY DEVELOPMENT
PATTOM P.O., THIRUVANANTHAPURAM-695 004.

3. THE ENQUIRY OFFICER
K.SURESH, DAIRY MANAGER, ERNAKULAM DAIRY MILMA
TRIPUNITHURA P.O., ERNAKULAM
PRESENTLY WORKING AS MANAGER, KOTTAYAM DAIRY, MILMA
VADAVATHOOR P.O., KOTTAYAM-686 010.

4. THE BOARD OF DIRECTORS
ERNAKULAM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD.
P.B.NO.2212, EDAPPALLY, KOCHI-682 024.

5. THE MANAGER,
ERNAKULAM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD.
RAMAVARMAPURAM P.O., TRICHUR DAIRY, PIN-680 631.

6. K.J.LOVESON
AGRICULTURAL OFFICER, MARKETING SECTION
ERNAKULAM DAIRY, TRIPUNITHURA, ERNAKULAM-682 301.

R1,R5 BY ADV. SRI.B.S.KRISHNAN(SR.), SC, MILMA
R1.5 BY ADV. SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : COPY OF THE ORDER DTD.19.11.99 ASSIGNING DUTIES AND RESPONSIBILITIES TO THE PETITIONER.

P2 : COPY OF THE ORDER DTD.31.3.2000 ASSIGNING DUTIES AND RESPONSIBILITIES TO THE 6TH RESPONDENT.

P3 : COPY OF THE STOCK VERIFICATION DTD.20.3.02 PREPARED BY THE INTERNAL AUDITORS.

P4 : COPY OF THE STOCK VERIFICATION REPORT DTD.11.3.2002 PREPARED BY THE 6TH RESPONDENT.

P5 : COPY OF SUSPENSION ORDER DTD.27.3.2002 ISSUED BY THE 1ST RESPONDENT.

P6 : COPY OF MEMO OF CHARGES AND STATEMENT OF ALLEGATION DTD.20.5.2002 ISSUED BY THE 1ST RESPONDENT.

P7 : COPY OF THE WRITTEN EXPLANATION DTD.4.6.2002 SUBMITTED BY THE PETITIONER.

P8 : COPY OF SHOW CAUSE NOTICE DTD.27.9.2002.

P9 : COPY OF THE ENQUIRY REPORT DTD.31.7.2002.

P10: COPY OF THE REPLY DTD.7.10.03 SUBMITTED BY THE PETITIONER.

P11: COPY OF THE ORDER BEARING NO.EU/P&A/56/2002/2869 DTD.16.10.2002.

P12: COPY OF THE ORDER BEARING NO.EU/P&A/56/2003/2097 DTD.23.7.03 ISSUED BY THE 1ST RESPONDENT.

P13: COPY OF ORDER BEARING NO.C1/14872/03 DTD.19.2.2004.

P14: COPY OF ORDER DTD.9.2.2012 IN ARC NO.13/2007 OF THE HON'BLE CO-OP. ARBITRATION COURT, THIRUVANANTHAPURAM.

P15: COPY OF JUDGMENT DTD.14.12.2012 IN APPEAL NO.32/12 OF THE HON'BLE CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.9241 of 2013-E

Dated this the 23rd day of June, 2015

JUDGMENT

The petitioner is challenging the punishment awarded to him, as modified in the appellate order and the award passed by the Co-operative Arbitration Court and in the Co-operative Tribunal upholding the punishment.

2. The petitioner, while working as Assistant Milk Procurement Officer in MILMA in their office at Trissur, was under the supervision of the 6th respondent, the Agricultural Officer. On transfer to Angamaly, as per order dated 17.3.2001, he was relieved on 19.3.2001, when he handed over charge to the 6th respondent. After several months of the transfer, the petitioner was asked why he did not complete the stock register. Petitioner informed that he was unable to complete the same as the stock register was kept in the custody of the 6th respondent except for a short period. Show cause notices of 27.3.2002 and 6.3.2002 were issued to him proposing to recover a sum of

Rs.1,14,321.76 and withholding salary. An audit objection was also raised in the meanwhile based on the report of the 6th respondent, against the shortage of the sum of Rs.1,14,321.76/-.

3. Immediately thereafter the petitioner was placed under suspension as per Ext.P5 on 27.3.2002, pending disciplinary action into the allegation as to the shortage occurred, on account of the dereliction of duty on the part of the petitioner. It was followed by Ext.P6 memo of charges issued on 20.5.2002, alleging that the petitioner, who was the custodian of the products of the marketing department of Thrissur Dairy and was responsible to maintain the register of despatch of products, up to-date, caused shortage of goods and as per Clause No.18(3) of Part III it was considered as wilful damage or loss of Union's goods or property and under 18.11 of Part III negligence and neglect of work of ERCMPU Staff Regulation.

4. The petitioner thereupon submitted Ext.P7 explanation on 4.6.2012, denying the allegations against him. His contention was that the 6th respondent was responsible for the shortage, as he took charge from him after verification and that he chose to make complaint regarding shortage only when the Manager, Thrissur Dairy pointed out the same. He explained

the inability to complete the stock register in the midst of heavy work and it was under the custody of the 6th respondent during the period from 1.4.2000 to 20.08.2000 and from 3.09.2000 to 3.9.2001.

5. Dissatisfied with the explanation, an enquiry was conducted, in which the petitioner was found guilty of the charges. Enquiry Officer submitted Ext.P7 report on 31.07.2008. Thereafter Ext.P8 show cause notice was issued by which the petitioner was asked to show cause against the proposal to recover a sum of Rs.1,14,321.76 and to terminate his services. The petitioner submitted Ext.P10 reply pointing out that he was not permitted to seek the assistance of a lawyer by the enquiry officer. By Ext.P11 order passed on 16.10.2002, the Managing Director finalised the disciplinary action terminating the services of the petitioner w.e.f 28.03.2002, the date of suspension and ordered recovery of Rs.1,14,321.76 from him towards the value of products found short from the dues payable to the petitioner.

6. The petitioner thereupon filed an appeal before the Board of Directors. By Ext.P12 order passed on 23.07.2003, the appeal was allowed modifying the punishment. It was ordered

that the petitioner will be appointed as a fresh recruit in the post of Assistant Milk Procurement Officer in the Union, protecting his last drawn salary and the scale of pay. He was directed to report for duty on 28.07.2003. The petitioner thereafter approached the Department of Dairy Development against the punishment, but of no avail. Thereafter he approached the Co-operative Arbitration Court in A.R.C No.13 of 2007. By Ext.P14 order, the A.R.C was dismissed with cost as the Arbitration Court did not find any ground to interfere with the impugned orders. As the petitioner was found to be the custodian of products in the Marketing Department, it was found that he was responsible for maintenance of stock register. His contention against his superior officers was not accepted.

7. As against Ext.P14 order, he filed Appeal No.32 of 2012 before the Kerala Co-operative Tribunal, Thiruvananthapuram. The said appeal was also dismissed.

8. It is as against the orders passed - Exts.P5, P6, P8, P9, P11, P12 and P13 that, the petitioner has approached this Court.

9. It is seen that the punishment was awarded after conducting an enquiry, in which the petitioner was afforded an effective opportunity to defend. The complaint of the petitioner

is that the respondents have not assessed the actual loss caused to them, and the person responsible for the same. Though he had worked at Trichur Dairy only upto 19.03.2001, the loss was calculated for the period from 1.4.2000 to 31.03.2001. His further case was that Mr.Loveson - the 6th respondent, was also responsible for maintaining the stock register, as found in the inquiry and that the stock register was in his custody for the period from 1.4.2000 to 20.08.2000 and from 03.09.2000 to 03.01.2001. According to him shortage was detected only after a long period.

10. I heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for respondents 1 and 3 to 5. The learned counsel for the respondents pointed out that the disciplinary proceedings were finalised as early as in 2002 and the appellate order was passed on 23.07.2003 as per Ext.P12. The petitioner chose to challenge those orders only in the year 2007 in A.R.C No.13 of 2007. It is pointed out that the orders passed by the appointing authority as well as the appellate authority on the basis of the findings in the enquiry report were already scrutinised with reference to the materials on record by the Arbitration Court after a full fledged

trial and thereafter by the Co-operative Tribunal. Relying on the judgments of the apex court in **Union of India v. P. Gunasekaran** [(2015) 2 SCC 610], and **State of Haryana & others V Rattan Singh** [AIR 1977 SC 1512], it is contended that this Court shall refrain from interference with those orders.

11. Having heard the contentions on either side, after considering the impugned orders with reference to the relevant materials, on record, I find that the legality of the orders has already been looked into with reference to the evidence on record by the Arbitration Court and the Co-operative Tribunal, which upheld the same.

12. The main grievance of the petitioner is that the 6th respondent was also responsible for maintaining the stock and stock register and the petitioner alone is proceeded against and punished, without assessing the quantum of loss caused by each of them. It is pertinent to note that the petitioner did not choose to adduce any oral evidence before the Arbitration Court. The arbitration court arrived at its findings on the basis of the documentary evidence made available before it. It can be seen that neither is this a case of no evidence nor is the punishment shocking to the conscience of this Court. The Arbitration Court

and the Co-operative Tribunal have passed the award after going into all the contentions and after considering all materials on record. Neither of those are perverse, warranting interference by this Court. As rightly contended by the learned Counsel for the respondents, the area of interference by this Court is very limited as held by the Apex Court and this Court in a series of judgments including **Union of India v. P. Gunasekaran** [(2015) 2 SCC 610], wherein the Apex Court while considering the challenge in Writ Petitions against the orders passed by the Central Administrative Tribunal, held as follows:

“19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to reappraise the evidence in exercise of its jurisdiction under Articles 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. XXX”

In the light of the law laid down as above, I do not find any

of the circumstances which warrants interference under Article 226 of the Constitution of India.

Hence the Writ Petition fails and is accordingly dismissed.

rtr/

Sd/-
(P.V.ASHA, JUDGE)