

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 19536 of 2006 (A)

PETITIONER :

V.A.LIZZY
CHERIYANKANDATH HOUSE, ECHIPARA P.O.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS :

1. THE SECRETARY,
CHIMONY ESTATE EMPLOYEES CONSUMERS CO-OPERATIVE
SOCIETY LTD. NO.283, P.O.CHIMONY DAM, THRISSUR.
2. THE LABOUR COURT,
ERNAKULAM.

R1 BY ADV. SRI.K.K.PREMALAL
R2 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19536 of 2006 (A)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF CLAIM STATEMENT DATED 10/11/1998

EXT.P2 : COPY OF REJOINDER DATED 15/9/1999 SUBMITTED BY THE PETITIONER

EXT.P3 : COPY OF AWARD DATED 20/6/2005 OF THE LABOUR COURT, ERNAKULAM

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.19536 of 2006

Dated this the 6th day of January, 2015

J U D G M E N T

The petitioner who was working as Sales Assistant under the 1st respondent Society has filed this writ petition challenging Ext.P3 award passed by the Labour Court, Ernakulam in Industrial Dispute No.90/1997. While so working, disciplinary proceedings were initiated against the petitioner alleging shortage of articles valued at ₹18,832.92/- (Rupees Eighteen thousand eight hundred and thirty two and ninety two paise only). She was charge sheeted on 16.10.1995. A domestic enquiry was conducted and the petitioner was terminated from service on 15.01.1997, with effect from 16.10.1995. Another employee was also similarly proceeded against along with the petitioner. He has accepted the punishment, without raising any dispute. The petitioner raised an Industrial Dispute and the same was referred to the Labour Court, Ernakulam, numbered as I.D.No.90/1997. Ext.P3 award has been passed in the said case.

2. According to Adv.Sri.P.Ramakrishnan who appears for the petitioner, the award has been passed, in the absence of the petitioner, though she has not been set ex-parte. My attention has been drawn to Ext.P1 claim statement and Ext.P2 rejoinder filed by the petitioner to point out that, she had raised various contentions before the Labour Court. However, she was not in a position to substantiate

her contentions, since the matter was proceeded in her absence. Therefore, according to the counsel, it is only appropriate that Ext.P3 award is set aside and the matter remitted back to the Labour Court for fresh consideration, after affording an opportunity to the petitioner to adduce evidence in support of her contentions. According to the counsel, the petitioner's counsel had not appeared because he was suffering from various ailments. She had come to know of the award only when she received a copy thereof on 25.02.2006. Therefore, she has filed this writ petition challenging the award. The facts being as stated above, the counsel seeks the issue of appropriate directions setting aside Ext.P3 and directing a reconsideration of the matter.

3. Adv.Sri.K.K.Premalal appears for the 1st respondent Society. According to the counsel, the Labour Court has proceeded in the matter strictly in accordance with law. Rule 10-B of the Kerala Industrial Disputes Rules, 1957 (hereinafter referred to as 'the Rules' for short) requires the grant of only three chances, in the absence of a party to the proceedings. Though the case was posted for evidence on 22.04.2005, since there was no representation for the worker, the case was adjourned to 19.05.2005 and thereafter to 16.06.2005 to enable her to appear. Since there was no appearance on 16.06.2005 also, the Tribunal was left with no other option, but to proceed under Rule 22 of the Rules. Though the petitioner could have moved the Labour Court itself, invoking Rule 23 of the Rules, the petitioner had not filed any

such petition. Therefore, according to the counsel, no interference is called for with Ext.P3. It is the further contention of the counsel for the 1st respondent that, the petitioner had been represented throughout the disciplinary proceedings and enquiry by a Senior Counsel. It was found at the enquiry that the petitioner was guilty of the charges levelled against her. Since all the allegations proved by documentary evidence are accepted by the person, no purpose would be served by remitting the matter to the Labour Court again.

4. Heard. It is no doubt true that the petitioner has preferred Ext.P1 claim statement and also a rejoinder to the statement of the 1st respondent. However, the fact remains that she had not appeared before the Labour Court, when the matter was posted for evidence. I find from Ext.P3 award that the case had been adjourned thrice, over a period of almost three months, to enable the petitioner to appear and participate in the trial proceedings. It was in view of the omission of the petitioner to take advantage of the said chances that, the Labour Court has proceeded in the matter, in her absence, in accordance with Rule 22 of the Rules. The Labour Court has marked the enquiry report and has relied on the same to find that the punishment imposed on the petitioner was justified. It is also worth noticing that the petitioner has not invoked the remedy of moving a petition for setting aside the ex-parte decision as provided by Rule 23 of the Rules. Though the petitioner has stated in the writ petition that her lawyer had been

suffering from various ailments during the relevant period, no material or evidence to substantiate the said statement has been produced before me. In the absence of any such material, I am not satisfied that Ext.P3 award should be set aside, acting only on the basis of a bare statement in the writ petition by the petitioner.

5. I notice that, though two workmen had been proceeded against by the 1st respondent, in the domestic enquiry only the petitioner had challenged the punishment. The other workman had accepted the punishment. The petitioner also appears to have contested the domestic enquiry, with the assistance of a lawyer. Since the Labour Court has proceeded in the matter strictly in accordance with law, I do not find any grounds to interfere with the same especially in the absence of any evidence to substantiate the contention of the petitioner that her omission to contest the matter was not wilful.

In view of the above, this writ petition fails and the same is accordingly dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.