

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 30268 of 2003 (C)

PETITIONER(S) :

1. THE EXECUTIVE DIRECTOR,
VAIDYARATNAM OUSHADHA SALA (PVT.LTD)
THYKKATTUSSERY P.O., THRISSUR DISTRICT
2. MANAGER, VAIDYARATNAM OUSHADHA SALA (PVT.) LTD.
CHUVANNAMANNU P.O. THRISSUR DIST.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S) :

1. INDUSTRIAL TRIBUNAL, PALAKKAD
2. K.V.K. PANICKER, AGENT,
SOUTHERN SHOPPING COMPLEX,
VELYANNUR P.O. , THRISSUR DISTRICT

R,R2 BY ADV. SRI.PAULSON C.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 27-02-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE AWARD DATED 13-09-2001
IN I.D NO. 89/99 PASSED BY THE FIRST RESPONDENT,
PUBLISHED IN KERALA GAZETTE NO. 40 DATED 8-10-
2002

A.M. SHAFFIQUE, J.

.....
W.P. (C) No. 30268 of 2003
.....

Dated : 27 - 02 - 2015

JUDGMENT

Petitioner challenges the award dated 13-09-2001 passed by the Industrial Tribunal in Industrial Dispute No. 89/1999.

2. The issue referred was regarding denial of employment and subsequent dismissal of Sri. C.V. George.

3. The workman contented that he was dismissed from service on account of his absence for a short period. According to the management, they have conducted a domestic enquiry with reference to certain charges which included unauthorised absence as well as raising false and defamatory statements against the Executive Director and the Manager of the Company. The enquiry officer found Sri. C.V. George guilty of the charges

levelled against him , and on that basis, he was dismissed from service. The Tribunal, after an elaborate consideration of the entire factual aspects formed an opinion that though the enquiry report could be accepted, the punishment imposed was not commensurate with the proved charges. It was observed that considering the unblemished past service of the workman, dismissal could have been avoided. Accordingly, the Tribunal set aside the order of dismissal and instead of directing re-instatement with back wages, the management was directed to pay compensation of Rs. 50,000/- (Rupees fifty thousand only) to the workman.

4. The Writ Petition is filed by the Management inter alia contending that the Tribunal having found that the misconduct was proved during inquiry, there was no reason to interfere with the punishment. A perusal of the Tribunal's order would indicate that the Tribunal had considered the entire factual situation involved in the matter and found that the punishment of

dismissal could have been avoided. Therefore, taking into consideration the fact that he was in employment only for a period of 9 years, instead of directing re-instatement with back wages, the Tribunal had exercised the discretion to award compensation of an amount of Rs. 50,000/- to the workman.

4. Learned counsel for the petitioner relies upon a judgment of the Supreme Court in Mahindra and Mahindra Ltd. v. N.B. Naravade - (2005) 3 SCC 134. In this case, the Supreme Court had considered the question regarding interference of Court in the matter relating to punishment when the misconduct is proved. There is no dispute about the fact that the Courts power to interfere with the punishment is very limited. However, if it is a case where the punishment is shockingly disproportionate to the proved charges, it is always open for the Court to interfere with the punishment. This proposition is very much settled by the Apex court. A perusal of the Tribunal's order clearly indicates that the Tribunal was not satisfied with the

imposition of punishment of dismissal in a case where the charge levelled against the workman was only unauthorised absence and making some false defamatory statements against the Executive Director of the Company.

5. Having regard to the fact that the exercise of power by the Tribunal is proper and taking into consideration the proportionality of the punishment imposed, I am of the view that the Tribunal has properly exercised its discretion. Hence it may not be proper for this Court to interfere with the said exercise of discretion at this point of time.

In the result, there being no merit in the Writ Petition, it is accordingly dismissed.

Sd/- A.M. SHAFFIQUE
(Judge)

ani/

/truecopy/

P.S. to Judge