

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 27447 of 2004 (P)

PETITIONER :

**S.MOHAMMED KHALIL,
S/O. SHAMSUDHEEN,
MANAGER, PUNALUR ESTATE,
VALACODE P.O., PUNALUR,
KOLLAM DISTRICT.**

**BY SENIOR ADVOCATE SRI.K.RAMAKUMAR
BY ADVS. SRI.T.RAMPRASAD UNNI
SRI.T.S.ARUNKUMAR**

RESPONDENT(S) :

**1. THE LABOUR COURT,
KOLLAM.**

**2. THE GENERAL SECRETARY,
KERALA PLANTATION EMPLOYEES' UNION, PUNALUR
(AFFILIATED TO CITU, REG.NO.478/86).**

**R1 BY GOVT. PLEADER SRI. MANOJ P. KUNJACHAN
R2 BY ADVS. SRI.M.K.CHANDRA MOHANDAS
SRI.R.ARUN RAJ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 27447 of 2004 (P)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE PRELIMINARY ORDER PASSED BY R1 ON 22.3.2003 IN
ID NO. 108 OF 1991.

EXT.P2 COPY OF THE AWARD PASSED BY R1 ON 19.1.2004 IN I.D.
NO. 108 OF 1991.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J.
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W.P.(C) No.27447 of 2004 - P
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Dated this the 2nd day of March, 2015

J U D G M E N T

The petitioner is aggrieved by Exts. P1 and P2 order passed in an industrial dispute. The petitioner is the management and the 2nd respondent is the Union espousing the cause of a workman. The workman by name Sri. N. Balakrishna Pillai was proceeded against by the management, for unauthorised absence and unruly behavior under the influence of narcotic drugs. A disciplinary enquiry was conducted, in which four charges, levelled against the workman, was found to have been proved. The disciplinary authority concurred with the enquiry officer and dismissed the workman from service.

2. The Union took up the matter on a reference before the appropriate Government, which was referred for adjudication to the Labour Court, Kollam. Ext.P1 is the

preliminary order passed, setting aside the enquiry for violation of principles of natural justice and Ext.P2 is the consequential final award passed, directing reinstatement of the workman with full back wages. The said award at Ext.P2 was passed since, there was no prayer in the written statement of the management for an opportunity to substantiate the charges before the Labour Court.

3. The issue with respect to the opportunity to be sought, for adducing fresh evidence and the stage at which such prayer should be made is no longer res integra. The issue is covered by **Karnataka State Road Transport Corpn. v. Lakshmiddevamma [2001(5) SCC 433]** and **Shambhu Nath Goyal v. Bank of Baroda [1983 (4) SCC 491]**, wherein it has been categorically held that, if a punishment is imposed pursuant to an enquiry or even otherwise, the opportunity to adduce evidence to substantiate the charges should be asked for at the first instance, itself. In the present case, that opportunity would first accrue to the

management; at the time of the filing of the written statement. The management has not sought for such prayer in the written statement. Hence, no evidence could have been adduced by the management, nor could the Labour Court grant any opportunity to the management to substantiate the charges, independently of the findings of the domestic enquiry. Hence, there would be absolutely no point, in considering the sustainability of Ext.P2 order. What could be considered is only the sustainability of Ext.P1 preliminary order, which held that the enquiry is vitiated.

4. A reading of Ext.P1 preliminary order, would show that, enquiry was found to have been vitiated for a number of reasons. It was found that, the workman was not issued with a proper notice and that the Advocate, who conducted the enquiry was in fact the Senior of the individual management. It was also found that the workman was not permitted to be represented in the enquiry proceedings by a worker or an office bearer of a Union. The management was

in fact represented by a legal practitioner. The enquiry officer, an Advocate was found to have elicited material from the witnesses and examined them elaborately on the basis of which, the finding of guilt was recorded.

5. With respect to the issuance of notice, the enquiry officer had issued a notice at the initiation of the proceedings, upon which the workman had appeared. The matter being adjourned to the next date, the workman had sought for an adjournment on that date. Without any notice by post, the adjournment was made to a specific date, on which date also, the workman appeared. On the subsequent date, since the workman was absent, the enquiry officer noticed in the proceedings that notice would be issued by registered post. No such notice was issued by registered post. The management produced evidence to show that notice was issued under certificate of posting. The Labour Court found that, it was not clear as to which of the said notices were issued to the workman. The notice in which the

workman's address was shown was seen to have been despatched under certificate of posting, on the previous date, of the posting date.

6. Hence, the Labour Court found that the workman was denied a fair opportunity and ought to have been issued a notice of the posting especially since, nothing substantially had transpired at that point and there were only four sittings of the enquiry. This Court does not find any reason to interfere with such findings.

7. Further, it is to be seen that the workman was not allowed to be represented in the enquiry proceedings by a workman or an office-bearer of the Union. The mere fact that the enquiry officer, was a practising Advocate, would not create any right on the workman to seek for representation by a legal practitioner. However, in the present case, it is to be noticed that the management itself was represented by a legal practitioner. Hence, rightfully, the workman also should have been entitled to be represented by a legal practitioner.

8. The situation in the present case is that, the workman was not even permitted the assistance of a co-worker or an office-bearer of the Union, despite a specific request. The one additional factor, which weighed with the Labour Court was that the enquiry officer himself elicited material from the witnesses. In such circumstance, this Court is unable to find any reason to interfere with Ext.P1 preliminary order. Ext.P1 preliminary order having been upheld; there is no warrant for any interference to be caused to Ext.P2 order.

Hence, the writ petition would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge