

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 19327 of 2008 (A)

ID.NO. 27/1996 OF LABOUR COURT, ERNAKULAM

PETITIONER :

**MANGALAM PUBLICATIONS (INDIA) PVT. LTD.,
S.H. MOUNT, KOTTAYAM-686 006,
REPRESENTED BY ITS DIRECTOR.**

**BY SRI.U.K.RAMAKRISHNAN,SENIOR ADVOCATE
ADVS. SRI.P.V.LOHITHAKSHAN
SRI.V.KRISHNA MENON
SMT.UMA GOPINATH
SRI.DEVIDAS.U.K
SMT.P.VJAYAMMA**

RESPONDENT(S):

**1. SRI.CHERIAN ZACHARIAH,
ASHISH VILLA,MARIAPPALLY,
KOTTAYAM-23.**

**2. LABOUR COURT,
ERNAKULAM.**

**R1 BY ADV. SRI.GOPAKUMAR R.THALIYAL
SRI.A.CHANDRA BABU**

R2 BY GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-03-2015, ALONG WITH OP(LC).NO. 3269/2012 AND OP(LC).NO. 3/2014,
THE COURT ON 11-03-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE SHOW CAUSE NOTICE NO.MP/PER/525/95 DATED 22/7/1995
ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- P2 COPY OF THE TERMINATION LETTER NO.MP/PER/3399/1995 DATED 5/8/1995
ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT**
- P3 COPY OF THE CLAIM STATEMENT DATED 20/7/1996 IN I.D.NO.27 OF 1996
FILED BY THE 1ST RESPONDENT**
- P4 COPY OF THE REPLY STATEMENT DATED 7/12/1996 FILED BY THE
PETITIONER IN I.D.NO.27 OF 1996.**
- P5 COPY OF THE PRELIMINARY ORDER DATED 15/6/2006 ISSUED BY THE 2ND
RESPONDENT**
- P6 COPY OF THE AWARD OF THE SECOND RESPONDENT DATED 28/2/2008 IN
I.D.NO.27 OF 1996.**
- P7 COPY OF THE CLAIM PETITION IN C.P.NO.43 OF 2012 ON THE FILE OF THE
SECOND RESPONDENT**
- P8 COPY OF THE COUNTER STATEMENT IN C.P.NO.43 OF 2012 ON THE FILE OF
THE SECOND RESPONDENT**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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K.SURENDRA MOHAN, J.

**W.P.(C) Nos.19327 of 2008, O.P.(LC) 3269 of 2012
& O.P.(LC) No. 3 of 2014**

Dated this the 11th day of March, 2015

J U D G M E N T

These writ petitions are all filed by the same petitioner. The petitioner is a company registered under the Companies Act, 1956, running a newspaper establishment. The petitioner is the Printer and Publisher of a Malayalam Daily by name 'Mangalam', besides other periodicals. The petitioner had dismissed the first respondent from service. He was working as a 'Bureau Chief' of the Mangalam Daily. His dismissal was the subject matter of challenge before the Labour Court, Ernakulam in Industrial Dispute No.27 of 1996. The Labour Court held that the dismissal of the first respondent was unsustainable. Therefore, he has been directed to be reinstated in service, with 50% back wages. The said order is under challenge in W.P.(C) No.19327 of 2008. The first respondent thereafter filed a claim petition before the Labour Court, Ernakulam, C.P.No. 37 of 2009 for

the realization of his back wages. The said petition has been allowed by the Labour Court and the order is under challenge in OP(LC) No.3269 of 2012. Subsequently, the first respondent filed another claim petition, C.P.No.43 of 2012 for recovery of the arrears of wages due to him. The said claim petition has also been allowed by the Labour Court and the order is under challenge in OP(LC) No.3 of 2014. Since the issues involved in these cases are common, they have been heard together and are disposed of by this common judgment.

2. The main question that arises for determination is whether the dismissal of the first respondent is sustainable or not. The question as to whether the first respondent is entitled to recover back wages would depend on whether his dismissal is sustainable or not. The short facts of the case necessary for our purpose are the following.

3. The first respondent was appointed in the service of the petitioner as the Chief Sub Editor on 01.01.1989.

Thereafter, on 01.01.1992 he was promoted as Chief of News Bureau. On 30.05.1994, he had applied for leave from 01.06.1994 to 30.06.1994. He was transferred to Kozhikode Unit as per letter dated 27.05.1994. However, it is alleged by the Management that, without accepting the transfer order, he had applied for Earned Leave. Thereafter, on 01.07.1994, he again applied for leave for a further period of 50days. Though the first respondent had been directed to join duty at Kozhikode, he did not do so. Therefore, the petitioner was again issued a letter dated 10.11.1994 cautioning him against taking leave for such a long duration. Since the first respondent did not abide by the said communication, he was issued with a memo dated 29.11.1994 alleging grave misconduct. According to the Management, he had joined duty at Kozhikode thereafter. However, he was not responsible in the discharge of his duties.

4. Subsequently, the first respondent was

transferred to Kollam as a Desk Editor of the Quilon Bureau on 13.04.1995. On 20.06.1995, a memo was issued to the first respondent alleging unauthorised leave. Since he did not show any improvement, a show cause notice dated 22.07.1995 was issued to the first respondent seeking his explanation. He was also informed by the said communication that the petitioner would be constrained to terminate his services if his explanation was not submitted within three days. The said communication is Exhibit P1 in W.P.(C) No.19327 of 2008. The first respondent did not submit any explanation and therefore, he was dismissed from service by Exhibit P2 order dated 05.08.1995.

5. The first respondent raised an industrial dispute which was referred for adjudication by the Government of Kerala under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I/D Act' for short) to the Labour Court, Ernakulam. The case was numbered as I.D.No.27 of 1996.

6. It was contended by the petitioner before the Labour Court that the first respondent was not a workman coming within the definition contained in Section 2 (s) of the Act. According to the Management, his job was supervisory in nature and he was drawing salary in excess of the ceiling limit stipulated by the Act. It was also alleged that though no domestic enquiry was conducted into the charges against the first respondent, the management may be given an opportunity to adduce evidence before the Labour Court, to substantiate the charges.

7. According to the first respondent, he was a Working Journalist coming within the definition of the said expression contained in Section 2(f) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1995 (hereinafter referred to as 'the Working Journalists Act' for short). Though he was designated as a Bureau Chief, the duties discharged by him were those of a Working

Journalist. He was the President of the Working Journalists Union during 1992-1993. During his career as the President, he had demanded enhancement of the wages inviting the wrath of the employer. His dismissal is on baseless charges and is motivated by the personal animosity nurtured by the employer. Though it was contended that his work was supervisory in nature, no evidence was adduced by the management in support of the said claim. Therefore, the said contention has been rightly rejected by the Labour Court. The finding of the Labour Court that the first respondent is a workman does not call for any interference at the hands of this Court, it is contended. The claim petitions filed by the first respondent were allowed for the reason that, he was entitled to recover his wages, since the petitioner did not implement the Award in time.

8. Senior Counsel Sri.V.Ramakrishnan who appears for the petitioner points out that, in cases where no

domestic enquiry was conducted or where the domestic enquiry conducted is found to be defective by the Labour Court, it is necessary that the Management is afforded an opportunity to prove by letting in evidence that the dismissal of the workman was justified. A number of decisions starting from **The Workmen of M/s Fire Stone Tyre and Rubber Company of India P.Ltd v. The management and Others** [AIR 1973 SC1227] have laid down the proposition of law that such an opportunity is to be provided to the Management. However, in the present case, no such opportunity was granted, it is contended. It is further contended that, the proceedings before the Labour Court itself was not maintainable for the reason that, the first respondent was not a workman as defined under Section 2(s) of the I/D Act. Though this question had been raised as a preliminary issue before the Labour Court, the preliminary order, Exhibit P5, passed finding that the Labour Court had jurisdiction is, according to the learned

Senior Counsel wrong and liable to be set aside. This writ petition filed challenging both the preliminary order Exhibit P5 and the final Award Exhibit P6 is therefore only to be allowed, according to the learned Senior Counsel.

9. The contentions of the learned Senior Counsel are opposed by Sri Gopakumar R. Thaliyil who appears for the first respondent. According to the counsel, the Labour Court has addressed the issue correctly and has drawn conclusions that are totally justified in the facts and circumstances of the case. According to the learned Counsel for the first respondent, absolutely no evidence or material has been placed either before the Labour Court or this Court to justify the conclusion that the nature of the duties discharged by the first respondent were supervisory. The oral evidence of the witnesses who were examined before the Labour Court as LW1 and LW2 do not substantiate the allegation that the first respondent was not a workman. It was after the first respondent had taken

leave that he was transferred to the Kozhikode Bureau. Since the first respondent was not keeping well, he had to extend his leave. After he became healthy enough to join duty, he had joined duty at Kozhikode. Thereafter, he was transferred to the Kollam Bureau as a Desk Editor. According to the counsel, the post of Bureau Chief is only that of a Working Journalist designated as such for the purpose of convenience. Above the Bureau Chief is the News Editor, the Chief News Editor, the Resident Editor, the Managing Editor and the Chief Editor. The work of the first respondent is that of a working journalist. It is therefore, contended that the writ petitions are only to be dismissed.

11. Heard. The question to be decided is whether the first respondent who was working as the Bureau Chief of Managalam Daily, at Kottayam could be considered to be a workman under Section 2(s) of the I/D Act. Section 2(s) of the I/D Act reads as follows:-

“workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950(45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. Working Journalists like the first respondent are brought within the purview of the I/D Act by virtue of Section 3 of the said Act. Section 3(1) of the Working

Journalists Act reads as follows:-

3.Act 14 of 1947 to apply to working journalists.-- (1)

The provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall subject to the modification specified in sub-section(2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

Therefore, if the first respondent is a 'Working Journalist', then the provisions of the I/D Act would apply to him.

13. Section 2(f) of the Working Journalists Act reads as follows:-

(f) "working journalist" means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishment, and includes an editor, a leader-writer, news editor, sub-editor, feature writer, copy-tester, reporter, correspondent, cartoonist, news photographer or proof reader, but does not include any such person who--

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

14. As per the above provision, a person whose principal avocation is that of a journalist and who is an Editor, Leader writer, News Editor, Sub Editor, Feature Editor, Copy Tester, Reporter, Correspondent etc. would come within the scope of the definition. At the time of his dismissal from service, the first respondent was working as a Desk Editor of Managalm Daily at Kollam. As per the definition contained in Section 2(f) of the Working Journalists Act, being a Desk Editor, he comes within the scope of the definition. Though the first respondent had been transferred to Kozhikode as Bureau Chief, he is seen to have been transferred to Quilon as a Desk Editor. The only inference therefore is that, the said posts were both equal and interchangeable. If the nature of the duties discharged by the first respondent were supervisory, it was for the Management to have adduced evidence in proof of the said fact. No such evidence has been adduced in this case. The evidence of LW1 and LW2 are also not definite

on the said aspect. Had the contention of the Management been true, they would certainly have had material evidence in proof of the said contention. In the absence of any such evidence, the only conclusion possible is that the first respondent was a Working Journalist coming within the expression defined by Section 2(f) of the Working Journalists Act. The findings of the Labour Court in Exhibit P5 preliminary order are therefore correct and proper.

15. Exhibit P5 preliminary order was passed on 15.06.2006. The final Award Exhibit P6 was passed only on 28.02.2008. The Management had contested the case by adducing both oral and documentary evidence. However, the fact remains that no evidence regarding the nature of duties discharged by the first respondent has been let in by the Management. The resultant position is that, there is no evidence to support the contention of the Management that the first respondent was discharging supervisory and managerial functions. In view of the above, the conclusion

drawn by the Labour Court cannot be found to be fault with.

16. The contention raised on the basis of the decision reported in **The Workmen of M/s Fire Stone Tyre and Rubber Company of India P.Ltd v. The management and Others** [AIR 1973 SC1227] (supra) is that the Labour Court erred in not affording an opportunity to the petitioner to substantiate the charges against the first respondent. The said contention lacks substance for the reason that it was for the Management to have let in proper evidence to support the charges on the basis of which the first respondent was dismissed from service. As already noticed above, Exhibit P6 Award was passed about two years after Exhibit P5 preliminary order was passed. The petitioner had therefore got sufficient time to adduce evidence in support of their case. Not having utilised the said opportunity, it is not open to the petitioner to blame the Court alleging that no opportunity was granted to substantiate his charges. In

the present case, admittedly no domestic enquiry was conducted into the charges against the first respondent. Therefore, he was denied an opportunity to defend himself against the charges. It has been found by the Labour Court that, the standing orders mandate the conduct of a domestic enquiry. His dismissal is therefore in contravention of the provisions of the standing orders also.

17. A number of decisions have been cited before me by the counsel appearing for the respective parties to contend that, the Labour Court erred in its decision. However, in the factual background of the present case, I do not think the said decisions are necessary to be considered. Even if it is assumed that, the first respondent was guilty of unauthorised absence, this court has held that any disciplinary action against a workman on the above ground should be preceded by a domestic enquiry and observance of the principles of natural justice. **Joy Xavier v. Madura coats Ltd** [2000(1) KLT 43] is a decision on the

said point.

18. In the present case, admittedly no domestic enquiry was conducted by the Management. The Labour Court has considered the contentions of the petitioner as well as the respondents and passed Exhibit P6 Award. It has also been noticed by the Labour court that though leave applications have been submitted by the workers, no orders have been passed thereon by the Management either rejecting or granting the same. The said conduct has been taken to be indicative of prejudice against the worker that the Management was having.

19. For the foregoing reasons, I do not find any grounds to interfere with Exhibits P5 and P6 in W.P.(C) No.19327 of 2008. OP(LC) No.3269 of 2012 and OP(LC) No.3 of 2014 are cases in which orders passed by the Labour Court on claim petitions filed by the Workman are under challenge. Since I have found that the Award of the Labour Court ordering reinstatement of the workmen is

proper and fully justified, I do not find any infirmity in the orders that are under challenge in these writ petitions. They are only consequential orders permitting the first respondent to recover the arrears of wages due to him on the basis of the Award reinstating him in service. Therefore, these are also only to be dismissed.

For the foregoing reasons, all the writ petitions are dismissed. No costs.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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