

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 20576 of 2011 (V)

PETITIONER(S):

**B.LATHA, C/O.SYNDICATE BANK EMPLOYEES UNION,
KANDATHIL HOUSE, THIRUNAKKARA WEST,
KOTTAYAM.**

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S):

- 1. REGIONAL MANAGER, SYNDICATE BANK,
REGIONAL OFFICE, SASTHAKRIPA COMPLEX, SASTHAMANGALAM,
THIRUVANANTHAPURAM, PIN - 695 010.**
- 2. THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, ERNAKULAM, PIN - 682 031.**

**R1 BY ADVS. SRI.M.PASHOK KUMAR
SRI. N.NAGARESH, ASST. SOLICITOR GENERAL
SRI.R.S.KALKURA**

R2 BY ADV. SRI.A.SUDHI VASUDEVAN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 20576 of 2011 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF CLAIM STATEMENT DATED 18.6.2008.

**EXT.P2: TRUE COPY OF ORDER APPLICATION DATED 12.4.2010 FILED BY THE
COUNSEL FOR THE PETITIONER.**

EXT.P3: TRUE COPY OF I.A.DATED 12.7.2010 FILED BY THE PETITIONER.

EXT.P4: TRUE COPY OF AWARD DATED 30.8.2010 IN I.D.NO.10/2008.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

K. VINOD CHANDRAN, J.
=====

W.P.(C) No.20576 of 2011 - V
=====

Dated this the 12th day of February, 2015

J U D G M E N T

The petitioner was an attender in the respondent Bank. On allegations of carrying on parallel banking activities, the petitioner was proceeded against, on nine charges, out of which, in a domestic enquiry, seven were found to be proved. The disciplinary authority concurring with the enquiry officer imposed a punishment of dismissal from service. The justifiability of such dismissal was referred for adjudication to the Central Industrial Tribunal-Cum-Labour Court, Ernakulam, which reference was numbered as I.D 10/2008.

2. The worker herself filed a claim statement and a written statement too was placed on record, which was resisted again by a replication. The entire controversy

occurred with respect to the non-appearance of the Union, the worker and her Counsel before the Labour Court, upon which, the enquiry officer was examined, the enquiry files marked and award passed, without hearing the worker or the Union. The worker filed the above writ petition contending that, she was denied an opportunity and an affidavit filed by her placed at Ext.P3 was not considered by the Central Industrial Tribunal-Cum-Labour Court.

3. Ext.P2 was an application for re-calling the management witness ie., the enquiry officer for the purpose of cross-examination and Ext.P3 was an application to permit herself to be examined. Serious dispute was raised on the filing of Ext.P3 by the respondent Bank. The respondent Bank contended that Ext.P3 is not the application filed before the Labour Court. This Court hence, called for the records found that there is difference in the application filed before the Central Industrial Tribunal-Cum-Labour Court. The application filed before Court and

numbered as I.A No. 59/2010 for examining herself is dated 30.07.2010. It was averred that the enquiry proceedings were conducted in violation of principles of natural justice and such violation could be brought out only on examination of the worker herself. The prayer was that since the Court had posted the case for hearing, on the validity of enquiry, before that, the worker may be permitted to give evidence.

4. The application produced as Ext.P3, raises substantially the very same contentions but has an additional paragraph at 'paragraph 2', wherein, it was seen that the petitioner has spoken about the earlier application filed for permitting cross-examination of the enquiry officer, having been allowed with a direction to bear the expenses of the enquiry officer. Hence, the contention of the respondent Bank is correct. The petitioner hence was directed to explain the mistake and she has now filed an affidavit expressing unconditional apology on the omission caused. The petitioner would submit that she had produced

the application, which was available in the Counsel's file. In this circumstance, this Court would not say anything more on that aspect.

5. Considering the issue on its merits as to the proceedings before Court, the enquiry officer is seen to have been examined on 06.04.2010. On 12.04.2010, the petitioner had filed an application, which was numbered as I.A No. 31 of 2010 for re-calling the witnesses for cross-examination. The proceedings sheet would indicate that on 12.04.2010, the said I.A was allowed and the witness was re-called for cross-examination and the case was posted to 24.05.2010. On 24.05.2010, the Court has recorded that, the Union is not prepared to bear the expenses of the witness. In fact, there is no order on the earlier date, directing the expenses to be borne by the petitioner. The proceedings sheet indicate that there is only an order re-calling the witness.

6. A perusal of the I.A available in the records

however, indicate that on 12.04.2010, the Court had ordered re-calling of the witnesses at the expenses of the petitioner. The portion “at the expense of the petitioner” was noticed on the back side of the I.A and hence, the same was not recorded in the proceedings sheet. It is also seen from the I.A that the said order is reviewed suo motu finding it to be a mistake.

7. In such circumstance, there was no circumstance for the petitioner or the Union to have paid the expenses of the witness. There is definitely an omission on the part of the Court and it is trite that such action of the Court shall not prejudice the litigant. In such circumstance, it is only proper that the petitioner be given an opportunity to cross-examine the management witness ie., the enquiry officer.

8. However, it is to be noticed that on various dates after the said posting, neither the Union nor the worker nor the Counsel appeared before the Court. There

were in fact six postings, when the absence was recorded, by the Court. It was only then there was an ex-parte award passed.

9. In such circumstance, the award cannot be set aside without any condition. The case shall be restored only on condition of payment of Rs.2,000/- (Rupees two thousand only/-) to the Kerala State Mediation and Re-conciliation Centre, Ernakulam. The petitioner shall produce a memo with receipt before Court, evidencing such payment; within a period of one month from today. The Central Industrial Tribunal-Cum-Labour Court shall, on such production, restore the case to its files and consider the same in accordance with law after re-calling the Enquiry Officer, from the stage of cross-examination of the said witness. The petitioner and the respondent Bank shall appear before the Central Industrial Tribunal-Cum-Labour Court on 12.03.2015 on which date the case shall be posted for evidence to a future date and the same shall be taken up

from the stage of cross-examination of the management witness, 'MW'.

The writ petition would stand allowed on the above terms.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge