

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

W.P.(C).No.21713 of 2012 (L)

[AGAINST THE AWARD IN I.D.NO.13 OF 2009 DATED 16.05.2012 OF THE
LABOUR COURT, ERNAKULAM].

PETITIONER(S):-

N.K.VIJAYAN, AGED 48 YEARS, S/O.KELU,
NEDUVALI HOUSE, PULLANI, THURAVOOR.P.O, ANGAMALY,
ERNAKULAM DISTRICT-683 586.

BY ADVS.SRI.C.A.JOY
SRI.BOSE M

RESPONDENT(S):-

1. THE MANAGING DIRECTOR
KERALA STATE BAMBOO CORPORATION LIMITED, ANGAMALY,
ERNAKULAM DISTRICT-683 573.
2. LABOUR COURT, ERNAKULAM - 682 031.

R1 BY ADVS.SRI.B.S.KRISHNAN (SENIOR ADVOCATE)
SRI.K.ANAND (SENIOR ADVOCATE)
SMT.LATHA KRISHNAN.

R2 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S) EXHIBITS:-

-
- EXT.P1- A TRUE COPY OF THE AWARD DATED 16.05.2012 OF THE LABOUR COURT, ERNAKULAM IN ID NO.13/2009.
- EXT.P2- A TRUE COPY OF THE ORDER DATED 12.10.2004 SUSPENDING THE PETITIONER.
- EXT.P3- A TRUE COPY OF THE MEMO OF CHARGES DATED 23.10.2004 ISSUED TO THE PETITIONER.
- EXT.P4- A TRUE COPY OF THE REPLY DATED 05.11.2004 SUBMITTED BY THE PETITIONER.
- EXT.P5- A TRUE COPY OF THE ENQUIRY REPORT FILED BY THE ENQUIRY OFFICER DATED 16.02.2005.
- EXT.P6- A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 28.03.2005.
- EXT.P7- A TRUE COPY OF THE DISMISSAL ORDER DATED 11.04.2005.
- EXT.P8- A TRUE COPY OF THE CLAIM STATEMENT DATED 23.09.2009 FILED BY THE WORKMAN BEFORE THE LABOUR COURT, ERNAKULAM IN ID NO.13/2009.
- EXT.P9- A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE MANAGEMENT IN THE LABOUR COURT, ERNAKULAM IN ID NO.13/2009.
- EXT.P10- A TRUE COPY OF THE PRELIMINARY ORDER DATED 22.02.2012 IN ID NO.13/2009 OF THE LABOUR COURT, ERNAKULAM.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

W.P(C) No.21713 of 2012-L

Dated this the 26th day of February, 2015

JUDGMENT

The petitioner impugn Exhibit P1 award of the Labour Court. The issue referred for adjudication was the justifiability of the dismissal of the petitioner, by the management. Admittedly proceedings were initiated on the basis of charges of misconduct levelled against the petitioner and the petitioner was found guilty in the disciplinary enquiry held. Concurring with the findings of the Enquiry Officer, the disciplinary authority imposed the punishment of dismissal. The petitioner raised a dispute on the question of justifiability of such action of the management.

2. The charges levelled against the petitioner are evident from Exhibit P3 charge memo. The petitioner was a workman in the depot of the management-Corporation. The charges were with respect to two incidents that occurred on 11.10.2004. On 11.10.20014, it was alleged that the petitioner had confined certain employees of the management in a room and abused them. The petitioner is also said to have threatened that, another sub depot

would not be permitted to be opened and that from 12.10.2004 onwards, the main depot also would be forcefully closed down. The D.F.A. of the depot, Sri.K.V.Varghese, was physically assaulted and he had to be taken to a hospital in an injured state. The aforesaid acts were stated to be acts subversive of discipline and the petitioner was found to have levelled threats against the life and limb of the employees of the management. The charges also included allegation of closing down the depot and thus interfering with the smooth functioning of the depot. An enquiry was conducted, in which all the allegations were found to have been proved. The disciplinary authority dismissed the petitioner from the service of the management.

3. The petitioner, before the Labour Court, raised a preliminary objection against the sustainability of the enquiry. The enquiry, it was urged, is vitiated for violation of principles of natural justice. A preliminary order was passed by the Labour Court at Exhibit P10. The first allegation was that the Enquiry Officer was biased; which was found by the Labour Court, to be an allegation without any substantiation. The Enquiry Officer was a practising lawyer. When he was examined as MW1, there was nothing brought out in the evidence as to the specific allegation of bias or prejudice against the workman.

On a perusal of the enquiry file, the Labour Court also came to the conclusion that the workman and the management were given ample opportunity to produce their respective evidence and every request for adjournment made by the workman was allowed by the Enquiry Officer. The Enquiry Officer also permitted a lawyer of the workman's choice to represent him in the enquiry; to effectively contest the allegations of the management.

4. The further allegation made to substantiate the claim of violation of principles of natural justice, was that the petitioner was not supplied with the proceedings of the enquiry and the enquiry report. As to the supply of proceedings, the Labour Court, on an examination of the proceedings produced along with the Enquiry File, found that the petitioner is seen to have signed in all the papers; thus evidencing his presence and participation in the enquiry. At no point of time, the workman had asked for a copy of the proceedings. The allegation raised was not that the documents relied on by the management were not supplied to him, but that the proceedings were not issued. There is no mandate, going by the principles of natural justice, that the proceedings of an enquiry should be issued to the delinquent; especially so when the workman did not ask for the same.

5. As to the non-supply of the enquiry report, it was the Labour Court's finding that the Enquiry Officer, appointed by the management, has the duty only to submit report to the management and there was no requirement for supplying a copy to the workman. The management was found to have supplied the enquiry report along with show cause notice issued, subsequent to the filing of the enquiry report. The Labour Court, hence, sustained the enquiry and found that there was no procedural irregularity; nor any violation of principles of natural justice. This Court does not find any reason to interfere with the same.

6. The Labour Court having found the enquiry to be sustained, looked elaborately into the evidence adduced at the enquiry. A Divisional Officer of the management was examined as P.W.1 and a workman attached to the Thuravoor main depot was examined as P.W.2. The victim of the assault Sri.K.V.Varghese, who was the D.F.A. of the depot in which the petitioner had been working, was examined as P.W.3. Exhibits P1 to P6 documents were also found to have been marked by the management. The workman got himself examined as D.W.1 and his brother, who was an employee attached to the Thuravoor depot, was examined as DW2. The

attendance register of the employees of the Thuravoor depot was marked as Exhibit D1.

7. The Labour Court having gone through the evidence of P.Ws 1 to 3, found that the same is acceptable evidence. The thrust of the defence put up by the petitioner before the Labour Court, was that the alleged victim was inimical towards him. The cause allegedly was on the ground of there being no proper disbursement of salary to the workman. It was specifically contended that P.W.3 Varghese had in fact assaulted the workman. Despite the said allegations, P.Ws 1 to 3 were not confronted with such a version when they were examined before the Enquiry Officer. P.W.2, another worker of the management, was a witness to the incident. P.W.2's version of the incident could not be shaken in cross-examination. P.W.2 in chief and cross, asserted that the workman had beaten P.W.3 when P.W.3 was proceeding to Manjapra for opening the other sub-depot. P.W.3 was said to be beaten up in the presence of P.W.2 and P.W.2 had immediately telephoned his superior about the said incident. Exhibit P2 complaint to the Sub Inspector of Police, Angamally was also registered on 11.10.2004 itself. The said documents were affirmed by P.W.2. It was P.W.2 who took P.W.3 to the hospital and it was later that the said

aforesaid complaints were lodged. It was P.W.2's evidence that he along with K.V.Varghese and another employee P.K.Sajitha had been confined in a room of the Thuravoor depot, where the shutter, which was the only entry and exit from the room, was downed by the worker. Later it was D.W.2 who opened the shutter, and it was subsequently that P.W.3 was assaulted.

8. P.W.3, the victim also deposed in consonance with the version of P.W.2. P.W.3 had categorically stated that the shutter downed by the petitioner was opened by his brother, D.W.2. The workman did not choose to challenge the said version. The abuse and threats made in a filthy language was deposed to, by both P.W.2 and P.W.3. P.W.3 specifically deposed as to the abusive words and filthy language used by the workman. The confinement of the employees of the Thuravoor depot and the fact that the Manjapra depot also could not be opened on the said date came out in evidence. The workman was found to be guilty of disruption of work and having assaulted his superior officer and further abuse of the superior officer and other employees.

9. The allegations levelled against P.W.3 was found to be not supported by any evidence. D.W.1, the workman, contended that

his brother, D.W.2, saw the incident in which P.W.3 had assaulted the workman. D.W.2, however, deposed that he did not see the incident and came to the scene on hearing the cry of his mother. The evidence of D.W.1 and D.W.2 were found to be inconsistent and also found to be unreliable for reason of it being interested testimony. The finding of the Enquiry Officer was upheld by the Labour Court on an examination of the evidence and this Court, under Article 226 of the Constitution, would not unsettle such finding. The charges levelled against the workmen stood proved at the enquiry.

10. The workman had a further contention that at the time of the imposition of punishment; he was was not served with a notice nor was the enquiry report supplied and, hence, the dismissal order was liable to be set aside. Such a contention was raised by the workman before the Labour Court and before this Court, with specific reference to the show cause notice issued to the workman and the order of punishment passed by the management. The show cause notice and the order of punishment are produced as Exhibits P6 and P7. The allegation is that, while Exhibit P7 refers to the enquiry report having been enclosed along with the document indicated at item No.6 of the said order, by registered post, Exhibit P6 show cause notice is

said to have been issued “Under Certificate of Posting”. That is only an obvious mistake and as long as the copy of the enquiry report was sent to the workman along with Exhibit P6 show cause notice, as is seen from a reading of Exhibit P6, there can be no prejudice alleged.

11. The learned counsel for the petitioner would, however, assert that the enquiry report was never supplied to the petitioner and that the order was passed without giving an opportunity to submit his explanation to the enquiry report. In answer to the said contention, it has to be noticed that the workman admits to the receipt of Exhibit P7, in which it is specifically noticed that the enquiry report was enclosed with the show cause notice. If the enquiry report was not received, then definitely that should have been raised at the first point of time; meaning, in the claim petition itself. The claim petition is produced at Exhibit P8. But for a bland statement that the enquiry was conducted in violation of the principles of natural justice, no specific averment as to the non-supply of the enquiry report is seen made in the claim statement. Despite the assertion of the learned counsel for the petitioner that the workman received the copy of the enquiry report only when the same was produced before the Labour Court, the specific contention in Exhibit P8 is that “the enquiry report is also

arbitrary and without considering any of the contentions and defenses pleaded by the workmen” (para 4). Definitely without receipt of the report such a contention could have been raised. Hence, the contention that no copy of the enquiry report was given to the workman is to be rejected.

12. The learned counsel for the petitioner has a further contention that the Labour Court has not examined the question of interference under Section 11A of the ID Act. The Labour Court considered the issue of proportionality of the punishment as against the gravity of the offence from paragraph 18 onwards. The charges were found to be one of grave misconduct. Assaulting an officer by a workman, according to the Labour Court, rightly so, cannot be encouraged by extending leniency or by interference on humanitarian considerations. By specific reference to Section 11A of the ID Act, It was found that there was no case for interference on the facts revealed and the gravity of the offences alleged and proved. The facts revealed in evidence, as noticed by the Labour Court, resulted in grave misconduct having been found to be proved. The charges alleged and proved were of disruption of work of the establishment, physical violence perpetrated on superior officer, confining co-workers

and a superior officer in a closed room and threats and abuses levelled against them. These are all charges grossly subversive of discipline and no management could condone the same. The Labour Court, exercising confined jurisdiction under Section 11A, also would not be enabled to cause interference in such instances. This Court finds that the refusal to exercise jurisdiction under Section 11A by the Labour Court was proper. No grounds were made out, to cause any interference, by the Labour Court.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]