

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 29672 of 2006 (G)

PETITIONER :

**KANIMANGALAM CONSUMERS CO-OPERATIVE
STORE LIMITED NO.447, P.O.KOORKANCHERI,
THRISSUR, REPRESENTED BY ITS PRESIDENT.**

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT(S):

**1. K.G. NALINI, W/O.P.V. RAJAN,
PULIPARAMBIL HOUSE, P.O.CHIYYARAM,
THRISSUR.**

**2. THE INDUSTRIAL TRIBUNAL,
PALAKKAD.**

R1 BY ADV. SRI.K.PADMANABHAN

R2 BY SR GOVERNMENT PLEADER SRI.C.R.SYAM KUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.29672/2006

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE MEMO OF CHARGES DATED 10/6/2000.**
- P2 COPY OF THE REPLY DATED 17/6/2000**
- P3 COPY OF THE REPORT OF THE ENQUIRY OFFICER DATED 22/9/2000**
- P4 COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 7/12/2005 IN
INDUSTRIAL DISPUTE NO.42/2003**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.M.SHAFIQUE, J

W.P.C.No.29672 of 2006

Dated this the 27th day of October 2015

J U D G M E N T

Petitioner challenges Ext.P4, an award passed by the Industrial Tribunal, interfering with the punishment of dismissal of the 1st respondent and directing discharge from service by invoking Section 11A of the Industrial Disputes Act.

2. The petitioner challenges the award of the Tribunal mainly on two grounds. One is that the Tribunal clearly erred in interfering with the punishment as the proved charges of misconduct were very grave in nature. The charges levelled against the delinquent was that while she was working as Deputy Manager, on a surprise inspection being conducted, it was noticed that there was disparity in the stock and 3.11 quintals of rice and 57.61 quintals of wheat were found short. On further verification of records, it was found that 103.30 quintals of wheat taken delivery on 21/10/1999 from the Mulakunnathukavu godown of Food Corporation of India was not entered in the stock register till 11/12/1999. Further, manipulation of the registers as well as stock was also noticed. Enquiry was conducted and the charges

were proved. The Tribunal also concurred with the enquiry report and found that the proved charges cannot be found to be wrong. However, the Tribunal interfered with the punishment.

3. The second contention urged is that, in view of the Larger Bench judgment in **Chirayinkeezhu Service Co-operative Bank Ltd. v. Santhosh** [2015(4) KLT 163], the Forum provided under the Industrial Disputes Act has no jurisdiction to entertain the disputes between the Society and its employees and therefore the Tribunal lacked jurisdiction to entertain the dispute between the parties.

4. A perusal of Ext.P4 order passed by the Tribunal would indicate that the Tribunal proceeded on the basis that the extreme punishment of dismissal was excessive. But, it would be useful to understand the proposition of law in regard to interference with such punishments. The position of law is well settled. As per the judgment in **Hombe Gowda Educational Trust v. State of Karnataka** [(2006) 1 SCC 430] the Supreme Court held that a Court or Tribunal can interfere with the punishment only if the punishment is shockingly disproportionate to the proved charges. In so far as the proved charges in the case

are very grave in nature, that is manipulation of records, shortage of stock and non-accounting of the stock received in a wholesale depot, the delinquent could have been dismissed from service. Once such an action has been taken by the disciplinary authority on a finding that all the charges against the delinquent employee have been proved, it was not open for the Tribunal to have interfered with the punishment, merely for the reason that it came to the opinion that the punishment of dismissal is excessive. What has to be looked into is regarding the proved charges, which has been completely ignored by the Tribunal while interfering with the punishment. Hence, I am of the view that the Tribunal has committed error in interfering with the punishment imposed and accordingly, the writ petition is liable to be allowed. In the result, this writ petition is allowed, setting aside Ext.P4 and the punishment imposed by the disciplinary authority is upheld.

5. As far as the second contention is concerned, the issue is covered by the judgment of the Larger Bench in **Santhosh** (supra) wherein this Court had held that it is not open for the employee of the Society to raise the dispute under the Industrial Disputes Act.

Under such circumstances, the very reference of the dispute to the Industrial Tribunal was bad in law and for that reason also, Ext.P4 is liable to be set aside. Accordingly, I do so.

This writ petition is allowed as above.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

True Copy

PA to Judge

