

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 35378 of 2004 (J)

PETITIONER:

MOOPLY ESTATE, HARRISONS MALAYALAM LTD.,
PALAPPILLY P.O., THRISSUR DISTRICT
REPRESENTED BY ITS GROUP MANAGER.

BY ADVS.SRI.E.K.NANDAKUMAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN
SRI.P.BENNY THOMAS

RESPONDENT(S):

1. SMT.LEELA, C/ROLL NO. 2616,
TAPPER, KARIKULAM DIVISION, MOOPLY ESTATE
TRICHUR DISTRICT.
2. INDUSTRIAL TRIBUNAL,
PALAKKAD-678 002.

R1 BY ADV. SRI.SHOBY K.FRANCIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015,
ALONG WITH WPC.35387 & 35429/2004, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX IN WPC.35378/04

PETITIONER'S EXTS:

EXT.P1: COPY OF ORDER PASSED BY THE 2ND RESPONDENT DT.9.8.2004.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C)Nos.35378, 35387 & 35429 Of 2004

DATED THIS THE 14th DAY OF JULY, 2015

JUDGMENT

The petitioner Management has filed these Writ Petitions seeking a writ of certiorari to quash Ext.P1 orders produced in these Writ Petitions of the Industrial Tribunal, Palakkad in M.P.Nos.10/2004, 8/2004 and 7/2004 respectively in I.D.No.30/2003.

2. The 1st respondent in these Writ Petitions were registered permanent workers of Mooply Estate. During the course of their employment, show cause notices were issued to them on the allegation that they have committed certain misconducts. The workmen submitted reply denying the charges. Unsatisfied with the reply, they were charge sheeted under Clause 22(a), (c) and (i) of the standing orders applicable to the estate workmen, which deals with wilful disobedience, insubordination, theft, etc. It is alleged in the charge sheet that on 3.9.2003, at about 9.45 am, one P.M.Jose (Supervisor 2656) along with Assistant Field Officer Achuthan were watching the FC Field No.32B, it was found that the workmen had

collected only less quantity of field coagulam and it was in such circumstances, it was apprehended that the workmen had committed theft of field coagulam.

3. A domestic enquiry was conducted in which the workmen were given opportunity to cross examine the witnesses, but they did not examine any witnesses in support of their defence. After completion of the enquiry, the Enquiry Officer submitted report finding that the workmen are guilty of the charges. After considering the report submitted by the Enquiry Officer, the Management decided to dismiss the workmen from service with effect from 15.1.2004.

4. At that time, the question regarding legality of a strike in the establishment was pending before the Industrial Tribunal, namely the 2nd respondent. In view of the pendency of that industrial dispute, the Management forwarded applications under Section 33(2)(b) of the Industrial Disputes Act, along with the enquiry file, to the Industrial Tribunal for approval of the action of dismissal of the workmen from the service. On receipt of notice from the Tribunal, the workmen entered appearance and

filed objections to those applications, contending, inter alia, that the findings of the Enquiry Officer are perverse.

5. The Tribunal after considering the entire matter issued Ext.P1 orders produced in these Writ Petitions in which it came to the conclusion that the enquiry held is proper and valid. But the Tribunal came to the conclusion that, the findings of the Enquiry Officer are perverse and in such circumstances the Management has not made out a prima facie case for dismissal of the workmen. Though the Management made a request in the application filed under Section 32(2)(b) seeking permission to adduce fresh/additional evidence, in the event of enquiry is being found vitiated, the Tribunal passed Ext.P1 order stating that such a course can be conducted only when there are materials to indicate that the enquiry conducted by the Management is vitiated.

6. In the result, the miscellaneous applications filed by the Management were dismissed by Ext.P1 orders produced in these Writ Petitions, thereby declining approval to the dismissal of the workmen. It is aggrieved by the same, the Management

has approached this Court in these Writ Petitions.

7. I heard arguments of the learned counsel for the petitioner/Management and the respective counsel appearing for the 1st respondent/workman in these cases.

8. The only issue that arises for consideration in these Writ Petitions is as to whether the stand taken by the Tribunal in Ext.P1 orders that, when the enquiry is found to be valid, can the Management be permitted to adduce fresh evidence in order to support the findings made by the Enquiry Officer.

9. The aforesaid issue is no more res integra in view of the various judgments of the Apex Court including that in **Bharat Forge Company Ltd. v. A.B.Zodge and another 1996 (4) SCC 374**, in which the Apex Court has categorically held that the right of an employer to adduce evidence is well recognised when a domestic enquiry is vitiated either for non compliance of rules of natural justice or for perversity. Para.7 of the judgment reads thus:

"7. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better

footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised. In this connection, reference may be made to the decisions of this Court in *Workmen of Motipur Sugar Factory (p) Ltd. v. Motipur Sugar Factory (p) Ltd.* (1965) 2 Lab LJ 162 : (AIR 1965 SC 1803), *State Bank of India v.R.K. Jain* (1971) 2 Lab LJ 599: (AIR 1972 SC 136), *Delhi Cloth and General Mill Co. Ltd V. Ludh Budh Singh* (1972) I Lab LJ 180: (AIR 1972 SC 1031) and *Firestone Tyre Co.'s case* (AIR 1973 SC 1227) (supra). The stage at which the employer should ask for permission to adduce additional evidence to justify the disciplinary action on merits was indicated by this Court in *Delhi Cloth and General Mill's case* (supra). In *Shankar Chakrabarty's case* (AIR 1979 SC 1652) (supra), the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or other wise of the enquiry and then serve a fresh notice on the employer by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so. By relying on the decision of the Court in the case of *Cooper Engineering Ltd.* (1975) 2 Lab LJ 379 : (AIR 1975 SC 1900), has not been accepted. The view expressed in *Delhi Cloth Mill's case* (supra) that before the proceeding are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal, has been reiterated in *Sankar Chakrabarty's case* after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in *Cooper Engineering Ltd.* has not overruled the decision of this Court in *Delhi Cloth Mill's case*. There is no dispute in the present case that before the closure of

the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified.”

10. In view of the principle laid down in the judgment of the Apex Court in the decision referred to above, the reasoning of the Tribunal in Ext.P1 orders in these Writ Petitions that since the enquiry is not held to be vitiated, the request made by the Management to adduce fresh/additional evidence cannot be permitted, is legally unsustainable.

11. It is mainly relying on the judgment of the Apex Court in **Shri Ganapati Bus Service, Thirunelveli v. Presiding Officer, Labour Court (2001 (2) SCC 602)**, the Tribunal in Ext.P1 orders came to the conclusion that, opportunity to lead evidence cannot be granted, once the validity of domestic enquiry is upheld by the Labour Court. A reading of the above said judgment would show that the earlier judgment of the Apex Court in Bharat Forge Company Ltd.'s case (supra) was never brought to the notice of the Apex Court. Further, the facts dealt with by the Apex Court in Shri Ganapati Bus Service's case

(supra) is entirely different from the facts of the case on hand.

12. In view of the principle laid down in the judgment of the Apex Court in Bharat Forge Company Ltd.'s case (supra), the reasoning of the Tribunal in Ext.P1 orders in these Writ Petitions is legally unsustainable and the said orders are set aside.

13. Consequently, the cases are remanded back to the Industrial Tribunal for fresh consideration, after affording an opportunity to the Management to adduce fresh/additional evidence, which will be limited to the extent of considering as to whether the findings in the enquiry report are perverse. The workmen shall also be afforded an opportunity to adduce evidence.

14. Since the applications are of the year 2004, I deem it appropriate to direct the Tribunal to pass final orders within a period of three months from the date of receipt of a certified copy of this judgment. Both sides are directed to appear before the Industrial Tribunal, Palakkad at its Camp sitting at Thrissur on **27.7.2015.**

15. As borne out from the pleadings on record, the 1st

respondent in these Writ Petitions were terminated from service in January, 2004, while they were working as tappers in the estate owned by the petitioner. These Writ Petitions were filed by the Management in the year 2004. Though the workmen have filed applications under Section 17B of the Industrial Disputes Act, seeking payment of last drawn wages during the pendency of these Writ Petitions, they could not succeed in obtaining an order in those applications. Considering the facts and circumstances of the case, I deem it appropriate to direct the petitioner Management to pay a sum of ₹20,000/- each to the workmen, who are the 1st respondents in these Writ Petitions taking into consideration the long pendency of these Writ Petitions before this Court. Such payment shall be treated as ex gratia payment and it would be open to the Industrial Tribunal to decide the question as to how such payment should be adjusted in case approval is declined to the action of the Management in dismissing the workmen from service. The petitioner Management shall pay such amount to the 1st respondent workmen in these Writ Petitions within a period of one month

from the date of receipt of a certified copy of this judgment.

16. The learned counsel for the Management would submit that the 1st respondent in W.P.(C)No.35378/2004 has already received terminal benefits and left the service of the Management during the pendency of that Writ Petition. Therefore, it is made clear that, the 1st respondent in W.P.(C)No.35378/04 shall not be entitled for the payment of ₹20,000/- ordered in this judgment, in case he had already left the service of the petitioner Management, as stated by the learned counsel for the Management.

The Writ Petitions are disposed of as above.

Sd/-
ANIL K.NARENDRA, JUDGE

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