

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 33209 of 2005 (C)

AGAINST THE AWARD IN ID 22/1998 of LABOUR COURT, KANNUR
DATED 22-08-2005

PETITIONERS :

1. RADHAKRISHNAN, S/O.SANKARAN,
AGED 40 YEARS, RESIDING AT PATHIYIL HOUSE, CHUNDAKOLLY
P.O.MANALVAYAL, VIA-PULPALLY, WAYANAD DISTRICT.
2. VISWANATHAN, S/O.VELAYUDHAN,
AGED 52 YEARS, RESIDING AT AURKADAVU, P.O.PAMBRA
SULTHAN BATHERY, WAYANAD DISTRICT.

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENTS :

1. LABOUR COURT, KANNUR.
2. THE MANAGER,
PAMBRA COFFEE PLANTATIONS, PAMBRA P.O.
SULTHAN BATHERI (VIA), WAYANAD DISTRICT.

R2 BY ADV.SRI.DEVAPRASANTH.P.J.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 33209 of 2005 (C)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER ON PRILIMANARY POINT PASSED BY THE LABOUR COURT, KANNUR

EXT.P2 : COPY OF THE AWARD PASSED BY THE LABOUR COURT KANNUR IN INDUSTRIAL DISPUTE NO.22/98

EXT.P3 : COPY OF THE JUDGMENT IN CC 148/01 OF THE JUDICIAL FIRST CLASS MAGISTRATE IICOURT OF SULTHAN BATHERI

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.33209 of 2005

Dated this the 6th day of April, 2015

J U D G M E N T

The petitioners, workmen of Pambra Coffee Plantations, have filed this writ petition challenging Ext.P1 preliminary order and Ext.P2 award of the Labour Court, Kannur. As per the award of the Labour Court, dismissal of the petitioners from the service of the 2nd respondent has been found to be justified.

2. The incident on the basis of which action was initiated against the petitioners, took place on 14.05.1997. On the said date, the Assistant Filed Officer, Sri.Krishnan informed the workmen that they would have to do some additional work assigned to them. The workmen thereupon took objection, assaulted him as well as the Estate Manager Sri.Thomas, who tried to intervene. It is alleged that, both of them sustained injuries in the assault.

3. Disciplinary proceedings were initiated against the petitioners, pursuant to the altercation. A Domestic Inquiry was conducted, the petitioners were found guilty of misconduct and were punished. Thereupon, an Industrial Dispute was raised and the question as to whether the dismissal of the petitioners was justifiable or not was referred for adjudication to the Labour Court, Kannur. The workmen filed their Claim Statement challenging the Domestic Inquiry conducted as well as the punishments imposed on them. On entering appearance before the Labour Court, the Management produced and

marked the files relating to the Domestic Inquiry through MW1, the Management witness. The respective enquiry files relating to each of the workmen were marked as Exts.M1 to M3. On a consideration of the matter, the Labour Court as per Ext.P1 preliminary order found that, the Domestic Inquiry that was conducted was proper and not violative of the principles of Natural Justice. Thereafter, by Ext.P2 award, the punishments imposed on the petitioners have been found to be in order. The petitioners have filed this writ petition challenging Exts.P1 and P2.

4. According to Adv.Sri.P.K.Ramkumar who appears for the petitioners, though a criminal case had been charged against the workmen in relation to the alleged incident on 14.05.1997, by Ext.P3 judgment in C.C.No.148/2001, the Judicial First Class Magistrate's Court-II, Sulthan Bathery had acquitted them. According to the learned counsel, the disciplinary proceedings initiated against the workmen were without any basis, unsupported by any evidence and violative of the principles of Natural Justice. It is pointed out that, Sri.Thomas who was the Estate Manager had tendered evidence before the Enquiry Officer in English, a language with which the petitioners were unacquainted. Though they had sought for the assistance of a lawyer, their request was not allowed by the Enquiry Officer. They were permitted to take the assistance of only another worker, who was also a person with less education, like one of them. According to the

learned counsel therefore, the petitioners were not provided with sufficient opportunity to place and prove their case before the Enquiry Officer. For the said reason, the enquiry proceedings initiated are liable to be set aside. The preliminary order as well as the award of the Labour Court are also for the said reason, liable to be set aside, it is contended.

5. Adv.Sri.P.J.Devaprasanth appears for the 2nd respondent Management. According to the learned counsel, this is a case where the workmen who were larger in number had manhandled the Estate Supervisor as well as the Manager for having allotted work to them. Physical assault on the Supervisor and the Manager, is an act that cannot be accepted lightly. The conduct is a grave act of indiscipline that requires stern action at the hands of the Management. However, the Domestic Inquiry conducted was held in an impartial manner providing every opportunity to the workmen to put forward their pleas in the most effective manner. The assistance of a lawyer was not permitted for the reason that, the Management was not assisted by a lawyer. However, the workers were permitted to take the assistance of a Union representative who was a very competent and experienced person. He was present throughout the enquiry proceedings. He had cross examined the witnesses who were examined in the Domestic Inquiry except Sri.Thomas. Though it is true that Sri.Thomas had tendered his evidence in English, no objection was raised regarding the

said procedure at that time. Instead, the workmen sought time to obtain the services of an interpreter. Though they were granted repeated chances to do so, they did not produce an interpreter to assist them. According to the learned counsel, even if the evidence of Sri.Thomas is excluded altogether, the charges against the workmen stand proved in view of the evidence of the Estate Supervisor Sri.Krishanan and the eyewitness Sri.Rajan who is one of the workers. The said witnesses were cross examined by the Union representative. Apart from the above, after examining the Management evidence, the workers had examined seven witnesses to support their case. It was after considering the evidence so let in that the Enquiry Officer had concluded the proceedings. All the above aspects have been considered in detail by the Labour Court, according to the counsel. The said proceedings do not warrant any interference by this Court.

6. Heard. A perusal of Ext.P1 preliminary order as well as Ext.P2 award shows that, the Labour Court has considered the contentions of the petitioners put forward before the said authority. The Labour Court has on an examination of the report of the Enquiry Officer as well as the enquiry files, found that, the Management witnesses had been cross-examined in extenso by the Union representative. He had not raised any objections regarding the proceedings of the enquiry till date. Though it is true that the evidence of Sri.Thomas was recorded in English for the reason that he was not very familiar with Malayalam,

it is pertinent to notice that the workmen had not requested the Enquiry Officer for the assistance of an interpreter to cross examine. Instead, they had sought time to obtain services of an interpreter which was granted repeatedly, on four occasions. It was only thereafter that, further proceedings were continued. As rightly pointed by the learned counsel for the Management, even if the evidence of Sri.Thomas is excluded, there is the evidence of MW3 Krishnan and MW4 Rajan who were cross-examined on behalf of the workers. It is also worth noticing that, WW1 to WW7 witnesses were examined on the side of the workmen in support of their contentions. It was thereafter that, the enquiry proceedings were completed. Therefore, this is a case in which, the workmen had participated in the enquiry without raising any objections regarding the manner of conduct of the same, at any time during the course of the enquiry. It is only before the Labour Court after the enquiry was over and they were punished, that they have raised objections regarding the manner in which the enquiry was conducted, as contended. A perusal of Exts.P1 and P2 shows that, the Labour Court has gone into the matter, in detail and has found that the proceedings as well as the punishments were in order. No infirmity justifying an interference with the said findings has been pointed out in it.

7. With respect to the contention of the counsel for the petitioner that the workers have been acquitted in the criminal case that had

been charged against them, it is the settled position of law that acquittal in the criminal case would not preclude the Management from initiating disciplinary proceedings against the workmen for the misconduct alleged against them. Therefore, the fact that the workmen were acquitted in the criminal case cannot be of any assistance to the petitioners in challenging Exts.P1 and P2. It is trite that, the degree of proof in enquiry proceedings is not as rigid as the requirements of the Indian Evidence Act. I also remind myself that, this is a case where the Estate Supervisor as well as the Manager were assaulted by the workmen, which has been described by the Honourable Supreme Court as an act of grave indiscipline in ***Madhya Pradesh Electricity Board v. Jagdish Chandra Sharma [2005 KHC 551 = 2005 (3) SCC 401]***, a case on the point. While considering a similar conduct on the part of the worker, the Honourable Supreme Court has held as under :

“9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the work place, obviously in the presene of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the work place in an organization like the employer herein, is the sine qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved.”

In view of the above, it cannot be held that the punishments imposed on the workmen are disproportionate to the charges levelled against them.

8. The learned counsel for the petitioner has further pointed out that, the Estate Supervisor and the Manager against whom also a criminal case had been charged, had been convicted by the Magistrate's Court concerned. The learned counsel for the 2nd respondent has in the face of the above allegation handed over to me a copy of the judgment dated 19.11.2005 of the Additional Sessions Judge (Adhoc) II, Kalpetta in Criminal Appeal No.66/2004 acquitting the said persons of the charges levelled against them. According to the learned counsel, the appellate judgment has become final. Since the Manager and the Estate Supervisor have also been acquitted in the counter case that was charged against them, I do not find that, there are any grounds to interfere with the impugned award.

For the above reasons, this writ petition is dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.