

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 25704 of 2013 (K)

PETITIONER(S):

**K.RAJENDRAN, AGED 57 YEARS
S/O.LATE BALAKRISHNAN NAMBIAR, IA , K.B.APARTMENTS
FATHIMA CHURCH ROAD, ERNAKULAM, KOCHI 682 020**

**BY ADVS.SRI.B.ASHOK SHENOY
SMT.C.G.PREETHA
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SMT.NISHITHA B.BHAT**

RESPONDENT(S):

- 1. THE PRESIDING OFFICER
LABOUR COURT, ERNAKULAM , KOCHI 682 031.**
- 2. SREE GOKULAM CHIT & FINANCE COMPANY PRIVATE LIMITED
CORPORATE OFFICE, SREE GOKULAM TOWER, NO.66 ARCOT ROAD
CHENNAI 600 024
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
T.K.BHARATHAN**

**R2 BY ADV. SRI.K.S.BABU
R2 BY ADV. SMT.N.SUDHA
R2 BY ADV. SRI.K.S.GOPI
R2 BY ADV. SRI.BABU SHANKAR
R2 BY ADV. SRI.VIPIN VISWAN
R BY GOVERNMENT PLEADER SRI. T.J. MICHAEL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 COPY OF THE APPLICATION ID NO.21/2012 DATED 5/3/2012 FILED BY PETITIONER BEFORE 1ST RESPONDENT.
- EXHIBIT P2 COPY OF THE WRITTEN STATEMENT DATED 16/10/2012 FILED BY THE 2ND RESPONDENT BEFORE 1ST RESPONDENT IN ID NO.21/2012.
- EXHIBIT P3 COPY OF THE PRELIMINARY ORDER DATED 13/5/2013 IN ID NO.21/2012 OF THE 1ST RESPONDENT.
- EXHIBIT P4 COPY OF THE PROCEEDINGS DATED 5/6/2013 AND 30/7/2013 IN ID NO.21/2012 OF THE 1ST RESPONDENT.
- EXHIBIT P5 COPY OF THE ORDER DATED 30/9/2013 IN ID NO.21/2012 PASSED BY 1ST RESPONDENT.
- EXHIBIT P6 COPY OF THE LIST OF WITNESS DATED 14.6.13 FILED BY COUNSEL FOR MANAGEMENT BEFORE 1ST RESPONDENT-LABOUR COURT IN I.D. NO.21 OF 2012.
- EXHIBIT P7 COPY OF ADDITIONAL LIST OF WITNESS DATED 21.1.013 FILED BY COUNSEL FOR MANAGEMENT BEFORE 1ST RESPONDENT LABOUR COURT IN I.D NO.21 OF 2012.
- EXHIBIT P8 COPY OF AFFIDAVIT AND PETITION DATED 19.10.13 FILED BY 2ND RESPONDENT BEFORE 1ST RESPONDENT-LABOUR COURT IN I.D NO.21 OF 2012.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT R2(a) COPY OF THE WITNESS LIST PRODUCED BY THE MANAGEMENT ON 14TH DAY OF JUNE, 2013.
- EXHIBIT R2(b) COPY OF THE I.A NO.169/13 IN I.D NO.21.2012.
- EXHIBIT R2(c) COPY OF THE ADDITIONAL LIST OF WITNESS FILED BY THE MANAGEMENT ON 21.10.2013.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.25704 of 2013 - K

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Dated this the 29th day of January, 2015

J U D G M E N T

The petitioner is aggrieved with the order passed at Ext.P5, permitting the management to adduce evidence, to prove the misappropriation. The contentions urged are that the management never had a prayer for permission to adduce evidence to prove the misconduct itself, on the enquiry being set aside; which according to the decision of the Hon'ble Supreme Court in **Karnataka State Road Transport Corporation v. Lakshmiddevama [2001(5) SCC 433]** had to be sought for, at the first instance; meaning in the written statement itself. The next contention urged against Ext.P5 is that the Labour Court had in fact found the issue against the management, but,however, had reviewed the earlier order, which power, the Labour Court could not have exercised for reason of it not being available under the statute.

2. The workman herein, was charged with misconduct of misappropriation of funds, and in a domestic enquiry conducted, was found guilty. The disciplinary authority concurred with the enquiry officer and imposed punishment of dismissal. The issue came up before the Labour Court, on an application made by the workman under Section 2A(2) of the Industrial Disputes Act, 1947; questioning the dismissal. The Labour Court by a preliminary order found that the enquiry was vitiated (Ext.P3). On 05.06.2013, as is evidenced from the proceedings sheet, an extract of which is produced as Ext.P4, the Labour Court recorded that, there was no prayer in the written statement for adducing evidence. The matter was hence posted for hearing. It was subsequent to that, Ext.P5 was passed, which is alleged to be beyond the scope of the powers conferred on the Labour Court.

3. The Labour Court in Ext.P5 clearly extracted the prayer in the written statement, which is as follows:-

“The management craves the leave of this

Hon'ble Court to give opportunity to the management to produce the enquiry report of the workmen and to prove the enquiry report before this Hon'ble Court and to examine the witnesses (sic)".

4. It is recored by the Labour Court that, on a reading of the above said pleadings, the Labour Court was of the opinion that, the management had revealed its intention to adduce fresh evidence for proving charges but, later on, considering the submission of the workman that, the said prayer was only for production of witnesses in support of the preliminary issue of validity of enquiry; the matter was posted for final hearing. On a further reading of the above statement, the Labour Court found that, the prayer is for adducing evidence. It would only amount to a procedural review was the reasoning. It was also found that, it was in the interest of justice that the management be permitted to adduce evidence, considering the peculiar nature and circumstances of the case.

5. Looking at the prayer made, the same can be said to be only an error in the language used. The management had prayed for an opportunity to produce the

enquiry report, to prove enquiry report and to examine the witnesses. Admittedly, if only the enquiry report was to be proved, the only witness to be examined would be the enquiry officer, who could mark the enquiry report. For that a specific prayer to examine the witnesses is not required in the written statement. The fact that the management had requested for examining the witnesses would definitely indicate that the intention was to examine the witnesses to prove the misconduct itself and not merely the enquiry report. In such circumstance, even going by the aforecited decision of the Hon'ble Supreme Court, it cannot be said that the management had not sought for permission of the Labour Court, at the first instance to examine the witnesses, to sustain the misconducts charged.

6. With respect to the question of adducing evidence, **Lakshmiddevama** (supra) followed **Shambhu Nath Goyal v. Bank of Baroda and Others [1983 (4) SCC 491]**. The Hon'ble Supreme Court in the earlier decision had specifically noticed the power of the Labour

Court to call for evidence at any stage, considering the facts and circumstance of the case and if the interest of justice so warranted. In the present case, despite the Labour Court having closed the evidence of the management on the ground that, no prayer was made in the written statement, on a re-arppriasal, it was found that there was a prayer and the facts and circumstances of the case warranted opportunity to the management to adduce evidence, in the interest of justice. Hence, looking at Ext.P5 order, from any angle, there cannot be found; any infirmity or illegality.

The writ petition would stand dismissed. There shall be a direction to the parties to appear before the Labour Court on 11.02.2015. The Labour Court shall endeavour to dispose of the matter within a period of three months from that date.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge.