

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 31227 of 2007 (P)

PETITIONER :

**KDHP COMPANY PRIVATE LIMITED,
(PREVIOUSLY KNOWN AS TATA TEA LIMITED)
MUNNAR WORKSHOP AND ENGINEERING DEPARTMENT,
REPRESENTED BY ITS MANAGER (IR) MR.G.SOMANATHAN.**

**BY ADVS. SRI.E.K.NANDAKUMAR
SRI.PBENNY THOMAS
SRI.ANIL D. NAIR**

RESPONDENTS :

**1. SECRETARY, NATIONAL UNION OF
PLANTATION STAFF, AITUC, REG.NO.136.79
MUNNAR P.O.**

2. INDUSTRIAL TRIBUNAL, IDUKKI.

**R1 BY ADVS. SRI.A.JAYASANKAR
SRI.MANU GOVIND**

R2 BY GOVERNMENT PLEADER SRI.V.K. RAFEEQ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-01-2015, ALONG WITH WPC. 5256/2008, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF CLAIM STATEMENT FILED BY THE R1 IN I.D. NO. 51/2000
DT 19/6/2000 BEFORE THE R2.
- P2: COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER BEFORE
THE R2 IN ID NO. 51/00 DT 22/2/2001.
- P3: COPY OF REJOINDER FILED BY THE R1 BEFORE THE R2 DT 28/7/2001 IN ID
NO. 51/2000.
- P4: COPY OF FINDINGS OF THE ENQUIRY OFFICER DT 9/10/1999.
- P5: COPY OF THE AWARD DT 11/8/2004 PASSED BY THE R2 IN ID 51/00.
- P6: COPY OF THE JUDGMENT PASSED BY THE HON'BLE HIGH COURT IN WRIT
PETITION NO. 17705 OF 2005 DT 1/9/2005.
- P7: COPY OF THE AWARD DT 17/1/2007 PASSED BY THE R2 IN ID 51/2000.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J

**W.P(C) Nos. 31227 of 2007 &
5256 of 2008**

Dated this the 19th day of January, 2015

J U D G M E N T

The management and the Union challenged Ext.P7 award passed by the Industrial Tribunal, Idukki in the above two writ petitions. The Union espouses the cause of one Assistant Technical Officer, against whom allegations of misconducts were raised, and dismissed from service, pursuant to a disciplinary enquiry, in which the misconducts alleged were found to have been proved.

2. The Industrial Tribunal considering the justifiability of the dismissal made, found the enquiry to have been properly held by a preliminary order. However, the Tribunal found only two out of the four charges, to have been proved, on the basis of the

evidence adduced at the enquiry.

3. Reinstatement was ordered, initially, as per Ext.P5 award without any backwages but with continuity of service. The award was assailed both by the Union and the Management. The writ petitions were disposed of by Ext.P6 judgment. It was found that, the Industrial Tribunal had committed a gross error insofar as refusing an opportunity to the management to adduce evidence to prove the charges, which the Tribunal, found to have been not proved in the enquiry. The award, hence, was set aside to the extent it interfered with the findings in the enquiry. The Industrial Tribunal was directed to re-hear the parties and allow the management an opportunity to lead evidence in proof of the charges, which were held to be not sustainable on the evidence recorded at the domestic enquiry by the

Industrial Tribunal. The question of proportionality was directed to be gone into only after such proceedings.

4. The matter was remanded to the Industrial Tribunal, which passed Ext.P7 order after affording an opportunity to the management to adduce evidence in support of the charges, which were held to be not proved, even on such evidence. By the impugned award, the management was directed to re-instate the workman in service with back wages from 11.09.2014, i.e, the date of the earlier order; with continuity of service.

5. The management seriously assails the findings of the Tribunal with respect to the four charges, to substantiate which, the management had adduced evidence before the Tribunal. The Union, by their writ petition contends that the back wages had

to be granted from the date of dismissal from service.

6. The Tribunal had, infact, extracted the earlier award also in Ext.P7, wherein charge Nos.1, 2, 4, and 6 were found to have been not proved, after elaborate discussion on the evidence adduced at the enquiry. The said findings, on the basis of the evidence adduced at the enquiry, remains concluded by Ext.P6 judgment. What the management was permitted was an opportunity to adduce fresh evidence, to substantiate the said charges. It is to be noticed that in the domestic enquiry three witnesses were examined by the management. The Manager, Munnar Workshop and Engineering Department, the Manager-Materials department and the Internal Auditor, Regional Office, Munnar were examined before the enquiry officer as MW1 to MW3.

7. Even in the earlier proceedings, it was

found that the Senior Manager of Munnar Workshop was not examined to prove the allegations, which were raised regarding the estimate prepared for repairing the tractors, maintenance of registers, replacement of parts from one vehicle to another without authorisation and so on and so forth. A reading of the charges as extracted at Ext.P7 would indicate that nowhere is there, an allegation that the petitioner had, in any manner, misappropriated any amounts or committed any theft of spare parts. The allegations were mainly related to non-compliance of procedure and the non-maintenance of registers as also preparation of enhanced estimates.

8. Be that as it may, when on remand, the Industrial Tribunal took up the matter, the management examined only one witness; an Assistant Manager-IR as MW2. Though M1(a) to M1(n) were

marked through the said witness, the said witness did not have any direct knowledge regarding the said documents. MW2 deposed that even at the time when the delinquent employee was charge sheeted, the witness was working as an Executive in the IR department. However, the witness confessed to have absolutely no connection with the workshop, which was housed in a separate building from that of the IR department. The witness also did not have any involvement in the day to day affairs of the workshop. The Industrial Tribunal found that MW2 merely narrated the charges alleged and produced the documents, which were earlier produced at the enquiry; in proof of the alleged misconducts. The documents produced before the Industrial Tribunal were also those produced before the Enquiry Officer, which were gone into at the earlier instance, when

the Tribunal had considered the sustainability of the findings entered into by the Enquiry Officer.

9. True, by the time, the matter was remanded, the persons who were involved with the day to day affairs of the Workshop were not available. But it is to be noticed that the management had challenged the earlier award before this Court and obtained an order of remand, seeking an opportunity to adduce evidence. It was the bounden duty of the management, to have adduced evidence to substantiate the charges. The witness examined and the documents marked could not at all substantiate the charges levelled.

10. This Court in the circumstances noticed above, does not find any reason to interfere with the award of the Industrial Tribunal at Ext.P7. The findings that the four charges, which were directed to

be considered afresh, after affording an opportunity to the management to adduce evidence, remained unsubstantiated and the findings brook no interference.

11. What remains is the issue, as to whether the two charges sustained, could have led to an order of dismissal. The two charges which were held to be proved in the enquiry and which were upheld by the Industrial Tribunal at the earlier instance at Ext.P5 are extracted hereunder

3. Although the above tractors were accepted to be in good running condition, majority of them are not in working condition now as the vital parts have been stripped which according to you have been used elsewhere for which nor records are available.

5. The register of old parts changed from vehicle was not kept up to date when checked on 16.6.1999 by Mr.T.V Alexander, deputy general

manager(production). On physical verification of stock of old parts it has been found spare parts are being misused. It was also found that unusable parts were not included in the old parts list, which clearly shows that a deliberate attempt had been made to misappropriate the same as the parts missing from the list were found to be usable parts.

12. Charge No.3 is vague since it is merely stated that as the majority of the tractors are said to be not in good running condition, since the vital parts have been stripped from them. The delinquent employee, admitted that in many instances, the parts of motor vehicles were swapped with other company vehicles, so as to increase efficiency and the same was said to have been done with the knowledge of the workshop Manager. Even going by the findings on the above charges, it is to be noticed that the Industrial Tribunal had specifically stated that “MW1, MW2,

MW3 have also stated in their evidence that the workman had removed the parts from tractors mentioned in the charge sheet and fitted in another vehicle without any authorisation from the management and without keeping any records(sic)" . Hence, even the management witnesses did not have a contention that the delinquent workman had in any way, removed the parts of the vehicles with an intention of causing loss to the management, or for appropriating the same. The allegation was only that, no authorisation was obtained from the management, for swapping spare parts and the register was not maintained properly.

13. The non-maintenance of registers, was the allegation in charge No.5. The physical verification made by the Deputy General Manager (Production) found that certain spare parts were

misused. Unusable parts were said to have not been included in the “old parts register” and the usable parts were said to be missing. The workman admitted that when the General Manager verified the register on 16.06.1999, entries were made only up to 12.06.1999. The delinquent workman also had an explanation that updation was carried out in the registers once in a week. MW1 deposed that the old parts registers have to be updated regularly and the internal auditor, MW3 also deposed that during the time of audit, it was noticed that the automobile section scrap registers were not regularly updated. The finding on Charge No.5, was hence only with respect to the workman having not updated the “old parts register”. It was clearly found that there is absolutely no evidence on record to establish misuse of the spare parts by the delinquent workman or an

attempt to misappropriate spare parts.

14. Charge Nos.3 and 5 were couched in the vaguest of terms without actually specifying as to the parts which were swapped or indicating the identity of the tractors, which had been rendered unusable for reason of such swapping. The charges were found proved for reason of the workman having admitted to have replaced certain parts between vehicles, but with only a bonafide intention. Hence, there was no proof as to any misconduct of misappropriation having occasioned or loss caused to the management. The findings on Charge No.3 was that, the replacement of spare parts was without authorisation from the management and the finding in Charge No.5 was only on updation of the "parts-register" having not been made regularly. This Court is of the opinion that the said charges would not, definitely warrant dismissal.

The Industrial Tribunal's findings on that respect, also cannot be assailed.

15. Definitely, two charges having been found, there should be some punishment imposed by the Industrial Tribunal, when causing interference under Section 11A of the ID Act on the finding of dismissal. The Industrial Tribunal exercising such power held that the workman would not be eligible for back wages, till 11.09.2004, the date on which the earlier award was passed, produced at Ext.P5.

16. It is to be noticed that, by Ext.P5 award, when two charges were found to have been proved, the Industrial Tribunal had directed re-instatement without back wages, but with continuity of service. Ext.P7 award also follows suit, insofar as the back wages till that date was declined. This Court is of the opinion that the punishment awarded by the Tribunal

was sufficient and that too, does not call for any interference. On the finding that the punishment awarded by the Tribunal is sufficient, but warranted, the writ petition filed by the Union is also found to be devoid of merit.

Both the writ petitions are dismissed, leaving the parties to suffer their respective costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge