

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA,
1937

WP(C) .No. 30926 of 2008 (F)

AGAINST THE ORDER/JUDGMENT IN ID 43/2006 of INDUSTRIAL
TRIBUNAL, PALAKKAD DATED 12-06-2008
PETITIONER:

TALUK CO-OPERATIVE STORE LTD.,
NO.R-203, IRINJALAKUDA 680 121, THRISSUR DISTRICT
REPRESENTED BY ITS PRESIDENT, MR.KURIAN JOSEPH.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR

RESPONDENTS:

1. SMT.K.VANAJA, KADANGODU VEEDU,
KARUKULLANGARA, IRINJALAKUDA P.O.,
THRISSUR DISTRICT.

2. THE INDUSTRIAL TRIBUNAL, PALAKKAD.

R1 BY ADV. SRI.A.JAYASANKAR
R1 BY ADV. SRI.MANU GOVIND
BY GOVERNMENT PLEADER, SRI. V.K. RAFAEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 15-12-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: COPY OF THE ORDER OF PUNISHMENT DATED
5.10.1998 GIVEN BY THE PETITIONER TO THE
1ST RESPONDENT.
- EXHIBIT P2: COPY OF THE ORDER OF PUNISHMENT DATED
7.2.2003 GIVEN BY THE PETITIONER TO THE
1ST RESPONDENT.
- EXHIBIT P3: COPY OF THE CHARGE SHEET DATED 22.2.2003.
- EXHIBIT P4: COPY OF THE ENQUIRY REPORT DATED
26.12.2003.
- EXHIBIT P5: COPY OF THE CLAIM STATEMENT FILED BY THE
1ST RESPONDENT BEFORE THE 2ND RESPONDENT IN
I.D. NO. 43 OF 2006 DATED 23.9.2006.
- EXHIBIT P6: COPY OF THE WRITTEN STATEMENT FILED BY
THE PETITIONER IN I.D. NO. 43 OF 2006
DATED 1.3.2007.
- EXHIBIT P7: COPY OF THE PRELIMINARY ORDER DATED
5.1.2008 PASSED BY THE 2ND RESPONDENT
DATED 5.1.2008 PASSED BY THE 2ND
RESPONDENT IN I.D. NO. 43 OF 2006
- EXHIBIT P8: COPY OF THE PROOF AFFIDAVIT FILED BY THE
WITNESS FROM THE SIDE OF THE PETITIONER
IN I.D. NO. 43 OF 2006 DATED 14.3.2008
- EXHIBIT P9: COPY OF THE AWARD PASSED BY THE 2ND
RESPONDENT IN I.D. NO. 43 OF 2006 DATED
12.6.2008

RESPONDENTS' EXHIBIT: NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.30926 of 2008

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Dated this the 15th day of December, 2015

J U D G M E N T

The petitioner is a Society registered under the Kerala Co-operative Societies Act, 1969 and governed by the provisions of the said Act. The petitioner is also engaged in distribution of LPG to the consumers, which is known as 'Neethi Gas Distribution'. The 1st respondent joined the service of the Society in the year 1979 and while she was in employment, she was involved in the misconduct of misappropriation of funds of the Society. Initially, she was charge-sheeted on 27.07.1998 raising the charge of misappropriation of funds and in the domestic enquiry she was found guilty and punished under Ext.P1. Again, she was charge-

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sheeted for another misconduct and charge-sheeted under Ext.P2. In the instant case, the allegation against the 1st respondent is that the 1st respondent had committed misconduct of misappropriation of funds, while selling gas cylinders to the customers on 02.07.2002, 03.07.2002, 04.07.2002 and 08.07.2007 and Ext.P3 is the charge-sheet against the 1st respondent. According to the petitioner, a domestic enquiry in compliance with the principles of natural justice was held and Ext.P4 report was filed by the Enquiry Officer and relying on the findings of the Enquiry Officer, the petitioner finally imposed the punishment of dismissal on the 1st respondent. Aggrieved by the order imposing dismissal, the 1st respondent challenged the dismissal order before the Industrial Tribunal, by raising an industrial dispute under Section 10 of the Industrial Disputes

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Act, 1947. In the proceedings before the Tribunal, the 1st respondent filed Ext.P5 claim statement and the petitioner filed Ext.P6 written statement. The Tribunal after hearing the question with regard to the validity of the enquiry, passed Ext.P7 order holding that domestic enquiry was conducted properly and in compliance with the principles of natural justice. But, further found that the charges levelled against the 1st respondent were not proved in the enquiry. Thereafter, the Tribunal proceeded with enquiry afresh and finally passed Ext.P9 award, setting aside the order of dismissal on a finding that the petitioner could not prove the charges and directed the petitioner to reinstate the 1st respondent in service with continuity of service. It was also held that the 1st respondent is eligible for Rs.20,000/- in lieu of back wages. The legality

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and propriety of the findings in Ext.P9 award is under challenge in this Writ Petition.

2. Heard the learned counsel for the petitioner and learned counsel appearing for the 1st respondent in extenso.

3. Learned counsel for the petitioner submits that Exts.P7 and P9 orders passed by the Tribunal are arbitrary and vitiated by patent errors of law apparent on the face of the records. According to the learned counsel for the petitioner, the Tribunal ought to have found that the 1st respondent did not appear before the Enquiry Officer nor did she deny the charges before the Tribunal and thereby, the 1st respondent was always avoiding cross-examination or confrontation with regard to the charges levelled against her and it was sufficient for the Tribunal to presume that the 1st

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respondent committed misconduct as alleged in the charge-sheet. On the other hand, the Tribunal totally ignored the oral and documentary evidence adduced by the petitioner in the enquiry and in the absence of any cross-examination by the 1st respondent the entire evidence stood unchallenged against the 1st respondent. It was also contended that the 1st respondent being an employee in a Co-operative Society, she ought to have discharged her duties without leaving any room for doubts as the co-operative movement itself is depending upon the confidence of the public.

4. *Per contra*, the learned counsel appearing for the 1st respondent advanced arguments to justify the finding in the impugned order. According to him, the entire burden of proof is on the petitioner and the petitioner miserably failed

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to prove the charges beyond doubt. The persons from whom the amount is said to have been levied by the 1st respondent towards charges of gas cylinders were not examined in evidence and no punishment can be imposed, relying on the evidence disclosed by Exts.M3 to M5.

5. In view of the rival submissions, the question to be considered is whether the Tribunal is justified in passing Ext.P9 award, directing the petitioner to reinstate the 1st respondent, after setting aside the order of dismissal passed by the petitioner. Put it differently, the question is whether there is any illegality or impropriety in any of the findings in Ext.P9. Going by Ext.P9, it is seen that the charge against the 1st respondent is that the 1st respondent, who had the charge of Neethi Store, while selling gas cylinders to three

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customers on 08.07.2002 at Rs.260/- each, remitted the said amount, after two days on 10.07.2002 and thereby she temporarily held the said amount for two days and that would amount to temporary misappropriation. Firstly, it is seen that the Tribunal has rightly considered the legal validity of the domestic enquiry report and arrived at a finding that the domestic enquiry report is not vitiated by the denial of principles of natural justice. But subsequently, arrived at a finding that the charge levelled against the 1st respondent was not proved beyond doubt. After arriving at such a finding, the Tribunal proceeded with the enquiry afresh and both persons were given sufficient opportunity to adduce evidence. MW1 and MW2 were examined and Exts.M1 to M5 were marked on the side of the petitioner. But, no oral evidence was

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adduced by the 1st respondent. As regards disciplinary proceedings of employee or worker is concerned, the burden is heavy on the Management to prove that the charge levelled against the worker or employee, as the case may be. In the instant case, the charge against the 1st respondent is that while she was in charge of the Neethi Store on 08.07.2002, she had committed the misconduct of temporary misappropriation of funds, while selling the gas cylinders to three customers by names, Abdul Rahman, A.K. Ganesan and P.M. Mujib, by collecting the amount of Rs.260/- each from them towards the cylinder charge and remitted the said amount on 10.07.2002 only, after holding the said amount in her hands for two days.

6. Going by the evidence on record, it is seen that MW1 and MW2 were examined. MW2 has stated

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that she became the Secretary of the Society only in 2004 and she has no direct knowledge about the alleged transactions took place in 2002. So her evidence is of no use at all. As rightly noted by the Tribunal, the three customers from whom the amount is said to have been collected on 08.07.2002 were not examined and no satisfactory explanation was offered for the non-examination of those customers. As rightly observed by the Tribunal the customers could have given evidence as to the date of payment of cash and delivery of gas. The non-examination of the said customers assumes significance, in view of the alleged Ext.M2 daily stock and sale statement dated 08.07.2002 and Exts.M3 to M5 photocopies of the passbooks, the original of which are supposed to be in the custody of those persons. As per Ext.M2, the transaction

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with those three customers was on 10.07.2002, i.e., the date on which the 1st respondent had remitted the said amount collected from those customers. When MW2 was cross-examined, she deposed that the 1st respondent has remitted the amount on the date of bill itself. Thus, the date of remittance of the amount tallies with the date of bill. If that be so, the allegation that the 1st respondent collected the amount on 08.07.2002, held that amount for two days and remitted the same on 10.07.2002 has no legs to stand. Thus, it is seen that the petitioner has miserably failed to prove the charge levelled against the 1st respondent. As regards the non-examination of the 1st respondent is concerned, the same is of consequence at all, particularly when the petitioner has miserably failed to prove charge against the 1st respondent. The rebuttal or defence

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evidence would come into consideration, only if the initial burden is discharged by the management. But, here the petitioner/management miserably failed to discharge the initial burden by proving the charge.

7. The petitioner has a case that in the earlier two occasions also she has committed similar temporary misappropriation of funds and thereby the Tribunal ought to have taken that aspect also into consideration. I am unable to accept the said argument because even if she has committed temporary misappropriation earlier, that aspect can be taken into consideration while considering the punishment, if the petitioner had succeeded in proving the present charge. When the petitioner has miserably failed to prove the present charge, the earlier punishments are of no consequence at all. So also,

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while considering the question, whether the petitioner had succeeded in proving the present charge, the earlier misconduct, even if proved and punished, cannot be merged with present enquiry or taken into consideration. Thus, I find that there is no illegality or impropriety in the impugned Award passed by the Tribunal. Therefore, there is no reason to interfere with the Award and the Award will stand affirmed.

This writ petition is dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge