

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

W.P.(C).No. 34966 of 2010 (U)

AGAINST THE PRELIMINARY ORDER IN I.D. NO.331/2006 of LABOUR COURT, ERNAKULAM
DATED 20-08-2010.

PETITIONER(S):

STATE BANK OF TRAVANCORE,
REPRESENTED BY ITS DEPUTY GENERAL MANAGER,
ZONAL OFFICE, ERNAKULAM-682 011.

BY ADVS. SRI.P.RAMAKRISHNAN
SMT.PREETHI RAMAKRISHNAN

RESPONDENTS:

1. CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, KARSHAKA ROAD,
ERNAKULAM - 682 016.

2. V.RAJAGOPALAN,
S/O.VENKETARAO, MARATHAUMADOM,
EROOR (WEST), TRIPUNITHURA - 682 306.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

R2 BY ADVS. SRI.H.B.SHENOY

SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.SOBHAN GEORGE
SRI.K.V.GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015, THE
COURT ON 22.12.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C).No. 34966 of 2010 (U)

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: TRUE COPY OF MEMO NO. RM II/E/4, DATED 07.04.1998.
- EXHIBIT P2: TRUE COPY OF CHARGE SHEET NO.RMV/EKM/DPS/152/98-99 DATED 04.08.1998 ISSUED TO THE PETITIONER.
- EXHIBIT P3: TRUE COPY OF EXPLANATION SUBMITTED BY THE 2ND RESPONDENT TO THE EXHIBIT P2.
- EXHIBIT P4: TRUE COPY OF ENQUIRY REPORT DATED 28.10.1999 SUBMITTED BY THE ENQUIRY OFFICER.
- EXHIBIT P5: TRUE COPY OF PRELIMINARY ORDER DATED 20.8.2010 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT P6: TRUE COPY OF DEPOSITION OF THE ENQUIRY OFFICER BEFORE THE TRIBUNAL.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.34966 of 2010

Dated this the 22nd day of December, 2015

JUDGMENT

This writ petition is filed by the petitioner/Management against the preliminary order in I.D.No.331 of 2006 of the Central Government Industrial Tribunal-cum-Labour Court dated 20.08.2010, whereby the Tribunal has passed an order finding that the enquiry is vitiated, being violative of the principles of natural justice and fair play.

2. Brief facts required for the disposal of the writ petition are as follows:

3. 2nd Respondent was employed as a Cashier in charge under the petitioner Bank in their Pottenkadu Branch. On 04.04.1998, a cash shortage of Rs.31,500/- was detected in his closing cash. On verification, some other irregularities were also detected, and thereupon 2nd Respondent was kept under suspension vide memo dated 07.04.1998, evident from Ext.P1. Later on, a detailed charge sheet dated 04.08.1998 was issued to the 2nd Respondent, evident from Ext.P2. To Ext.P2, 2nd Respondent had submitted an explanation, evident

from Ext.P3.

4. Since the explanation offered by the 2nd Respondent was not satisfactory, petitioner had instituted a departmental enquiry in the matter. An enquiry officer was appointed, and the enquiry was conducted in accordance with law. In the enquiry, 2nd Respondent was assisted by the Union Secretary. List of witnesses and documents and copies of documents were supplied to the 2nd Respondent. Five witnesses were examined on the side of the petitioner/management and the 2nd Respondent was provided with opportunity to cross-examine the said witnesses. 2nd Respondent was also provided with opportunity to examine witnesses from his side. After enquiry, the enquiry officer had submitted a report dated 28.10.1999, finding that charges 1, 3 and 8 alleged against the 2nd Respondent under Ext.P2 were proved and the 2nd Respondent was exonerated from charges 2, 4, 5, 6 and 7, evident from Ext.P4.

5. Thereafter, the disciplinary authority had called for the representation in regard to the findings of the enquiry officer and the 2nd Respondent was also heard in detail. Thereafter, the disciplinary authority imposed the punishment

of dismissal on the 2nd Respondent. Though an appeal was filed by the 2nd Respondent against the order, the Appellate Authority dismissed the appeal. Against the order of dismissal from service, 2nd Respondent had raised an industrial dispute and thereupon a reference under Sec.10(1)(d) of the Industrial Disputes Act was made by the Government, which reads thus:

"Whether the dismissal from service of Shri. V. Rajagopal, Cashier in charge of Pottenkadu Branch of State Bank of Travancore by the management of State Bank of Travancore is legal and justified? If not, what relief the workman is entitled?".

6. The workman has filed claim statement and the management has filed written statement before the Labour Court. Thereafter, the validity and sustainability of the enquiry was considered by the 1st Respondent as the preliminary issue and by preliminary order dated 20.08.2010, the 1st Respondent held that the enquiry conducted against the 2nd Respondent was in violation of the principles of natural justice. It is thus challenging the preliminary order of the 1st Respondent, this writ petition is filed.

7. The 1st Respondent, Labour Court, after evaluating

the facts and circumstances of the case, held that two documents which were sought to be produced by the 2nd Respondent from the custody of the management were not produced since they were not traced out and that page 8 of Ext.M1(a) reveals that the workman had submitted a list of documents. However, no such list is seen in the enquiry files. Further, page 26 of Ext.M1 file contains a copy of defence list and as per that list, there are nine documents and all of them were marked as Exts.D1 to D9. However, the workman disputes the correctness of the list and that the list was not signed by any one. Therefore, 1st Respondent entered into a finding that the list contained at page 26 of Ext.M1 is not the list submitted by the defence and at any rate, out of the documents marked, Exts.D5 and D8 are missing and in spite of opportunity given to the management by the Labour Court to produce the missing documents, they were not able to produce them. It was also found that Ext.M1(a) proceedings of enquiry does not show that Enquiry Officer had asked the Presenting Officer to produce 2 documents wanted by the defence. It was also found by the Labour Court that the proceedings do not show that the Presenting Officer had informed the Enquiry

Officer either in writing or orally that the documents were not traceable or available. However, the Labour Court entered into a categorical finding that neither the Branch Manager of the Pottenkadu Branch nor anybody from the management had informed the enquiry officer in writing that the documents were not available or were destroyed or were not traceable. In such circumstances, the Labour Court entered into a finding that those documents requested by the 2nd Respondent for production from the management side was vital in deciding the case of the 2nd Respondent.

8. It was also held by the 1st Respondent that one of the two documents sought to be produced is the Gold Loan Third Party Release Letter and on production of the same, it would have revealed that the loanee had got the pledge redeemed and it would have also shown that the gold ornaments were pledged not by the workman but by another person and the ornaments were taken back by that person and not by the 2nd Respondent.

9. That apart, with regard to the second document i.e. Courier Pick Up Run Sheet which relates to charge No.8 i.e. issuing cheques without maintaining sufficient balance in the

account and keeping the cheques pending till sufficient money is remitted in his account, it was held by the Tribunal that the 2nd Respondent could have defended the charge in a formidable way if the document was produced.

10. Overruling the contention of the management in the written statement that non-production of the document has caused no prejudice to the defence, the Labour Court has found that the documents are vital and relevant in proving or disproving charges 3 and 8, and that by non-production of the same, the charge-sheeted employee lost an opportunity to meet the charges effectively. Therefore, categorical finding was entered to the effect that non-production of documents has caused prejudice to the 2nd Respondent workman and the same amounted to violation of the principles of natural justice. That apart, it was found by the Labour Court that out of the 8 documents produced and marked as Exts.D1 to D8, two documents were missing, i.e. Exts.D5 and D8, and thereupon the Labour Court found that the management are bound to explain how these documents which were once marked in the enquiry are missing now and how the findings based on Exts.D5 and D8 can be sustained and it was found by the Court

as an instance of irregularity in the enquiry.

11. So also, while meeting with the contention raised by the 2nd Respondent that the charges framed against him are vague, the Labour Court found that the charges cannot be stated to be vague, but the provisions of Bipartite Settlement relating to misconduct are mentioned, without specifying which provision to which charge or misconduct and therefore it mars the efficacy of defence in meeting charges. It was also held that the enquiry officer, the disciplinary authority or Appellate Authority have not referred to any provision of the Bipartite Settlement relating to misconduct found proved and charge sheeted employee has a right to know under what provision of law he is being proceeded and punished. It was also held that it is only fair that the workman was informed of the nature of the misconduct as major or minor and the penal provision that is invoked and therefore the procedure adopted lacks fair play. Thereupon, it was found that the enquiry is vitiated for violation of the principles of natural justice and fair play.

12. Heard learned counsel for the petitioner, Sri. P. Ramakrishnan and Sri. Ashok B. Shenoy, appearing for the 2nd Respondent.

13. The thrust of the contention advanced by the learned counsel for the petitioner is that the Labour Court having found that there is no vagueness in the charges alleged, went wrong in finding fault with the provisions of the Bipartite Settlement. It is also contended that so far as the enquiry is concerned, the duty of the enquiry officer is to find out whether the allegations raised against the delinquent employee is proved or not. It is also the contention of the learned counsel that the enquiry officer in Ext.P4 enquiry report has entered into a definite finding as to the allegations raised against the Respondent as far as the defence in the enquiry is concerned, the provisions in the Bipartite Settlement has no role.

14. That apart, it is contended that the relevance of the provisions of the Bipartite Settlement is for deciding punishment as to major or minor, based on the findings. Therefore, it is contended by the learned counsel that the non-mentioning of the provisions of the Bipartite Settlement in relation to the allegations did not affect the efficacy of the defence of the workman at all. That apart, it is also contended that there is no ambiguity in the charge sheet at all and it is

clearly discernible from the charge memo, which allegation relates to which provision in the Bipartite Settlement and further that the 2nd Respondent had not made any complaint in this regard in Ext.P3 explanation. It is also contended by the learned counsel that since the Labour Court has entered into such a finding, the opportunity of the petitioner to adduce fresh evidence has turned futile and even if fresh evidence is adduced, with the said observations in the preliminary order will not result in passing a final award by the Labour Court independently and freely. It is also contended by the learned counsel that with regard to the two documents found to be vital by the Labour Court, i.e. Courier Pick Up Run Sheet and the Gold Loan Third Party Release Letter, no prejudice is caused to the 2nd Respondent. There was no evidence before the Labour Court to come to a conclusion that the 2nd Respondent had filed an application before the enquiry officer calling for documents. No copy of such a petition was produced before the Tribunal by the 2nd Respondent.

15. Apart from the same, it is contended that in such a situation, the 2nd Respondent should have put necessary questions to the enquiry officer during cross-examination.

Since no such questions were put, the Labour Court was not legally correct in entering into such findings in a preliminary order. Apart from the same, it is also contended that from the argument notes filed by the 2nd Respondent before the enquiry officer, it is explicitly clear that even according to the workman, the said documents were not available with the Branch and that apart, it is also contended that any questions with regard to such documents were not put to the enquiry officer in cross-examination also. In the absence of any prejudice caused to the 2nd Respondent due to non-production of the said documents, the findings entered by the Tribunal are not sustainable, contends the counsel that even if assuming that the documents were not produced, the same would have been applicable and pertinent only in respect of one of the charge relating to pledged ornaments and therefore the Tribunal went wrong in finding that the whole enquiry was vitiated for non-production of documents.

16. So also, it is contended that the findings of the Tribunal with regard to withholding of the cheque leaves for want of sufficient fund in the account of the 2nd Respondent, even the 2nd Respondent has in his Ext.P3 reply to the charge

sheet, has categorically admitted in paragraph 8 that some of the cheques presented through the Edappally branch when came to Pottenkad branch, the Manager obliged to his request and kept those cheques for a few days in his custody. Therefore, it is contended that since such an admission is made by the 2nd Respondent himself in the reply to the charge sheet, there was no further evidence required to prove the lapses alleged on the part of the workman regarding that aspect.

17. *Per contra*, learned counsel for the 2nd Respondent has contended that the two documents sought to be produced from the side of the management were vital for establishing the defence of the workman and therefore non-production of the same in the enquiry proceedings and the lapses on the part of the enquiry officer to call for the said records from the petitioner amounted to serious irregularity touching the root of defence and therefore the enquiry became vitiated being violative of the principles of natural justice. Moreover, learned counsel contended that the management has failed to explain in the charge sheet in accordance with the terms of the Bipartite Settlement as to which are the punishment for major

and minor offences separately and therefore the workman did not have an opportunity to know the nature of punishment and the consequence thereto he is liable to suffer, if he was found guilty. It is also contended by the learned counsel that since the charge with regard to the withholding of the cheques, various cheques were involved, the same should have been clearly explained by the management as to which of the cheque was withheld for want of sufficient funds. Therefore, the learned counsel submitted that the findings in the preliminary order of the Labour Court does not warrant any interference by this Court by invoking either Article 226 or Article 227 of the Constitution of India.

18. Appreciated the rival arguments advanced by the learned counsel for the respective parties, and perused the records. I do not propose to interfere with the finding of the 1st Respondent that the enquiry is vitiated being violative of the principles of natural justice, being a finding of fact, for want of production of documents, missing of documents from the enquiry file etc. etc. In my view, so far as the vagueness of the charge is concerned, with regard to withholding of cheque, it is clear from Ext.P3 explanation offered by the

workman itself that the cheque was withheld for some time since there was no sufficient funds in the account. But, he states that he had sought the assistance of the Manager for the purpose. If that was the manner in which the cheque was withheld, the workman had a duty to adduce evidence and prove before the enquiry officer that he was not liable for withholding the cheque and the same was done with the permission of the manager. From the preliminary order of the Labour Court, I do not find any reference at all regarding the admission of 2nd respondent in Ext.P3 reply to the charges alleged. Therefore, that by itself is explanatory that cheques were withheld in the Branch for want of sufficient funds. Since the 2nd Respondent himself was aware of the cheque transactions which were withheld, there is no point in stating that the charge with regard to the same was vague. If the 2nd Respondent has not understood the charge properly, he should have raised such an objection in the explanation itself. Having not done so, it was not proper on the part of the Labour Court in finding fault with the management for vagueness of the charge. Therefore, I have no hesitation to hold that the finding of the Labour Court with regard to the vagueness of the

charge cannot be sustained at all.

19. I have perused Ext.P2 charge sheet and it is true that after the charges 1 to 8, clauses of the Bipartite Settlement regarding punishment are mentioned. According to the petitioner, the punishment so mentioned reflects the sequence of events explained in the charge sheet itself and therefore the contention that the 2nd Respondent could not understand which of the punishment will be applied against which of the charges, cannot be sustained. In my view, no such vagueness can be attributed in the nature of punishment mentioned thereunder. That apart, so far as the imposition of punishment is concerned, it is for the Disciplinary Authority to issue necessary show cause notice to the workman after the enquiry was over and explain the punishment that it was proposing to impose against the workman, and therefore the contention raised by the 2nd Respondent that he had no opportunity to understand which are the major and minor punishments from the extracts made in the charge sheet cannot have any legal force at all. That apart, if the documents i.e. Exts.D2 and D5 were missing from the enquiry file, the management is duty bound to produce the same and

prove those documents while adducing evidence in the *de novo* enquiry.

20. After evaluating the evidence and fact situation, I am of the considered opinion that the Labour Court after having found that the enquiry is vitiated being violative of the principles of natural justice, it could have left open the other aspects to the management, to adduce appropriate evidence before it and then prove that the charges alleged by the petitioner against the 2nd Respondent was in accordance with law and in order. The Labour Court also should have taken into account the nature of employment that was carried on by the 2nd Respondent in the Bank. He was holding a responsible post and the charges alleged against him were of serious nature, especially due to the fact that the 2nd Respondent was handling public money which required, impeccable integrity, character and honesty. Any violation of the basic character that is required and expected of, from a Cashier must have been viewed by the Labour Court with more seriousness. This is more so, when no allegations are raised by the 2nd respondent against the petitioner of victimisation and unfair labour practice. As I have already held, since the finding of

the Labour Court that the enquiry conducted was in violation of the principles of natural justice, I do not propose to interfere with the said finding. But, at the same time, the finding rendered by the Labour Court with regard to the vagueness of the charge consequent to non-explanation of the details of the cheque and the vagueness of the imposition of punishment as regards the provisions of Bipartite Settlement cannot be sustained under law, in view of the reasons stated above. Therefore, the findings of the 1st Respondent in accordance with the same are vacated.

21. Since the matter is pending for long, it is only appropriate to issue a direction to the 1st Respondent, Labour Court to take the matter into its files and proceed with the case in accordance with law. At any rate, the entire exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment, after providing sufficient opportunity to the petitioner and the 2nd Respondent.

The writ petition is partly allowed and the findings of the 1st Respondent regarding the vagueness of charge and the imposition of punishment under the provisions of Bipartite Settlement are vacated. But, sustain the finding of the Labour

Court that the enquiry is vitiated.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
22.12.2015