

M.Prabhakaran Vs. the President, Chorode Service Co-operat

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Court : Kerala

Decided On : Feb-17-2014

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : M.Prabhakaran

Respondent : The President, Chorode Service Co-operat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN MONDAY,THE17H DAY OF FEBRUARY201428TH MAGHA, 1935 OP(LC).No. 3346 of 2011 (O) ----- AGAINST THE AWARD IN ID92008 of LABOUR COURT, KOZHIKODE ===== PETITIONER: ----- M.PRABHAKARAN, AGED52YEARS MATHATHU VEEDU, MUTTUNGAL WEST PO VATAKARA, KOZHIKODE. BY ADVS.SRI.S.K.SAJU SRI.A.RANJITH NARAYANAN RESPONDENTS: ----- 1. THE PRESIDENT, CHORODE SERVICE CO-OPERATIVE BANK LTD , CHORODE PO VATAKARA, KOZHIKODE673106.

2. THE SECRETARY, CHORODE SERVICE CO-OPERATIVE BANK LTD , CHORODE PO VATAKARA, KOZHIKODE673106.

3. LABOUR COURT KOZHIKODE, CIVIL STATION PO, KOZHIKODE DISTRICT, PIN673020. R1 & R2 BY ADV. SMT.A.K.PREETHA R1 & R2 BY ADV. SRI.C.ANIL

KUMAR THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD ON 12-02-2014, THE COURT ON 17-02-2014 DELIVERED THE FOLLOWING: SD S.S. SATHEESACHANDRAN, J., ----- O.P.(L.C.) No.3346 OF 2011----- Dated this the 17th day of February, 2014

JUDGMENT

The above original petition has been filed under Article 227 of the Constitution of India, challenging the award passed by Labour Court, Kozhikode. On the reference made by the Government over dismissal of petitioner from the service of Chorode Service Co-Operative Bank Limited, the Labour Court has held that his dismissal was justifiable and that he is not entitled to any relief.

2. Petitioner was employed as an 'attender' in the above bank. After conducting a domestic enquiry over the misconduct imputed against him and charges against him established in such enquiry, he was dismissed from service by the management. On the reference made by Government over his dismissal, petitioner filed a claim statement contending that there was no proper enquiry over the charges of misconduct imputed against him, that the report filed by enquiry officer is unsustainable and, findings entered by him are perverse, and, that the management O.P.(L.C.) 3346/11 2 and enquiry officer did not consider the explanation offered by him to the charges. Management filed a counter statement resisting the challenges contending that the charges proved against petitioner are grave, and proper enquiry, in accordance with rules and complying with the principles of natural justice, had been conducted, and, on the misconduct established he deserved the maximum punishment of dismissal from service, and no interference with that order is called for. Labour Court on the materials placed by both sides came to the conclusion that the enquiry conducted was fair, and the misconduct proved against petitioner on the evidence let in, justified the punishment imposed by the management, for his dismissal from service.

3. Learned counsel for petitioner assailed the award of labour court contending that it has not considered the challenges raised against the report of the enquiry officer in the proper perspective and that has resulted in miscarriage of justice. Management has not appointed any presenting officer in the enquiry and enquiry

officer acted as its presenting officer, and, infact, he was having double role as the prosecutor and judge while he conducted the enquiry, is the submission of counsel. O.P.(L.C.) 3346/11 3 Management witnesses were examined by enquiry officer on behalf of management, is the submission of counsel. Relying on Sebastian K. Antony v. Manager, St.Alberts College, Ernakulam and others (2012 KHC347, learned counsel contended that enquiry officer cannot be the presenting officer, judge and prosecutor and, when he had acted so, enquiry conducted by him is vitiated and the report filed by him cannot be accepted. Learned counsel would also submit that the witness examined on behalf of management, secretary of the bank, was not included in the witness list filed before the court, and, copy of list given to the workman. Management had no right to examine a witness not included in the witness list and when that was so done without notice to petitioner, he was denied reasonable opportunity to crossexamine the witness of management, according to the counsel. Further more, other than marking of enquiry report, enquiry officer was not examined as a witness, and, workman was denied opportunity to cross examine the enquiry officer and that has caused prejudice to him in establishing his challenges to the enquiry proceedings and the report filed, according to the counsel. At any rate, punishment O.P.(L.C.) 3346/11 4 imposed by management is shockingly disproportionate, and, his dismissal from service was not justified in the given facts of the case, is the submission of counsel for setting aside the award of labour court, ordering his reinstatement in service. On the other hand, learned counsel appearing for the respondent/management, advertng to the charges proved against the workman, contended that they are grave and the punishment imposed which has been found to be justified by the labour court, is not open to any challenge on any sustainable ground. Petitioner was provided sufficient opportunity in the enquiry, which was conducted strictly following the principles of natural justice, and, there is no merit in the challenges against the enquiry proceedings and the report, is the further submission of counsel.

4. Petitioner, employed in a Co-Operative Society running banking business as attender was attending duties of a 'cashier'. Among other charges levelled to initiate disciplinary action against him, he was imputed of working as an agent for others, more than one concern, canvassing deposits for them from the customers

of the employer bank, and collecting commission from O.P.(L.C.) 3346/11 5 them for such work. Explanation offered by the petitioner to the above charges was that some other staff were also carrying on such activities. Management has let in evidence to show that despite directions given to him to stop such financial dealings affecting the reputation and also interest of the institution doing banking service, he continued to work as an agent for other organisations collecting commission. He had misbehaved to two employees, one of them a lady, and also continued to work as an agent of the Life Insurance Corporation while working as a full time employee of the bank, were some among the other charges levelled against him. The above charges, with some others too, were established in the enquiry, in which the lady employee, who, allegedly, suffered the misbehaviour from petitioner, gave evidence of his misconduct. Enquiry officer found the evidence tendered in the enquiry establishing all the charges except one levelled against the worker. After examining the challenges raised by the workman against the enquiry the labour court has come to the conclusion that enquiry has been conducted fairly, there is no misreading of evidence and findings are entered by enquiry officer on proper appreciation of the evidence tendered. O.P.(L.C.) 3346/11 6 Some of the charges established against the workman, as indicated above, are grave. It is well settled that while exercising powers under supervisory jurisdiction, this Court will not interfere with the factual findings of labour court, which are based on appreciation of evidence adduced, unless such findings are shown to be perverse. Only if it is shown that the findings suffer from errors of law or that the procedure followed manifested injustice or violation of natural justice, interference can be resorted to. Finding of fact entered by labour court cannot be interfered unless it is shown to be perverse or wrong legal principles were applied or that wrong questions were posed for consideration or it has been arrived at on the basis of irrelevant facts or extraneous consideration. Going through the award passed by labour court it is seen that proper questions have been posed for consideration and appreciating the evidence, it has entered definite and conclusive findings to hold that the enquiry conducted was fair and grave charges of misconduct imputed against the workman have been brought home by the materials produced. There is no merit in the challenges canvassed that the enquiry officer had acted as presenting officer, and also that the examination of O.P.(L.C.)

3346/11 7 secretary of the bank without inclusion of his name in the witness list on behalf of the bank was improper. Management is a co-operative bank and the secretary represented the bank before the labour court. When that be so, his examination was done without including his name in the witness schedule, cannot be canvassed as a ground causing prejudice to the workman. It is seen the workman has been given sufficient opportunity to meet the charges levelled, and, the materials produced clearly established grave misconduct by him justifying the punishment imposed by the management. There is no merit in the petition, and it is dismissed. Sd/- S.S. SATHEESACHANDRAN JUDGE sd // True Copy // P.A. to Judge

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