

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.SIRI JAGAN

FRIDAY, THE 29TH DAY OF JUNE 2012/8TH ASHADHA 1934

WP(C).No. 9131 of 2007 (K)

PETITIONER(S):

**C.PRABHAKARAN NAIR,
USHUS, MANNARKUZH VEEU, PULIYARAKONAM,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.N.P.PRAJEESH**

RESPONDENT(S):

- 1. THE SECRETARY,
MAILADY MILK PRODUCERS CO-OPERATIVE SOCIETY LTD.
NO.T.142(D), PULIYARAKONAM, THIRUVANANTHAPURAM.**
- 2. THE INDUSTRIAL TRIBUNAL,KOLLAM.**

**R1 BY ADV. SRI.P.RAMAKRISHNAN
R2 BY GOVERNMENT PLEADER SRI.V.VIJULAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-06-2012, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Kss

WPC.NO.9131/2007 K

APPENDIX

PETITIONER'S EXHIBITS:

- P1: COPY OF THE CHARGE SHEET ALONG WITH THE STATEMENT OF ALLEGATIONS DTD. 19/01/1998.**
- P2: COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DTD. 22/01/1998.**
- P3: COPY OF THE ENQUIRY REPORT DTD. 19/06/1998.**
- P4: COPY OF THE CLAIM STATEMENT DTD. 26/05/2003.**
- P5: COPY OF THE WRITTEN STATEMENT DTD. 11/11/2003.**
- P6: COPY OF THE AWARD PASSED BY THE 2ND RESPONDENT DTD.22/8/2006.**
- P7: COPY OF THE NOTICE ISSUED TO THE PETITIONER DTD. 30/12/2000.**
- P8: COPY OF THE EXPERIENCE CERTIFICATE ISSUED TO THE PETITIONER DTD. 24/10/1997.**

RESPONDENT'S EXHIBITS:

N I L

/TRUE COPY/

P.A.TO JUDGE

Kss

S. SIRI JAGAN, J.

W.P.(C)No.9131 of 2007

Dated this the 29th day of June, 2012

J U D G M E N T

The workman in Industrial Dispute No.71/2002 before the Industrial Tribunal, Kollam is the petitioner herein. He is challenging Ext.P6 award passed by the Tribunal in that I.D. The issue referred for adjudication was :

“Whether the dismissal of Sri. C. Prabhakaran Nair Milk Tester is justifiable? If not, what relief he is entitled to?”

2. Since the petitioner was dismissed after having been found guilty of misconducts proved in a domestic enquiry conducted by the management, the Tribunal first considered the validity of the enquiry as a preliminary point. The workman specifically raised question of bias against the Enquiry Officer. He contended that the Enquiry Officer was a regular advocate of the management and therefore he is biased in favour of the management. He also contended that the Enquiry Officer himself, later, after conducting the enquiry, replied to a lawyer notice issued to the petitioner in respect of the disciplinary proceedings against the petitioner himself. He also submitted that in the industrial

dispute, the award in which is under challenge in this writ petition, that Enquiry Officer himself appeared before the Tribunal and filed a written statement on behalf of the management, which is produced as Ext.P5 in this writ petition. Therefore, according to him, the enquiry conducted by such a biased Enquiry Officer cannot be held valid and proper. But the Tribunal passed a preliminary order holding that the fact that the Enquiry Officer had appeared for the Society in some litigation or issued a reply notice to the workman subsequently, cannot be a fact or circumstance which would go to show that the Enquiry Officer acted with partiality with regard to the conduct of the enquiry. The Tribunal held that the enquiry is valid and proper and also that the evidence adduced in the enquiry justifies the findings of guilt on the petitioner. Since the misconducts alleged against the petitioner were very serious in nature, the Tribunal found that the dismissal is justified and the workman is not entitled to any reliefs in the I.D. Ext.P6 is the award passed by the Industrial Tribunal. The petitioner is challenging that award. The petitioner's

main contention is regarding the bias of the Enquiry Officer. The petitioner would contend that insofar as the Enquiry Officer was a regular advocate of the management, he himself having appeared before the Industrial Tribunal to support the enquiry filing a written statement as evidenced by Ext.P5 after conducting the enquiry and he having further issued a reply on behalf of the management to the lawyer notice issued by the petitioner to the management, by Ext.P7 reply notice, the bias of the Enquiry Officer can be inferred from the circumstances which were available for consideration by the Industrial Tribunal. The petitioner also relies on a decision of this Court in **Jailavudeen v. State of Kerala [2009 (2) KLT 232]** which holds that the action of the Enquiry Officer in appearing for the management in proceedings before superior authority defending his own action, amounts to bias.

3. In answer to the same, the counsel for the management points out that it is settled law that the fact that the Enquiry Officer is an advocate appearing for the management in other cases is no ground to infer bias of the

Enquiry Officer. As far as Ext.P5 written statement is concerned, the argument is that the Enquiry Officer filed the written statement without realising that he was the Enquiry Officer in the industrial dispute. He points out that as is clear from Ext.P6 award, the advocate for the management was somebody else. It is contended by the counsel for the management that, the fact that the very same advocate issued Ext.P7 reply notice also does not spell out any bias on his part as against the workman.

4. I have considered the rival contentions in detail.

5. It is a basic principle of law that justice should not only be done it also manifestly be seen to be done. The contentions of the parties should be appreciated in the light of that basic principle of law. Of course as contended by the learned counsel for the management, the fact that the Enquiry Officer used to appear for the management in other cases will not be a ground for inferring bias on the part of the Enquiry Officer. But when the Enquiry Officer himself appeared in the I.D. raised in respect of the enquiry conducted by him and files a written statement defending

the enquiry, then it is a totally different matter. Ext.P5 is the written statement filed by the manager before the Industrial Tribunal in the I.D. From the docket of the written statement it is abundantly clear that the Enquiry Officer himself was the advocate who prepared and filed Ext.P5 written statement of the management. Added to that, the Enquiry Officer himself issued Ext.P7 reply notice to the lawyer notice issued by the petitioner in respect of the disciplinary proceedings against the petitioner. That shows that the Enquiry Officer himself chose to appear for the management in proceedings before the superior authority defending his own action. A learned Judge of this Court has, in **Jailavudeen**'s case (supra), held that such a situation is sufficient to infer bias on the part of the Enquiry Officer. I respectfully agree with the law laid down in that decision. Therefore, it is evident that the Enquiry Officer was biased in conducting the enquiry. As such, on that ground, the enquiry should have been held to be vitiated. Insofar as in Ext.P6 award the Tribunal has not held so, Ext.P6 award is unsustainable. Accordingly, Ext.P6 award

is quashed. The Industrial Tribunal, Kollam is directed to re-adjudicate the I.D in accordance with my above findings and pass fresh award. Needless to say the Tribunal shall pass fresh preliminary order and on finding that the enquiry is vitiated for bias on the part of the Enquiry Officer, give the management an opportunity to adduce evidence to prove the misconducts alleged against the petitioner and pass fresh award after considering the evidence produced by both sides in respect of the same. In view of the fact that the I.D. is of the year 2002, the Tribunal shall pass fresh award, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment.

The parties shall appear before the Tribunal for further proceedings on 10.07.2012.

Sd/-

S. SIRI JAGAN
JUDGE

//True copy//

P.A. TO JUDGE

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