

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 28TH DAY OF FEBRUARY 2023/9TH PHALGUNA, 1944

W.A. NO.2424 OF 2016

(AGAINST THE JUDGMENT IN WPC 11073/2006
OF HIGH COURT OF KERALA)

APPELLANT/PETITIONER IN W.P. (C) :

SRI. N.NANDAKUMAR, MANAGING PARTNER,
SASTHA ENTERPRISES, AENATH, ADOOR TALUK- 689 693.

BY ADVS.
SRI.E.K.NANDAKUMAR (SR.)
SRI.P.BENNY THOMAS
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENTS/RESPONDENTS IN W.P. (C) :

- 1 SRI.A.P.JACOB, AMBILASHIKATHU VEEDU,
AENATH, ADOOR TALUK - 689 693
- 2 LABOUR COURT,
KOLLAM - 691 013.

SR. GOVERNMENT PLEADER, SMT. MARY BEENA JOSEPH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

(Dated: 28th February, 2023)

Basant Balaji, J.

The appellant was the petitioner in W.P.(C) No.11073 of 2006. The petitioner filed the writ petition for quashing Ext.P7 award of the Labour Court, kollam in ID No.123/99 whereby the dismissal of the workman from the service by the management was held to be unjustifiable and the management was directed to reinstate the workman with 30% of the back wages.

2. On 22.09.97, the first respondent along with two others were issued with a charge-sheet. Though an explanation was given by the first respondent, proceedings were initiated against them, and they were placed under suspension pending enquiry. After the enquiry, the enquiry officer submitted his report finding that the workman was guilty of the charges, and all the three were dismissed from service. The first respondent

raised an industrial dispute and it was referred for adjudication and was registered as ID No.123/1999. The Labour Court as per the preliminary order dated 31.05.2005 held that the domestic enquiry conducted against the worker is valid and the prayer of the workman to set it aside was rejected.

3. The only question to be considered by the Tribunal was regarding the proportionality of punishment imposed on the worker. The Tribunal after referring to the charge came to the finding that the incident which occurred on 11.09.1997 for which a charge is framed against the employer is part of collective bargaining for bonus by the workers and though two other persons were also dismissed, one Thankachan was reinstated by the management without any further action. The Tribunal invoking Section 11(A) of the Industrial Disputes Act, therefore, held that the punishment imposed is disproportionate to the charge levelled against the worker. The punishment of dismissal

was modified and the management was directed to reinstate the worker and further held that the worker will not be entitled to 70% of the back wages as the penalty for his misconduct. Aggrieved by the award, the management has filed the writ petition. The learned single Judge has gone through the award of the Labour Court and came to a definite finding that there are no reasons to interfere with the finding entered by the Labour Court that the domestic enquiry conducted is valid and the charge levelled against the worker was also proved. The only challenge made by the management in the writ petition was regarding the order of reinstatement with 30% back wages.

4. It is worthwhile to note that the charge proved against the workman was that, on 11.9.1997, when the managing partner reached the factory with money for meeting the bonus commitment of the first respondent, he was prevented from entering the factory for more than 2 hours and showered filthy

and most objectionable language. It took note of the fact that one Mr.Thankachan who was also charge-sheeted along with the first respondent was granted all service benefits and the first respondent alone was singled out for termination. The Tribunal had entered into a finding that the charge was proved against the first respondent and denial of 70% back wages is sufficient punishment. During the pendency of the writ petition also there was a direction for payment of wages under Section 17(B) of the Act, but even after granting time, to ascertain whether the entire amount due under Section 17(B) has been paid. The petitioner did not have a correct answer and therefore the learned single Judge was of the opinion that for the above reason of non-payment of Section 17(B) Wages and also a punishment has been imposed which amounted to a denial of 30% back wages is sufficient punishment. Therefore, the learned single Judge did not interfere with the award of the Tribunal.

5. Heard counsel on either side.

6. The learned counsel for the appellant/petitioner argues that the Tribunal as well as the learned single Judge had concurred with the finding that the charge alleged against the first respondent has been proved and he deserves punishment. So, the next question to be decided is, to what extent the punishment of dismissal is proportionate to the charges framed? As stated above, the charge proved against the first respondent was that he did not allow the managing partner to enter the factories for more than two hours and showered him with filthy language. The termination of the first respondent cannot be said to be proportionate to the charge proved against the first respondent. The tribunal has awarded a punishment of not granting 70% of back wages though reinstatement was ordered.

7. The counsel for the appellant relied on the judgment of the Apex Court in *Mahendra Nissan Allwyns, Ltd. v. M.P.Siddappa & Another (2000 (4) LLN 562)* and contended that if there are serious charges against a workman, proved before the Labour Court, then the High Court was not justified in interfering with the award of the Labour Court and modifying the punishment. It was a case in which the delinquent workman was let out from the factory premises to the administrative building of the management and entered the room of the Deputy General Manager and abuse filthy language and also the misbehaviour of the delinquent with five executives of the management was also proved. In those circumstances, the Apex Court held that the charges were of serious nature and the punishment of removal from service is proportionate. Coming to the facts of this case, the only allegation proved is that the first respondent did not allow the managing partner to enter the factory for more than two hours and the facts of this case are distinguishable from the

facts of the case in ***Mahendra Nissan's*** case cited (supra). Therefore, the dictum laid down by the Apex Court is not applicable to the facts of this case.

The learned single Judge is perfectly right in concurring with the award of the Tribunal. We have perused the award of the Tribunal, as well as the judgment of the learned single Judge, the punishment imposed by the Tribunal is proportionate with the charge proved against the workman. Therefore, we are of the considered opinion that there no ground to interfere with the judgment of the learned single Judge is made out. The writ appeal therefore fails and the same is dismissed.

Sd/-
S.V.BHATTI, JUDGE

Sd/-
BASANT BALAJI, JUDGE