
(2016) 10 KL CK 0002

In the High Court Of Kerala

Case No : Writ Petition (C). No. 37290 of 2007 (L)

Hotel Yuvarani

APPELLANT

Vs

Labour Court, Ernakulam

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 152 FLR 521 : (2016) 4 LLJ 677

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. B. Ashok Shenoy, Sri. Abu Mathew, Sri. Antony Figaredo, Smt. Lakshmi B. Shenoy, Sri. H.B. Shenoy, Sri. Sobhan George, Sri. Thomas P. Makil, Advocates, for the Respondent No. 2; Sri. P. Ramakrishnan, Sri. T.C. Krishna, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Mr. K. Vinod Chandran, J. - The petitioner is the management and the 2nd respondent, the workman. The challenge raised is against the preliminary order of the Labour Court, at Exhibit P7.

2. The issue referred was, whether the dismissal of the workman was justified or not. The misconducts alleged against the workman were many; but, relevant was only the allegation of having assaulted another workman in a drunken state.

3. The workman specifically contended that the action initiated by the management was a clear act of victimization, especially since; but for the misconduct of assault on 07.04.1991 all other misconducts were alleged to have been committed prior to that, in 1981, 1986 and 1988. The workman also alleged bias on the Enquiry Officer for reason of he having been engaged by the management especially in a case in which the workman was an opposite party. The workman contended that he was the leader of a Trade Union and initiated proceedings for payment of minimum wages, which was contested by the management through the Enquiry Officer, who was their lawyer.

4. The preliminary order passed by the Labour Court found the allegation of bias to be a reasonable one and set aside the enquiry proceedings. The learned Counsel for the petitioner-management submits that it is trite that the mere fact that a lawyer who was engaged by the management was appointed as an Enquiry Officer would not result in any bias being found. In any event, it is contended that despite the bias being found, it has been found by the Labour Court itself that the Enquiry Officer had given sufficient opportunity as requested by the workman. The learned Counsel for the respondent-workman, however, argues that bias is a fundamental aspect which if found, would be in violation of the principles of natural justice and, hence, if there is a reasonable likelihood of the same, the proceedings would stand vitiated for reason of such bias.

5. It is trite that the mere fact that a lawyer, who was regularly engaged by the management, was appointed as the Enquiry Officer would not vitiate the proceedings. The further fact that such lawyer had appeared in a proceeding against the very same workman who is the delinquent in the enquiry initiated, would not also, hence, create any reasonable cause for raising a ground of bias. This is so since the lawyer appearing for a party in a proceeding before a Court of law cannot be alleged to be inimical towards the other party or even biased towards the opposite party; for which the lawyer should be identified with the management. The binding decisions; which permit a lawyer engaged by the management to act as an enquiry officer takes into account the professional relationship between the two and the nature of the proceedings that are carried on at a domestic enquiry. The Enquiry Officer in a disciplinary proceeding is merely entrusted with the work of collecting evidence and entering a finding on the same. Even the finding rendered by the Enquiry Officer would not be binding on the disciplinary authority. There can be hence no reasonable likelihood of bias found against the lawyer who appeared for the management against the delinquent employee, in another proceeding; without instances being pointed out from the proceedings itself; revealing facts which could lead to such a reasonable presumption. Here the Tribunal had merely presumed the bias on the fact of the Enquiry Officer having appeared against the workman and nothing else.

6. The Enquiry Officer being entrusted with only the work of collecting evidence by a due process known to law informed by the principles of natural justice, what would be relevant is to look into the proceedings and find whether there is any violation of principles of natural justice. On mere assertion of bias on the Enquiry Officer, the enquiry cannot be set aside. The relevant factor to find such reasonable apprehension to be justified has to be found out from the proceedings.

7. The petitioner-management asserts that the Labour Court has found that sufficient opportunity was given to the workman. The said finding is only with respect to the adjournments sought for by the workman on the various dates. The learned Counsel for the respondent-workman has a contention that the deposition of the witnesses and the enquiry proceedings were never supplied to the workman despite the same having been asked for.

8. This Court would not look into the allegations and counter allegations on the aspect of the enquiry, since the Labour Court has not looked into the same. It would have been ideal for the Labour Court to have looked into the enquiry proceedings as revealed from the enquiry file to find whether there is any violation of principles of natural justice. In such circumstance, while disagreeing with the finding of the Labour Court that there is a reasonable likelihood of bias for reason only of the Enquiry Officer having appeared for the management against the workman in another case, the preliminary issue itself is left open for consideration. The petitioner-management and the respondent-workman shall appear before the Labour Court on 26.10.2016 and the Labour Court shall allow both the parties to lead evidence and consider the entire issue within a period of six months from the date of appearance of parties. The preliminary order passed could also be challenged along with the final award.

9. The writ petition is allowed as indicated above. Parties are left to suffer their respective costs.