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**(1988) 01 KL CK 0031**  
**In the High Court Of Kerala**

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| Idukki District Estate Workers" Union | APPELLANT  |
| Vs                                    |            |
| Labour Court and Another              | RESPONDENT |

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**Date of Decision :** 20-01-1988

**Acts Referred:**

Constitution of India, 1950 — Article 20, 226  
Industrial Disputes Act, 1947 — Section 11A

**Citation :** (1989) 1 LLJ 408

**Hon'ble Judges :** Chettur Sankaran Nair, J

**Bench :** Single Bench

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## Judgement

Chettur Sankaran Nair, J.—Five workmen represented by the petitioner were dismissed after a domestic enquiry by the second respondent. An industrial dispute was raised and exhibit P-1 is the reference order. In the proceedings a preliminary issue was raised and by exhibit P-4, dated 9th February, 1983, the Labour Court (first respondent) found that "workmen were not given sufficient opportunity to establish their innocence. Enquiry to that extent is vitiated."

2. Thereafter, additional evidence was taken and three witnesses (WW2 to 4) were examined for the workmen. One of the workmen and the enquiry officer were examined respectively, as WW1 and MW1, as seen from exhibit P-6 (paragraph 5). Thereafter, the first respondent considered the matter and found that charges 1 and 3 were established. Punishment of discharge from service was imposed.

Exhibit P-6 order is challenged on three grounds. It is contended that the first respondent should not have acted on evidence recorded at the domestic enquiry. It was also contended that the findings are unsupported by evidence and that the punishment imposed is unduly harsh.

3. The petitioner would contend that, since the domestic enquiry was found to be improper, the evidence recorded therein could not be relied on. According to counsel, if the domestic enquiry is illegal, all that took place during the enquiry is wiped out. I am unable to accept this submission on principle or precedent.

Section 11A of the Industrial Disputes Act provides that the Labour Court shall rely only on the material on record. What is "material on record" came up for consideration in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, In the said decision (paragraph 46), the Court observed that "material on record" takes in (at page 298):

(i) the evidence taken by the management at the enquiry and proceedings of the enquiry; or

(ii) the above evidence and, in addition, any further evidence led before the Tribunal; or

(iii) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

4. Category (i) refers to evidence taken by the management at the enquiry. This is clear indication that evidence at the domestic enquiry is "material on record." The fact that the domestic enquiry was found to be vitiated will not have the effect of obliterating whatever was done in the course of the enquiry. The language of Section 11A, as interpreted by the Supreme Court, leaves no room for doubt that evidence already recorded at the domestic enquiry is material on record that could be and should be considered.

There are no rules of evidence or procedure governing this area. In the absence of rules, there is no warrant to think that such evidence should be excluded from consideration.

5. The "exclusionary rule" does not come into play. "Exclusionary rule", wherever it is found, must be based on a legal provision or constitutional mandate, like Article 20(3) of the Constitution of India or the fourth or fourteenth amendment in the *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, and *Wolf v. Calarado* 338. US. 25, I find support for this view. The petitioner placed reliance on the decision in *Radio and Electricals Mfg. Co. Ltd. Vs. Industrial Tribunal and Others*, to contend that evidence recorded at the domestic enquiry must be excluded. Even in that case it was found that, in the absence of an obligation raised before the Tribunal against admitting the evidence, such a contention cannot succeed. In the instant case, no objection was raised before the first respondent regarding the admissibility of the evidence recorded at the domestic enquiry. Besides, the decision of the Supreme Court aforesaid clearly is to the effect that such evidence can be considered.

6. The next contention is that the conclusion reached by the first respondent is not supported by evidence. I have been taken through exhibit P-6. The first respondent has relied on the evidence of Chandran and corroborating circumstances. In proceedings under Article 226 of the Constitution, this Court will not sit in appeal on findings of fact. I am not inclined to think that the findings are not based on evidence, or that they are vitiated by any error apparent on the face of the record. The contention must fail. It was then urged

that the punishment imposed is not merited. This Court will not consider the question of punishment, as a Court of appeal would - unless the punishment is "unduly harsh." Having regard to the nature of the charges found, I do not think that the punishment is unduly harsh. Considerations of discipline and other relevant factors must govern this area, and the appropriate authority has applied its mind to the facts and circumstances of the case. I am not inclined to think that the finding calls for interference.

7. In the result, the writ petition fails and is dismissed. There will be no order as to costs.