

**(2010) 09 KL CK 0253**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 29364 of 2008 (U)**

S. Padmakumar

APPELLANT

Vs

The Kerala State Film Development, The Managing Director  
and N. Harikumar, Sound Engineer

RESPONDENT

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**Date of Decision : 09-09-2010**

**Acts Referred:**

**Citation : (2010) 09 KL CK 0253**

**Hon'ble Judges : S. Siri Jagan, J**

**Bench : Single Bench**

**Advocate : B.S. Swathy Kumar, for the Appellant; P. Gopalakrishnan Nair, for the Respondent**

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## **Judgement**

S. Siri Jagan, J.—While the petitioner was working as a counter clerk in a theatre owned by the 1st respondent, disciplinary proceedings were initiated against him for certain charges of misconduct, which ultimately resulted in a notice directing the petitioner to show cause why the punishment of dismissal should not be imposed on him. The petitioner filed a reply stating that no witnesses were examined in his presence in the enquiry and the petitioner knew about the examination of witnesses only when he received the copy of the enquiry report. Therefore, he took the contention that the enquiry is violative of the principles of natural justice and unsustainable. But disregarding the petitioner's contention, by Ext. P4, the punishment of dismissal from service was imposed on the petitioner. The petitioner filed W.P(C) No. 2561/2008, in which this Court directed the Board of Directors of the 1st respondent to consider the appeal filed by the petitioner which resulted in Ext. P5 order of rejection of the appeal. It is under the above circumstances, the petitioner has filed this writ petition seeking the following reliefs:

- i. Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to issuance of Ext. P5 and quash the same;
- ii. to declare that Ext. P2 is legally unsustainable and cannot be acted upon since

it has been prepared violating the basic principles of natural justice and also declare that the proceedings consequent to Ext. P2 including Ext. P5 are legally sustainable;

iii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding and compelling respondents 1 and 2 to reinstate the petitioner as counter clerk forthwith and allow him to work as counter clerk.

2. A counter affidavit has been filed by the 1st respondent seeking to controvert the allegations of the petitioner.

3. I have considered the rival contentions in detail.

4. The primary contention of the petitioner is that the enquiry is vitiated by non-compliance with the principles of natural justice insofar as the evidence relied upon in the enquiry was taken in the absence of the petitioner and the petitioner was never informed about the examination of witnesses whose evidences have been relied on in the enquiry report to find the petitioner guilty. In the counter affidavit filed, there is no specific statement to the effect that the witnesses were examined in the presence of the petitioner or that the petitioner had been given a notice regarding examination of witnesses. The enquiry file has also not been produced before me to disprove the allegations of the petitioner. In view of the above, I am constrained to find that the petitioner had not been given adequate opportunity to cross examine the witnesses of the management whose depositions have been relied upon to find the petitioner guilty of the charges against him. Therefore, the enquiry and the consequential orders are vitiated by non-compliance with the principles of natural justice.

Accordingly, Exts.P4 and P5 are quashed. However, this will not stand in the way of the 1st respondent conducting a de novo enquiry against the petitioner in compliance with the principles of natural justice and taking further action against the petitioner in the disciplinary proceedings. Fresh action, if any, shall be initiated and completed within 3 months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.