

**(2016) 07 KL CK 0007**

**In the High Court Of Kerala**

**Case No :** W.A.No. 2753 of 2009(Against the judgment in O.P. 3704 of 1997 of Dated 28-07-2005 and Order Dated 17.06.2009 in R.P. No.936 of 2006)

The General Secretary

APPELLANT

Vs

The Manager, Madupetty Estate

RESPONDENT

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**Date of Decision :** 04-07-2016

**Acts Referred:**

**Citation :** (2016) 151 FLR 931 : (2017) LabLR 60 : (2016) 4 LLJ 206

**Hon'ble Judges :** Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

**Bench :** Division Bench

**Advocate :** Sri. P. Ramakrishnan, Advocate, for the Petitioners; Sri. E.K. Nandakumar, K. John Mathai and P. Benny Thomas, Advocates, for the Respondents

**Final Decision :** Dismissed

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## **Judgement**

Anil K. Narendran, J.&mdash;This appeal arises out of the judgment of the learned single Judge dated 28.07.2005 in O.P. No.3704 of 1997 and also the order dated 17.06.2009 in R.P. No.936 of 2006.

2. O.P. No.3704 of 1997 was filed by the first respondent herein, namely the Manager of the Madupetty Estate, Tata Tea Limited, Munnar challenging Ext. P6 Award passed by the Industrial Tribunal, Alappuzha and seeking other consequential reliefs. The learned single Judge by the judgment dated 28.07.2005 allowed the original petition interfering with Ext. P6 Award passed by the Industrial Tribunal. Seeking review of the judgement of the learned single Judge, the appellant Union filed R.P. No.936 of 2006 contending that there is error apparent on the face of the record. However, the said review petition ended up in dismissal by order dated 17.06.2009, which in turn is under challenge in this writ appeal.

3. We heard the arguments of the learned counsel for the appellant, the learned

counsel appearing for the first respondent Management and also the learned Government Pleader appearing for the second respondent.

4. The pleadings and materials on record would show that the workman, namely, one Balakrishnan (2557), while working as Mazdoor of Nettimaed Division under the first respondent Management was proceeded against alleging the following misconducts; under standing order No.22(h):

"Clause 22 (h)&mdash;Riotous or disorderly behaviour on the premises of the estate or any act subversive to discipline: in that it is alleged that you have unauthorisedly opened and occupied a full line unit in the new six rooms line at Nettimaed Division which is allotted to Sri. Mariappan, 2541 of same division.

And

Clause 22 (a)&mdash;wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior: in that you have not obeyed my instructions to vacate the above line unit and hand over the same to the Conductor, as per my memo dated 13th February, 1986."

5. Initially, the workman was issued with a memo of charges, calling for his explanation. On a finding that the explanation offered by the workman is not satisfactory, disciplinary proceedings were initiated. After enquiry, Enquiry Officer submitted Ext. P1 report finding the workman guilty of the charges levelled against him. Based on the report of the Enquiry Officer, the workman was imposed with a penalty of dismissal from service.

6. The punishment imposed by the Management was under challenge before the Industrial Tribunal, Alappuzha, based on the reference made by the Union for and on behalf of the workman. Before the Industrial Tribunal, the Union filed Ext. P2 statement, which was followed by Ext. P3 counter statement by the Management. After considering the materials on record, the Tribunal passed Ext. P4 preliminary order setting aside the domestic enquiry conducted against the workman and the Management was permitted to adduce fresh evidence in support of the findings in the enquiry report. Accordingly, the matter was proceeded with.

7. Before the Industrial Tribunal, MW1 and MW2 were examined and Exhibits M1 to M1(g) were marked from the side of the Management. On the side of the Union, the workman himself was examined as WW1. During the pendency of the matter before the Tribunal, an Advocate Commissioner was deputed to inspect the housing unit in question and to submit a report, who conducted an inspection on 13.12.1995 and submitted Ext.P5 report.

8. After considering the materials on record, the Tribunal came to the conclusion that the workman is entitled for re-instatement in service with back wages of 10%. The reasoning given by the Tribunal as contained in Ext. P10 order reads as follows :

"11. Considering the Commissioner's report regarding the non-occupation of the workman in the controversial Housing Unit for the last 7-8 years and also the fact that there was an offer by the Management for the reinstatement of the workman in service, I think better course would be to grant the relief of reinstatement to the workman in service at least now after these developments. After all, the very reason for initiating disciplinary action was the alleged refusal by the workman to vacate the Housing Unit. Possibly considering the triviality of the issue, the Management had offered to reinstate him in service earlier. But nothing was fructified and that was only on account of some technical reasons. When the workman took the stand that he had vacated the building, the Management took up the stand that there was no vacating by him. The Commissioner's report vindicates the stand of the workman to some extent that he was not at all going to the controversial Housing Unit for the last 7 - 8 years. Considering all these aspects, an award is passed holding that the workman is entitled for reinstatement in service from the benefit of continuity of service. But he will be entitled only for 10% of the back wages. The entitlements for back wages is reduced to that level only because of the peculiar facts and circumstances of this dispute."

9. Feeling aggrieved by Ext. P10 order passed by the Tribunal, the Management approached this Court in O.P.No. 3704 of 1997 and the learned single Judge after considering the rival contentions disposed of the original petition by judgment dated 28.07.2005, which reads as follows:

"Ext. P6 award is under challenge. The issue referred for adjudication is dismissal of the workman by name Balakrishnan. The Tribunal after appreciating the evidence adduced on both sides passed an award holding that the workman is entitled for reinstatement in service with the benefit of continuity in service. However, the back wages were limited to 10%. Going by the age of the workman, he has crossed the age of superannuation. Therefore, there arises no question of any reinstatement. It is also seen that the workman was being paid wages under Section 17B of the Industrial Disputes Act. It is submitted that an amount of Rs.42,191/- has been paid in that regard. The disputed issue is with regard to an unauthorised occupation of the quarters by the said Balakrishnan. It is seen from the award that the workman had not vacated the quarters, as can be seen from the report of the Advocate Commissioner, Sri Lohithakshan. It is also seen that despite offers from the part of the Management, the workman was not prepared to join duty on surrendering the quarters. The Tribunal has however taken a strange stand that since the workman had unauthorisedly kept the quarters under lock and key the Management could have taken possession even with police assistance. May be that would have been possible. But that will not in any way mitigate the arrogant and culpable conduct on the part of the workman, which is certainly an act of indiscipline. In the above circumstances, the award for reinstatement with continuity of service is certainly unreasonable. The next question to be considered is to what extent the power under Section 11A of the Industrial Disputes Act could be exercised. Having regard to the facts and

circumstances of the case as referred to above, I do not think it necessary to send back the matter to the Tribunal. Taking note also of Section 17B payments received by the workman during the years, it is only in the interests of justice that the dismissal is converted as discharge and the consequential benefits accordingly be worked out and granted to the workman. It is made clear that the benefits if any paid after the date of dismissal including the wages paid under Section 17B of the Act shall not be recovered. "

10. Seeking review of the judgment of the learned single Judge, the Union filed R.P. No.936 of 2006, which ended up in dismissal by the order dated 17.06.2006.

11. As we have already noticed, the charge levelled against the workman is that he has unauthorisedly opened and occupied the housing unit in question, which was allotted to one Mariyappan [another employee in estate] and that in spite of the instructions given by superior officer, he failed to vacate the said housing unit and hand over its possession to the conductor of the estate. When the matter was pending before the Tribunal, an Advocate Commissioner was deputed to inspect the premises in question and he submitted Ext.P5 report. In the said report, the Advocate Commissioner, after conducting necessary enquiry with the workmen occupying the adjacent quarters, has found that the workman is not occupying the housing unit in question for the last 7 - 8 years. However, the occupants of the nearby quarters have categorically stated that the workman himself has put two locks on the door of the housing unit in question.

12. When the matter was pending consideration before the Tribunal, as discernible from Ext. P6 award passed by the Tribunal, a submission was made on behalf of the Management, by the learned counsel for the Management, that the Management has even offered reinstatement to the workman, if he is prepared to vacate the housing unit unauthorisedly occupied by him. Despite the said offer made by the Management, the workman has not chosen to hand over the key of the housing unit to the Manager. Therefore, the materials on record, prima facie shows that the workman failed to surrender to the Manager, vacant possession of housing unit in question. He has also not chosen to produce any material before the Tribunal to show that housing unit in question was allotted to him on the basis of any proceeding issued by the Management. In that view of the matter, conclusion is irresistible that the workman was in unauthorised occupation of the housing unit in question and that, in spite of the offer made by the Management for reinstatement, he was not prepared to surrender vacant possession to the Management.

13. In the above circumstances, the reasoning of the Tribunal in Ext. P6 while ordering reinstatement of the workman with back wages of 10% is perverse and patently illegal. In such circumstances, the learned Single Judge is perfectly justified in interfering with Ext. P6 Award passed by the Tribunal. Hence, we find absolutely no grounds to interfere with the discretion exercised by the learned Single Judge in the judgment dated 28.07.2015 in O.P. No.3704 of 2006.

14. Similarly, since no error apparent on the face of the record was brought to the notice of the learned Single Judge, no interference was possible in R.P. No.936 of 2006 and as such, there is no illegality or irregularity in the order dated 17.06.2009 in R.P. No.936 of 2006.

15. In the result, there is no merit in the writ appeal. Writ Appeal fails and the same is dismissed.