
(2016) 12 KL CK 0007
In the High Court Of Kerala
Case No : WP(C).No. 12547 of 2010 (P)

Worker's Congress

APPELLANT

Vs

Industrial Tribunal

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

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

Citation : (2017) 153 FLR 583 : (2017) 1 LLJ 752

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Smt. A.K. Preetha and Sri. C. Anil Kumar, Advocates, for the Petitioner; Sri. M.V. Anandan, Government Pleader, for the Respondent No. 1; Sri. P. Benny Thomas, Sri. P. Gopinath, Sri. K. John Mathai and Sri. E.K. Nandakumar, Advocates, for the Respondent N

Final Decision : Partly Allowed

Judgement

Mr. A. Muhamed Mustaque, J.—The workman was proceeded under a domestic enquiry for unauthorized occupation of the quarters ear-marked for the workers under the Plantation Labour Act, 1951. This resulted in dismissal, which was referred by the Government for adjudication by the Industrial Tribunal, Idukki. The Labour Court refused to interfere with the punishment imposed. Challenging the award, Ext.P4, this writ petition has been filed.

2. Heard the learned counsel for the petitioner and the learned counsel for the management.

3. Having considered the quality of the fact finding, I do not find any scope for interference by invoking Articles 226 & 227 of the Constitution as to the misconduct proved against the workman though the learned counsel for the workman earnestly attempted to reappraise the facts to review the decision on the findings on facts. However, the punishment imposed by way of dismissal is striking the attention of this Court from the facts revealed. The doctrine of

proportionality, in fact, is root in objective consideration to be secured and therefore, the proportionality of punishment has to be considered in a given situation with reference to the proved misconduct of the workman.

4. The workman in this case entered into service on 01.04.1967. The management is covered by the Plantation Labour Act, 1951. Based on the request and turn, accommodation was provided to him in 1984. This was a single room without kitchen and bathroom. Another room just adjacent to the accommodation provided to another workman became vacant during September, 2001. The allegation against the workman is that without obtaining any permission, he occupied the said portion as kitchen and started using the same as a part of the accommodation allotted to him. This kitchen was originally in the occupation of one Mosses. When the room in the occupation of Mosses was allotted to one Balasubramaniam, he raised a complaint before the management, stating that the kitchen portion of his unit is in the occupation of the workman. Thus, proceedings were initiated against the workman, alleging illegal occupation of the kitchen.

5. The facts, otherwise, emerge in this case would clearly establish that the workman was constrained to occupy the kitchen for want of the same in the unit provided to him. Necessity sometimes may compel a person to do extreme though such action is not permitted. No doubt, occupation of the portion for accommodation without permission has to be treated as misconduct. However, in the given circumstances, it is obvious that, the workman occupied the portion of the kitchen for better utilization of the accommodation provided to him. It is to be noted that he occupied the same when it was vacant; and it was on a complaint of Balasubramanian when allotment was made in favour of Balasubramanian, the workman refused to surrender it.

6. The act of the workman has to be treated as misconduct albeit its realm for the purpose of punishment should be as a premonition to dissuade other workmen from having such tendencies. Therefore, for that purpose, the workman should not be deprived of the benefits enured to him from 1967 to 2002. The interest of the workman as well as the management ought to have been weighed before imposing a punishment, if balance of justice required to be weighed. It is without adverting to the interest of the workman, an extreme punishment was imposed. The management could have imposed a lesser punishment, which would also safeguard the interest of the management. The service of a workman, who has put more than 35 years, cannot be ignored while imposing such an extreme punishment. Deprivation of his labour by imposing extreme punishment is possible only if larger interest of the management outweigh the individual interest of the workman.

7. In that view of the matter, this Court is of the view that the impugned award has to be set aside to the extent it affirming the dismissal of the workman from service and it has to be converted as a discharge. Therefore, for all the purposes, the dismissal is converted as discharge. It is to be noted that the Labour Court

failed to exercise its power in terms of Section 11A of the Industrial Disputes Act. The discussion of the labour court, even in this regard, is scant and has not provided any reason while affirming the extreme punishment imposed on the workman. Therefore, the impugned award is interfered with to the extent as above.

8. Accordingly, the writ petition is partly allowed. No costs.