

**(1960) 06 KL CK 0025**  
**In the High Court Of Kerala**  
**Case No : A.S. No. 982 of 1959**

Workmen of Nellikkai Estate

APPELLANT

Vs

Superintendent, Nellikkai Estate

RESPONDENT

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**Date of Decision :** 27-06-1960

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** AIR 1961 Ker 92

**Hon'ble Judges :** M.A. Ansari, C.J;M. Madhavan Nair, J

**Bench :** Division Bench

**Advocate :** K.Velayudhan Nair, for the Appellant; K.P. Abraham, T.V. Yagneswara Iyer, K.K. Poullose, George Kurien and M.Pathrose Mathai for 1st Respondent, P. Balagangadhara Menon, Govt. Pleader for 2nd Respondent, for the Respondent

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## Judgement

Madhavan Nair, J.—The Industrial dispute, which gave rise to this appeal related to the dismissal of five workmen of the Nellikkai Estate, Vandiperiar, by its management. It appears that on 17-7-1956 a workman by name Bharathanathan went to work in the field half an hour late. He was not given work that day though the delay was, according to him, due to the fact that he was not given tools in time. The other four workmen concerned in this case remonstrated against this attitude of the management and incited and caused their fellow workmen also to leave work for the day. Seeing this, the management instituted an enquiry against all the abovesaid five workmen. According to the 1st respondent (the management) show-cause notices, were given to the workmen concerned on the evening of 17-7-1956, the enquiry was held on the morning of 18-7-1956, and orders dismissing the five workmen were passed on 19-7-1956. The matter was then taken up by the appellant Labour Union and thereupon the State Government referred for adjudication by the Industrial Tribunal Ernakulam the question "Whether the dismissal of the five workers (names given) from the Nellikkai Estate is justifiable; if not justifiable to what relief are the dismissed workers entitled?" The Tribunal, after recording the statements of the parties and taking evidence on the matter, came to the

conclusion that notice of enquiry was not served on, the workmen concerned, that no opportunity was given to them to explain the charges levelled against them and to prove their defences, and that therefore the conduct of the enquiry was in violation of the principles of natural justice. The Tribunal therefore ordered reinstatement of all the five workmen by its Award dated 26-3-1959. It is against this Award that the instant Original Petition was filed in this Court by the management of the Estate to invoke its powers under Articles 226 and 227 of the Constitution of India to get the abovesaid Award quashed by the issue of a Writ of Certiorari and to have such further directions that may be deemed expedient by this Court in the circumstances of this case.

2 The learned single Judge who disposed of the Original Petition held:

"The Superintendent of the Estate, E. W. 3 .....has stated that he is convinced that the show cause notices were served (on the workmen) in view of the records of Mr. Velu and Kanakka Pillai. After having stated all these, he finally also stated: "Now I feel that he may not have served these notices"..... (But) there are specific admissions made by some of the workmen, at least, that enquiry notices were served on the evening of the 17th July, 1956 not only on them, but also on the five workmen concerned. It is perfectly open to the Tribunal to consider those items of evidence and still hold against the Management that those admissions cannot be seriously taken note of. It may be open to the Tribunal to explain away those admissions. But in my view it is not open to the Tribunal to completely ignore the admissions made by at least some of the workmen before it could come to the conclusion that the show-cause notices were not served upon the workmen..... It is not within the province of this court to scrutinise the appreciation of the evidence in this case or the sufficiency of evidence which would justify a finding recorded by the Tribunal..... In this case before me,

I am concerned with an Industrial Tribunal which has interfered with the order of a domestic tribunal on the ground that it violated the principles of natural justice. The violation of the said principles according to the Tribunal consists in non-issue of notices for the enquiry. This finding has been recorded by the Tribunal without adverting or even noting and totally ignoring the admissions of at least some of the workers about the service of such a notice on all the five workmen. In my view, this will come under the second test laid down by their Lordships of the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, viz., "certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction". In the result, the order of the Industrial Tribunal, Ernakulam, in I. D. No. 88 of 1957 is quashed and this O. P. allowed."

3. We are in respectful agreement with the learned Judge in holding that it is not the province of this Court to scrutinise the appreciation of the evidence in a case adjudged by an Industrial Tribunal. Here, relying on the admission of the Superintendent of the Estate, the Tribunal entered a definite finding that notices of enquiry were not served on the workmen concerned. The learned Judge has

not come to any conclusion as to the correctness of that particular finding. The only error found by the learned Judge is that in arriving at this finding the Tribunal has not taken note of a particular piece of evidence, viz., the admission of some of the workmen in the matter. This by itself cannot be sufficient to close the matter finally. If the learned Judge tell that the Tribunal was bound to consider the so-called admission of the workmen also before entering any "finding on the matter, he ought to have directed the Tribunal to do so and to dispose the matter afresh. Instead of making such direction, the "learned Judge has merely quashed the Award and left the matter there as closed. "Though in a certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can under Article 227 do that and also issue further directions in the matter. See Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . Happily the petition in this case is for exercise of the powers of this Court under Article 227 as well. We are therefore constrained to modify the judgment o? the learned Judge and direct the Tribunal to reconsider the matter in the light of the observations in the judgment of the single Jude in O. P. No. 650 of 1959. We make it clear that, in disposing the matter afresh, it is open to the Tribunal to consider the probative value of the admissions of the workmen and the legal sufficiency of a notice served on the evening of a day for a trial or enquiry to be held on the next morning.

4. The appeal is allowed to the above extent and dismissed in other respects. The parties will bear their respective costs in this appeal.

5. It was submitted by Shri K.P. Abraham, the learned counsel for the first respondent that since the Industrial Tribunal, Ernakulam, has al ready expressed a particular view, it would be more becoming if the dispute is referred for fresh disposal by another Tribunal or the Labour Court. It is a case for the consideration of the Government, which, we are sure, will do the needful in the matter.