

(2009) 05 KL CK 0121

High Court Of Kerala

Case No: Writ Petition (C) . No. 12410 of 2007 (B)

The Head, Re Division

APPELLANT

Vs

Shri Sivakumar Shenoy and
Central Government Industrial

RESPONDENT

Date of Decision: May 27, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: S. Siri Jagan, J

Bench: Single Bench

Advocate: A.M.Shaffique, for the Appellant; K.S. Madhusoodanan, for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.

The management in I.D. No. 3/2005 before the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam is the petitioner herein. They are challenging Ext. P1 award of the Labour Court in that I.D. The issue referred for adjudication was:

Whether the action of the management in reduction of one increment with cumulative effect and also recovering transport subsidy from his salary is correct or not? If not, to what relief the workman is entitled?

2. Before imposing punishment on the 1st respondent-workman, the management chose to conduct a domestic enquiry on the allegation of misconduct. But, in the enquiry, the enquiry officer found the 1st respondent not guilty. But the disciplinary authority chose to differ with the findings of the enquiry officer and found that the 1st respondent is guilty of the misconduct and imposed a punishment of reduction of one increment with cumulative effect and directed to return the transport subsidy paid to the workman, the alleged illegal drawal of which was the allegation of misconduct. An industrial dispute was raised by the workman, which was referred

for adjudication by the Tribunal.

3. Before the Tribunal, instead of relying on the enquiry, the management chose to adduce evidence in support of their contentions. Accordingly, evidence was adduced by both sides and on the basis of that evidence, the Tribunal came to the finding that there was no material on record to find that the workman was guilty. On that finding, the punishment was set aside and the management was directed to refund the transport subsidy recovered from the workman. That award is under challenge in this writ petition at the instance of the management.

4. The allegation of the management against the workman was that for the period from 24-1-2000 to 1-12-2000, the workman was residing at Kalamasserry. But he applied for and got payment of Rs. 468/- per month for the said period as transport subsidy on the alleged false ground that during the relevant period, he was residing at Kumbalangi. The management produced the voters" list of Kalamasserry area in which it is shown that the workman and his wife are residing at Kalamasserry. The management produced another document, which is a letter from a ration shop at Kalamasserry to the effect that during the relevant period, he was availing of ration articles from that shop. Thirdly, the management produced a report from the Police Commissioner dated 10-7-2003. The workman also produced four documents. One was a letter from the President of the Kumbalangi Gram Panchayat, the second was a residence certificate issued by the Village Office, Thrikkakkara north village, the third was a certificate from the Village Officer of Kumbalangi and the 4th from the Executive Officer of the Kumbalangy Grama Panchayat. The Tribunal, for the reasons stated in the award, refused to rely on the documents produced by the management. On the other hand, the Tribunal found the three documents produced by the workman reliable in support of his case. Based on that evidence, the Tribunal found the workman not guilty. It is such a finding that is under challenge in this writ petition at the instance of the management.

5. I have considered the rival contentions in detail.

6. At the outset, I note that what is canvassed before me is the findings of fact entered into by the Industrial Tribunal on the evidence adduced before it. It is settled law that that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can interfere with such findings only if such findings are demonstrably perverse.

7. The first document relied on by the management before the Industrial Tribunal was the voters" list of North Kalamasserry Municipality for the year 2000. The Tribunal refused to rely on the same on the ground that the details appearing in the voters" list is prior to 1-1-2000, whereas the period in dispute was between 24-1-2000 to 29-11-2000. The second document is a letter issued from a ration shop, the signatory of which had expired in 1999. Therefore, the Tribunal refused to rely on the same also. The third one was a report from the Police Commissioner in respect

of 18 employees. The management had requested the Police Commissioner to enquire into the antecedents of the 18 persons. No adverse report was given by the Police Commissioner against any of them. But, in respect of the workman alone, there was a statement in the report that for the period from 15-1-2000 to 1-12-2000 the workman was residing at Kalamasserry. The Tribunal found it unreliable on the ground that such a statement was not expected in a police verification report. The Tribunal also found that that report was only in respect of the workman and not in respect of any of the other 17. Further, Ext. P11 request in this regard to the Police Commissioner was issued in 13th May, 2003, long after the period in question. On the other hand, the President of the Kumbalangi Grama Panchayat, the Village Officer, Thrikakkara North Village and the Village Officer, Kumbalangy categorically certified that the workman was residing at Kumbalangi during the relevant period. Those documents were relied on by the Tribunal. From a reading of the reasoning given by the Tribunal, I am unable to find any perversity whatsoever in those findings, without which I would not be justified in interfering with such findings.

Therefore, I do not find any merit in the contentions in the writ petition and accordingly, the writ petition is dismissed.