



2024:KER:42302

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

TUESDAY, THE 18TH DAY OF JUNE 2024 / 28TH JYAISHTA, 1946

WP(C) NO. 13438 OF 2021

PETITIONER:

SUJITH T.V.,
AGED 34 YEARS
S/O.VENU.T.R., BADE NO.200139, TECHNICIAN (PROCESS),
R & D CENTER, FERTILIZERS AND CHEMICALS OF TRAVANCORE
LTD., UDYOGAMANDAL, KOCHI-683 501, RESIDING AT THEKKOOT
HOUSE, KODUNGALLUR P.O., THRISSUR-680 554.

BY ADVS.
KALEESWARAM RAJ
VARUN C.VIJAY
THULASI K. RAJ
MAITREYI SACHIDANANDA HEGDE

RESPONDENTS:

- 1 FERTILISERS AND CHEMICALS TRAVANCORE LTD.,
(GOVERNMENT OF INDIA ENTERPRISE), REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR, UDYOGAMANDAL,
KOCHI-683 501.
- 2 CHAIRMAN AND MANAGING DIRECTOR (DISCIPLINARY
AUTHORITY),
FERTILIZERS AND CHEMICALS OF TRAVANCORE LTD.,
CORPORATE OFFICE, UDYOGAMANDAL, KOCHI-683 501.
- 3 BOARD OF DIRECTORS,
REPRESENTED BY THE CHAIRMAN AND MANAGING DIRECTOR,
FERTILIZERS AND CHEMICALS OF TRAVANCORE LTD.,
CORPORATE OFFICE, UDYOGAMANDAL, KOCHI-683 501.



4 DY.GENERAL MANAGER (R & D) ,
 FERTILIZERS AND CHEMICALS OF TRAVANCORE LTD. ,
 UDYOGAMANDAL, KOCHI-683 501.

BY ADVS.
M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURRYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



SATHISH NINAN, J.

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W.P.(C) No.13438 of 2021

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Dated this the 18th day of June, 2024

J U D G M E N T

The petitioner is an employee in the first respondent Company. He challenges the order of suspension and punishment imposed on him in a disciplinary proceedings.

2. On 31.07.2019, as per Ext.P1, the petitioner was suspended pending enquiry. This was followed by Ext.P2 memo of charges dated 05.08.2019. The charges levelled against the petitioner were :-(i) The petitioner caused harm to the Company's reputation by spreading false information and libelous statements through messages in a 'WhatsApp' group "Technician Official". The messages were of such nature as to create an impression in the co-workers that the company has an unsafe environment and instigating co-workers to fight against the Company; (ii) Unauthorised entry in the ammonia handling section at the Cochin division at Ambalamedu on 28.07.2019, even



though his place of work is R&D Udyogamandal.

3. In response, the petitioner submitted Ext.P7 reply dated 08.08.2019 expressing regret, seeking pardon and assuring that such actions will not be repeated. The proceedings culminated with Ext.P8 order of the DGM (R&D)-disciplinary authority, accepting the regret expressed by the petitioner and awarding him the punishment of "WARNING". The petitioner challenges Ext.P8 order and also Ext.P1 order of suspension.

4. I have heard Smt.Thulasi K. Raj, learned counsel for the petitioner, and Sri. M. Gopalakrishnan Nambiar, learned counsel for the respondents. I have also perused the counter affidavit and the documents placed on record.

5. The contentions of the petitioner are that :-

(i) The imposition of punishment is bad in law for the reason that punishment was imposed without holding an enquiry.



(ii) The posting of the messages was in a private whatsapp group and did not contain any derogatory statements. The charge levelled violates the fundamental right of freedom of speech under Article 19(1)(a) of the Constitution of India.

(iii) The punishment was imposed without a hearing thereon and hence is vitiated.

6. Learned counsel for the respondents contended that, the order of suspension was on 31.07.2019 and the punishment was imposed on 16.08.2019. The writ petition has been filed only two years later, on 05.07.2021. The petitioner had accepted the punishment. The challenge is not liable to be entertained on the ground of delay. So also, the writ petition is not liable to be entertained for availability of appellate remedy before the appropriate authority. With regard to the petitioner's contention of failure to conduct disciplinary enquiry, since the petitioner admitted the charges and guilt, it was not necessary to conduct a formal enquiry. As



regards hearing on the proposed punishment, it was contended that there is no mandate requiring such hearing, and that apart, the punishment imposed is of the lowest category viz. a mere "WARNING". Therefore, the writ petition is only to be dismissed, it is argued.

7. According to the petitioner, the delay in raising challenge was due to the fact that, it was only later that he realised that the punishment, though only a 'Warning', will be entered in the service book and also it would affect his future career. Though normally this court would not have entertained the writ petition for the reasons of delay and availability of alternate remedy, considering the fact that the petitioner contends violation of fundamental rights, it is considered proper to deal with the writ petition on the merits. So also, the writ petition was admitted by this Court on 07.07.2021. Having entertained the writ petition three years back, I do not consider it appropriate to dismiss the writ petition relegating the



petitioner to the alternate remedy of appeal stated to be available.

8. Firstly, regarding the failure to conduct a formal enquiry, the defence is that the charges were admitted by the petitioner. Ext.P7 is the reply given by the petitioner to the charges. A reading of the same indicates that, as regards the first charge of objectionable posts, the petitioner, except for admitting the posts, did not admit that the posts are objectionable. However, after stating so, he tendered an apology. The mere fact that he expressed apology by itself does not mean that he admitted the charge. It could not have been considered as an admission of the charge, thus waiving the necessity for a formal enquiry.

9. However, as regards the second charge, the allegation of unauthorised entry into the ammonia handling section of the Cochin division at Ambalamedu even though the petitioner's place of work was at R&D Udyogamandal, is admitted by him. Definitely such entry



would attract contravention of the safety rules. The admission made by the petitioner in Ext.P7 reply is unambiguous. Hence no formal enquiry was necessary on the said charge, to award punishment. Therefore, the failure to conduct a formal enquiry will not vitiate the proceedings regarding the second charge.

10. As regards the contention of violation of fundamental right, the petitioner placed before this Court the alleged objectionable and derogatory 'WhatsApp' post. A perusal of the same suggests that, all that has been raised therein are concerns of safety with regard to ammonia handling. The 'WhatsApp' group was a private one, within the technicians of the Company. The mere expression of concern on safety cannot attract the charge in the nature as levelled against him. The petitioner is justified in his contention that his fundamental right of freedom of speech guaranteed under Article 19(1)(a) is infringed. Charge No.1 levelled against the petitioner, could not be sustained.



11. As regards the contention regarding failure to grant hearing on the proposed punishment, such hearing on punishment is not mandatory (*Managing Director, ECIL Hyderabad & Ors. v. B. Karunakar & Ors. 1993 (4) SCC 727*). The standing orders does not provide for any such hearing. The punishment imposed is the lowest form viz. "WARNING". There is no reason to interfere with the same.

12. On the discussions as above, though charge No.1 is held to be violative of fundamental right, the finding of guilt on charge No.2 and the punishment imposed does not warrant any interference. Writ Petition is disposed of holding accordingly.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX OF WP(C) 13438/2021

PETITIONER EXHIBITS

- Exhibit P10 TRUE COPY OF THE SCREENSHOTS OF THE WHATSAPP MESSAGES ALLEGEDLY SENT BY THE PETITIONER,
- Exhibit P2 TRUE COPY OF THE CHARGE SHEET NO.DGM (R & D) R & D-16A (NM) 912 DATED 05.08.2019 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- Exhibit P3 TRUE COPY OF THE ONLINE NEWS ARTICLE DATED 20.05.2016 IN THE NEWS MINUTE.
- Exhibit P4 TRUE COPY OF THE ONLINE NEWS ARTICLE DATED 20.05.2016 IN THE NEW MINUTE.
- Exhibit P5 TRUE COPY OF THE ONLINE NEW REPORT DATED 27.01.2018 PUBLISHED BY MATHRUBHUMI.
- Exhibit P1 TRUE COPY OF THE ORDER NO.DGM (R & D 16 NM-909) DATED 31.07.2019 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- Exhibit P7 TRUE COPY OF THE REPLY DATED 08.08.2019 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- Exhibit P8 TRUE COPY OF THE ORDER NO.DGM (R & D) -R & D 16 (A) 915 DATED 16.08.2019 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- Exhibit P9 TRUE COPY OF THE JUDGMENT IN WPC NO.21994/2020 DATED 26.03.2021 TITLED RETHEESH V. KSEB 2021 (3) KLT 358.
- Exhibit P6 TRUE COPY OF THE ONLINE NEWS REPORT DATED 27.01.2018 PUBLISHED BY MANORAMA ONLINE.
