IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

OP.No. 4692 of 1996 (H)

AGAINST THE AWARD IN ID 19/1993 of INDUSTRIAL TRIBUNAL, KOLLAM
DATED 20-07-1995

PETITIONER :

ATTUKAL BHAGAVATHI TEMPLE TRUST,
ATTUKAL, THIRUVANANTHAPURAM 695 009
REPRESENTED BY ITS SECRETARY

BY ADVS.SRI.B.S.KRISHNAN (SR.)

RESPONDENTS:
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1. ATTUKAL BHAGAVATHI TEMPLE TRUST
   EMPLOYEES ASSOCIATION, PADMATHEERTHAKARA,
   THIRUVANANTHAPURAM,
   REPRESENTED BY ITS GENERAL SECRETARY

2. INDUSTRIAL TRIBUNAL, KOLLAM

3. GOVERNMENT OF KERALA, REPRESENTED
   BY THE SECRETARY TO GOVERNMENT,
   DEPARTMENT OF LABOUR,
   GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM

R1 BY ADVS.SRI.R.SUDHISH
SRI.S.V.RAJAN
SRI.SAJAN SREE RAJ
SRI.MVS.NAMBOOTHIRY
SMT.M.MANJU
SMT.V.P.GEETHA KUMARY
SMT.SHIBI. K.P.
SRI.A.N.PREMLAL
SMT.S.MANJU
SRI.C.P.JAGADESH
SRI.S.VINOD
SRI.R.VIVEK
R BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 4692 of 1996 (H)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE REPORT OF THE COMMITTEE OF BOARD OF TRUSTEES

EXT.P1(a) : ENGLISH TRANSLATION OF EXHIBIT P1

EXT.P2 : COPY OF EMPLOYMENT PATTERN AND PAY SCALE PREVAILING IN SREE GANAPATHY TEMPLE

EXT.P3 : COPY OF EMPLOYMENT PATTERN AND PAY SCALE PREVAILING IN SREE PADMANABHA TEMPLE

EXT.P4 : COPY OF CHARTER OF DEMANDS DATED 17.7.92 SUBMITTED BY THE 1ST RESPONDENT

EXT.P4(a) : ENGLISH TRANSLATION OF EXHIBIT P4

EXT.P5 : COPY OF THE AWARD

EXT.P6(a) : COPY OF THE INCOME & EXPENDITURE ACCOUNT OF THE TEMPLE TRUST FOR THE PERIOD 1992

EXT.P6(b) : COPY OF THE INCOME & EXPENDITURE ACCOUNT OF THE TEMPLE TRUST FOR THE PERIOD 1993

EXT.P6(c) : COPY OF THE INCOME & EXPENDITURE ACCOUNT OF THE TEMPLE TRUST FOR THE PERIOD 1994

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

O.P. No.4692 of 1996

Dated this the 30th day of January, 2015

J U D G M E N T

The petitioner is the Attukal Bhagavathi Temple Trust. This writ petition is filed challenging Ext.P5 award of the Industrial Tribunal, Kollam in Industrial Dispute No.19/1993. The Attukal Bhagavathi Temple Trust owns the Attukal Bhagavathy Temple and its properties. Apart from the temple, the trust runs a Hospital, an Industrial Training Centre, a Rubber Estate as well as a Travels conducting luxury bus service. The Trust employs a number of persons. It has been the practice of the Trust to constitute committees every five years to study the question of revision of wages and other service conditions of the employees. The committee would submit a report on the basis of which, revision of wages as well as service conditions are effected every five years. Ext.P1 is a study report of July 1991, which was implemented w.e.f. 01.07.1991. As per Ext.P1, a number of benefits were conferred on the employees taking into account the income of the Trust as well as the expenses that it had to incur.

2. While so, a Trade Union of the employees came into existence in the year 1992. They put forward a Charter of demands, Ext.P4 dated 17.07.1992. Since the Trust had already given effect to Ext.P1 study report, it did not accede to the Charter of demands of the Trade Union. A dispute arose which was referred to the Industrial Tribunal,

Kollam by the Government as per order dated 05.06.1993. The Industrial Tribunal considered the demands of the workmen and has passed Ext.P5 award dated 20.07.1995. The said award is under challenge in this writ petition.

3. According to the Adv.Sri.M.N.Radhakrishna Menon who appears for the petitioner, the only evidence adduced by the workmen were the oral testimonies of WW1 and WW2. The documents produced, W1 to W4 were copies of the certificate of registration of the Trade Union, Notice dated 31.10.1992 published by the management stating the Designations, existing Pay Scales, proposed new Scales etc., Membership Register of the Union and photostat copy of a representation submitted by the employees. The Management produced Ext.P1 pay revision report of the employees, M2 copies of Income and Expenditure Account of the management for the years 1991-93 and also examined MW1 as witness. The matter was considered by the Industrial Tribunal on the basis of the above evidence. According to the counsel, there was absolutely no evidence on material to justify the findings entered by the Tribunal. The Tribunal has found that, most of the demands made by the Union were only to be allowed. Such findings have been entered without taking into account the income or the expenditure of the Trust. Since the Trust has been conducting the exercise of periodic revision of wages and service conditions of the employees, there was no justification for

the direction to grant further benefits. It is pointed out that, a revision had been implemented w.e.f. 01.07.1991. Therefore, the question of further concessions, without any reference to the income or expenditure of the Temple, apart from other relevant considerations, was absolutely uncalled for, w.e.f. July 1992 onwards. Even in the Government, wage revisions are made only once in five years, it is pointed out. Particular objection is taken to the direction of the Industrial Tribunal that, the employees are entitled to be paid pension. According to the counsel, the Tribunal has failed to take note of the fact that, the employees are all members of the Employees' Provident Fund Scheme, entitling them to the benefit of the Contributory Pension Scheme. Though a revision of wages had been implemented w.e.f. 01.07.1991, the Tribunal erred in granting an interim relief of ₹200/- to the employees. The same would cast a substantial financial burden on the Trust, it is contended. It is also pointed out that, even after the award, periodic revision in wages have been implemented and are being implemented even at present.

4. Heard. I have been taken through the award of the Industrial Tribunal Ext.P5 in extenso. It is worth noticing that, there is absolutely no discussion of the evidence adduced by either the management or the workers. The Tribunal has proceeded to itemise the demands made by the workmen one by one and to enter findings on each of them as either reasonable or unreasonable. On many of the issues, I

find that the direction of the Tribunal was only to the management to consider the demands. Therefore, it is not necessary for me to consider the said aspects to any length or to issue any directions relating to them. However, with respect to the demand for introduction of a pension scheme, the reasoning of the Industrial Tribunal cannot be accepted. What is stated is that, WW1 who is the Union leader of the employees under the Devaswom Board has stated on oath that, the Devaswom Board has decided to implement central parity and pension scheme to all their employees. Since the nature of duties discharged by employees under the Devaswom Board and those under the petitioner are comparable, it is necessary to introduce a pension scheme. The said reasoning is absolutely faulty. There is absolutely no evidence on record to show that, the nature of the duties discharged by the employees of a Devaswom Board as well as those of the petitioner Trust are comparable. As already notice above, the petitioner has employees who work in their Hospital, Industrial Training Centre, Travels as well as Rubber Estate, apart from the employees of the temple. It cannot be said that the nature of duties discharged by various categories of the employees of the petitioner are the same or are comparable. There is absolutely no evidence regarding the circumstances under which, the pension scheme has been introduced for employees of the Devaswom Board. Any rate, the Devaswom Board, a statutory organisation, is not comparable to the petitioner

Trust. The question of grant of pension to its employees is not a matter that ought to have been so lightly decided. In the absence of any evidence, I find that the finding entered at sub paragraph 24 of paragraph 8 of Ext.P5 award is unsustainable. The said finding is therefore, set aside.

5. At sub paragraph 26 of paragraph 8 of Ext.P5, the Tribunal has considered the claim for a minimum of ₹500/- as increased wages for each existing employee. The Tribunal enters a finding that, the wages had been fixed by the management arbitrarily, since no discussion was conducted with the Union. The Tribunal has failed to note that the Union had come into existence only in the year 1992, after the implementation of Ext.P1 w.e.f. 01.07.1991. The Tribunal has instead of deciding whether the claim of the workmen was sustainable or not has directed an amount of ₹200/- to be paid as interim relief to each employee. The said direction is also without any basis. The Tribunal ought to have noticed that, an interim relief is granted usually in cases where pay revision is not made at the appropriate time. This was a case in which a revision in wages was made as per Ext.P1 w.e.f. 01.07.1991. No circumstances justifying the grant of interim relief has been pointed out by the Tribunal. Therefore, the said direction also cannot be sustained and is hereby set aside.

6. I notice from the award that, a number of other directions have also been given, but I do not consider any interference with the

said directions necessary, for the reason that, they do not burden the petitioner with any substantial financial liability.

In view of the above, this writ petition is allowed. Ext.P5 award is modified to the extent indicated above.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV