

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 16TH DAY OF JULY 2015 / 25TH ASHADHA, 1937

OP.No.13376 of 1999 (P)

PETITIONERS :

1. KURUMBAN,
AGED 60 YEARS,
S/O.PAINKILY,
KOLLIKATTIL HOUSE,
N.PIRAMADOM.P.O.,
PIN 686 667.
2. VARKEY MATHEW,
AGED 50 YEARS,
S/O.VARKEY,
NADUMTHOTTATHIL HOUSE,
N.PIRAMADOM.P.O., PARAKKADAVU,
PIN 686 667.
3. PAULOSE,
AGED 55 YEARS,
KANEKKATT HOUSE,
N.PIRAMADOM.P.O.,
PARAKKADAVU,
PIN 686 667.

BY ADVS.SRI.A.X.VARGHESE
SMT.RADHIKA P.GOPINATH

RESPONDENTS :

1. DISTRICT COLLECTOR,
COLLECTORATE,
CIVIL STATION,
KAKKANAD,
ERNAKULAM.
2. DISTRICT LABOUR OFFICER,
CIVIL STATION,
KAKKANAD,
ERNAKULAM.
3. PRESIDING OFFICER,
AGRICULTURAL TRIBUNAL CIVIL STATION,
KAKKANAD, ERNAKULAM.

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4. CHERIAN CHACKO (DIED),
VELIYAMMEL HOUSE,
N.PIRAMADOM.P.O.,
PARAKKADAVU,
PIN 686 667.
5. CHERIAN,
S/O.CHERIAN CHACKO,
VELIYAMMEL HOUSE,
N.PIRAMADOM.P.O.,
PARAKKADAVU,
PIN 686 667.

BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R5 BY ADV. SRI.P.RAMAKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :-

EXT.P1 : COPY OF THE AWARD PASSED BY THE 3RD RESPONDENT
DTD.18.8.1998.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

O.P.No.13376 of 1999

Dated this the 16th day of July, 2015

JUDGMENT

The petitioners, who were doing tapping works in the rubber estate owned by the 4th respondent, are before this Court in this Original Petition, seeking a writ of certiorari to quash Ext.P1 award passed by the Agricultural Tribunal, Ernakulam dated 18.8.1998 to the extent the Tribunal declined payment of back wages till reinstatement.

2. The District Labour Officer, Ernakulam, who is the Conciliation Officer under the Agricultural Workers Act, 1974 (hereinafter referred to as 'the Act') referred the Agricultural Dispute between the petitioners and the 4th respondent to the District Collector, Ernakulam, under sub-section (3) of Section 22 of the Act, which the District Collector has referred for adjudication to the Agricultural Tribunal, under sub-section (4) of Section 22 of the Act, which resulted in Ext.P1 award being passed by the Tribunal. But, in Ext.P1 award the Tribunal held that, the petitioners are entitled only for reinstatement. It is aggrieved by Ext.P1 award, to the extent it declines back wages, the petitioners are before this Court in this Original Petition. The 4th respondent died while the dispute was pending before the Tribunal and his son who is impleaded as the 5th respondent in the Original Petition adduced evidence on the side of the employer.

3. A reading of Ext.P1 award passed by the Tribunal would show that, in the absence of any reliable materials the Tribunal came to the conclusion that, the question whether it was a denial of the employment by the 4th respondent or whether the petitioners have voluntarily left the employment of the 4th respondent during the next agricultural season cannot be decided and it was in such circumstances the Tribunal held that, the petitioners are entitled only for reinstatement.

4. Section 7 of the Act deals with preference for employment as agricultural workers. As per sub-section (1) of Section 7 of the Act, the landowner shall not employ any agricultural worker other than an agricultural worker who has worked in the same land during the previous agricultural season. Going by sub-section (2), notwithstanding anything contained in sub-section (1), where any agricultural worker has worked in the land of a landowner during three consecutive agricultural seasons, prior to the previous agricultural season, he shall not be denied employment merely on the ground that he has not worked during the previous agricultural season, provided his absence during that season was due to reasons beyond his control. Sub-section (3) of Section 7 provides that, nothing contained in sub-section (1) or sub-section (2) shall be deemed to enable the landowner to refuse employment during an agricultural season to an agricultural worker eligible to be employed by

the landowner under either of those sub-sections but who has not offered himself for employment on any previous day of that agricultural season. But, going by sub-section (5) of Section 7, notwithstanding anything contained in the foregoing provisions of this section, no landowner shall be under an obligation to employ any agricultural worker, (a) who does not offer himself for employment; or (b) who is more than sixty years of age; or (c) who is incapacitated and is unable to do the work; or (d) who has intentionally caused damage of crops belonging to the owner or caused any other loss to the landowner.

5. Section 36 of the Act deals with maintenance of registers and records by landowners. As per sub-section (1), every landowner shall maintain such registers and records as may be prescribed. Sub-section (2) provides that, the registers and records referred to in sub-section (1) shall contain such particulars and shall be kept in such place, as may be prescribed. Though the landowner has not maintained any register under Section 36 of the Act, he has produced a register maintaining the names and the rate at which the agricultural workers were being paid during the period from 1981.

6. From the oral testimony of both sides, the Tribunal came to the conclusion that, neither the landowner nor the workers have complied with the statutory formalities which the parties are bound to do when an

agricultural dispute occurs. The oral testimony of the petitioners referred to in Ext.P1 award of the Tribunal makes it clear that, the workers have no specific case of denial of employment by the landowner. It has come out in evidence that the petitioners never approached their Union by way of any written complaint alleging denial of employment by the landowner. On an appreciation of the oral testimony, the Tribunal came to the conclusion that the stoppage of work by the workers was by their own temperament and not a case of denial of employment by the landowner. It was in such circumstances, the Tribunal came to the conclusion that, petitioners are entitled only for reinstatement. The reasoning of the Tribunal in this regard in Ext.P1 award is neither perverse nor patently illegal, warranting an interference by this Court.

7. It is trite law that, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India is not sitting in appeal over Ext.P1 award passed by the Tribunal. Any interference with such an award passed by the Tribunal is permissible only when the findings or reasoning of the Tribunal are either perverse or patently illegal or that, such findings or reasoning cannot be reasonably arrived at based on the materials or the evidence on record. In the absence of any such vitiating circumstances pointed out in Ext.P1 award passed by the Tribunal, the challenge made in this Original petition can only be dismissed. When there is total dearth of

materials to show that there was denial of employment by the landowner, the petitioners are not entitled for payment of back wages.

In the result, the Writ Petition fails and the same is dismissed.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

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