

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

OP(LC).No. 2653 of 2012 (O)

ID 10/2009 of INDUSTRIAL TRIBUNAL CUM - LABOUR COURT,ERNAKULAM

PETITIONER :

**P.MUHAMMED
S/O.MOIDEEN, PANANGARA HOUSE, CHEMPOTHARA VAYAL
KOTTANAD POST-673577, MEPPADI, WYNAD DISTRICT.**

BY ADV. SRI.LUIZ GODWIN D COUTH

RESPONDENTS :

- 1. THE CHAIRMAN/MANAGING DIRECTOR,
BSNL, SANCHAR BHAVAN, NEW DELHI-110001.**
- 2. THE PRINCIPAL GENERAL MANAGER,
TELECOM, BSNL, KOZHIKODE-673001.**

**R1 & R2 BY ADV. SRI.SAJI VARGHESE,SC,BSNL
BY SRI.MATHEWS K.PHILIP,SC, BSNL**

**THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

OP(LC).No. 2653 of 2012 (O)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE CERTIFICATES ISSUED BY THE DEPARTMENT
SHOWING THE ABOVE SAID SERVICE (4 IN NUMBER).

EXHIBIT P2: TRUE COPY OF THE EXTRACT OF LIST OF APPLICANTS FOR
EMPANELMENT SHOWING THE NAME OF THE PETITIONER.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 6TH JULY 2007 PASSED BY THE
HON'BLE HIGH COURT OF KERALA IN WRIT PETITION CIVIL
NO.35782/2005.

EXHIBIT P4: TRUE COPY OF THE CLAIM STATEMENT (WITHOUT THE EXHIBITS)
SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
ERNAKULAM.

EXHIBIT P5: TRUE COPY OF THE FILED WRITTEN STATEMENT IN THE ABOVE CASE,
A TRUE COPY OF THE WRITTEN STATEMENT.

EXHIBIT P6: TRUE COPY OF THE AWAR DATED 29-11-2011 OF THE CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
ERNAKULAM IN ID 10/2007.

RESPONDENTS' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

K. Vinod Chandran, J.

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O.P.(LC) No.2653 of 2012

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Dated this the 11th day of February, 2015.

JUDGMENT

1. Petitioner is aggrieved by Ext.P6 award, passed by the Central Government Industrial Tribunal-Cum-Labour Court, Ernakulam (hereinafter referred to as the “Labour Court”). The reference was on the question as to whether the termination of the workman, with effect from 2003, is justifiable. The claim statement was filed, on the ground that, the workman is entitled to regularisation of his service. The evidence laid was also with respect to the regularisation of service.
2. The management, in their written statement, contended that, the workman is not entitled to be regularised nor is there any illegal termination of employment. It was contended that, though casual workers were engaged from 22.6.1988, there was a total

ban of engagement of casual labourers and a scheme was formulated, by which, the casual labourers were given a temporary status under the Casual Labour (Grant of Temporary Status and Regularisation) Scheme. The specific condition as per the scheme was that, a casual labourer must have been in employment before the ban and also at the time of commencement of the scheme and in continuous service of at least one year, in which, he had been continuously engaged for a period of 240 days.

3. The workman was claimed to have abandoned his employment within one year from the date of commencement of the scheme and hence he was not granted temporary status as per the Scheme. The workman had also not submitted any application for empanelment, which was also not made within a period of 30 days from the date of publication of notice. The petitioner,

along with others, approached this Court by filing W.P.(C) No.23716 of 2003 and connected cases, which were considered and disposed of by Ext.P3.

4. This Court, in the said writ petitions, were concerned again with the question as to whether the temporary status of the workman could be recognized or not. It was found that, entitlement of each of the writ petitioners, would essentially involve the adjudication of disputed questions of fact, relating to each claim for regularization, which alone could decide the entitlement. The nature of claims were essentially found to be within the realm of a consideration as to the status of a workman. The issues were held to be one, which could be appropriately considered by the Labour Court or the Industrial Tribunal. The writ petitions were disposed of directing that, if advised, the appropriate authorities could be moved under the labour laws, to

obtain adjudication of their claims and disputes.

5. The petitioner herein, however, chose to raise a dispute, with respect to his termination of service, with effect from 2003 and then attempted to raise the claim of regularization, on the basis of the said reference.
6. The Labour Court rightly found that, the issue, with respect to the regularization, could not be dealt with, since, the Labour Court could be acting only within the four bounds of the order of reference made by the appropriate Government. The reference made was one of justifiability of the alleged termination. The question of regularization, hence, was refused to be considered by the Labour Court, rightly so, in the opinion of this Court.
7. The question of termination as such, was also considered by the Labour Court. The Labour Court found that, the petitioner had been intermittently employed and that, even the plea raised in the

claim statement was that, the petitioner had been working for 220 days in a year. The workman was found to have no consistent case. In the claim statement when he stated that he was working till 2003, in the affidavit filed, it was averred that, he was working with the opposite party till 2005. Petitioner also did not raise any claim, with respect to his termination in the claim statement or in the deposition before the Labour Court. The Labour Court found that, casual employment of the petitioner for intermittent periods, not amounting to continuous employment for 240 days in a year, would not legitimately permit a claim to be made under Section 25F of the Industrial Disputes Act, 1947.

8. The reliance placed on a document produced to prove 240 days being Ext.W1, was found to be specious. The person, who issued Ext.W1, was not examined and another workman

examined as W.W.2, to prove the issuance of Ext.W1; was not conversant in English and the certificate obviously was one issued in English.

9. In such circumstances, the Labour Court, finding that the workman was not a casual labourer, engaged continuously for 240 days in a year and no sustainable claim for illegal termination could be raised under the Industrial Disputes Act. Is to be sustained. This Court finds no reason to interfere with the findings. The original petition would stand dismissed.

10. However, it is to be noticed that, it is open to the petitioner to raise an industrial dispute in an appropriate manner before the appropriate authority, in which event, the same has to be considered, in accordance with law. The petitioner, hence, would have remedies left open, as per Ext.P6 judgment; the sustainability of such invocation at this point of time, would be a

question to be considered, if it is invoked. This Court would make it clear that by reserving liberty, this Court does not legitimize the invocation of the remedy, at this delayed stage, which would be appropriately considered at that time.

K. Vinod Chandran, Judge.

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