

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. 3142 of 2012 (O)

**AGAINST THE AWARD DATED 25-10-2011 IN ID 7/2009 OF INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, ERNAKULAM**

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PETITIONER(S):

**K. SHAJI,
S/O. MUTHARON, PULUKUDI KUNNEL HOUSE,
MANIPPURAM P.O., KODUVALLY,
KOZHIKODE DISTRICT.**

BY ADV. SRI.LUIZ GODWIN D' COUTH

RESPONDENT(S):

- 1. THE CHAIRMAN/MANAGING DIRECTOR,
BSNL, SANCHAR BHAVAN,
NEW DELHI - 110 001.**
- 2. THE PRINCIPAL,
GENERAL MANAGER, TELECOM, BSNL,
KOZHIKODE - 673 001.**

**BY ADVS. SRI.SAJI VARGHESE, SC
SRI.MATHEWS K.PHILIP, SC**

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

msv/

OP(LC).No. 3142 of 2012 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1- THE TRUE COPIES OF THE ATTENDANCE REGISTERS DURING THE PERIOD FROM 1985 – 1993 ISSUED BY THE DEPARTMENT SHOWING THE SERVICE OF THE PETITIONER.

EXHIBIT-P2- THE TRUE COPIES OF THE WORK DIARY SHOWING THE ENGAGEMENT OF THE PETITIONER.

EXHIBIT-P3- A TRUE COPY OF THE JUDGMENT DATED 06/07/2007 IN W.P(C) NO.35782/2005

EXHIBIT-P4- A TRUE COPY OF THE CLAIM STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM.

EXHIBIT-P5- A TRUE COPY OF THE AWARD DATED 25/10/2011 OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM IN I.D 7/2009.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. Vinod Chandran, J.

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O.P.(LC)No.3142 of 2012

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Dated this the 18th day of February, 2015.

JUDGMENT

1. Petitioner is aggrieved by Ext.P5 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 regularization of his service. The evidence laid was also with respect to the regularization of service.
2. The management, in their written statement, as seen from the Award, 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 stated 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 had to be 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 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 220/206 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 2004. 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. 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.

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.P3; 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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