

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. 3213 of 2012 (O)

AGAINST THE ORDER/JUDGMENT IN ID 7/2010 of LABOUR COURT, KOZHIKODE
DATED 18.06.2012

PETITIONER(S):

**C.T.SAHADDEVAN,
CHEEKKOTH VEEDU, THIRUTHIYAD, P.O.PUTHIYARA
KOZHIKODE - 673 004.**

**BY ADVS.SRI.D.KRISHNA PRASAD
SMT.O.K.SANTHA**

RESPONDENT(S):

- 1. LABOUR COURT,
KOZHIKODE.**
- 2. THE GENERAL MANAGER,
COMMON WEALTH TRUST (INDIA) LIMITED, MANANCHIRA
KOZHIKODE - 673 001.**
- 3. THE FACTORY MANAGER,
COMMON WEALTH TILE FACTORY, PUTHIYARA
KOZHIKODE - 673 004.**
- 4. THE GENERAL SECRETARY,
THE EMPLOYEES UNION (INTUC), CHERUVANNUR (PO), FEROKE
KOZHIKODE - 673 001.**
- 5. THE GENERAL SECRETARY,
CITY TILE LABOUR UNION (INTUC), REG.NO.83, F.NO.8848
CHEROOTTY ROAD, KOZHIKODE - 673 001.**

**R2,R3 BY ADV. SRI.V.KRISHNA MENON
R2,R3 BY ADV. SMT.P.VIJAYAMMA
R2,R3 BY ADV. SRI.U.K.DEVIDAS
R BY GOVERNMENT PLEADER SRI. V.K. RAFEEQ**

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

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT P1. TRUE COPY OF THE CHARGE SHEET CUM SHOW CAUSE NOTICE DATED 18.07.2005 ISSUED BY THE MANAGEMENT.

EXHIBIT P2. TRUE COPY OF THE SHOW CAUSE NOTICE CUM MEMO OF CHARGES DATED 01.03.2007 ISSUED BY THE MANAGEMENT.

EXHIBIT P3. TRUE COPY OF THE PROCEEDINGS OF THE MANAGEMENT DATED 05.08.2008.

EXHIBIT P4. TRUE COPY OF THE AWARD DATED 18.06.2012 IN I.D.NO.7/20100 OF THE LABOUR COURT, KOZHIKODE.

EXHIBIT P5. TRUE COPY OF THE COMMUNICATION DATED 12.09.2012 ISSUED BY THE MANAGEMENT.

RESPONDENTS' EXHIBITS: NIL

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.

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O.P(L.C) No.3213 of 2012 - O

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Dated this the 11th day of February, 2015

J U D G M E N T

The petitioner is aggrieved with the award passed by the Labour Court, to the extent, the Labour Court directed his reinstatement only as a general worker; and not as a watchman. The issue referred for adjudication by the appropriate Government was the question of denial of employment to the petitioner herein. The issue referred termed the workman as a 'watchman'.

2. The management appeared and contended that the petitioner was merely a general worker and that for dereliction of duty, the petitioner was proceeded against and was imposed with a minor penalty of withholding of annual increment with cumulative effect for two years. The management also submitted that the petitioner had not been removed from the rolls of the management and the petitioner voluntarily left the service of the management. It

was undertaken that the petitioner would be employed as a 'general worker' if he is desirous of the same and would be taken back to the service of the management.

3. The Labour Court found that there is no serious dispute as to the denial of employment, since, the management was willing to employ the petitioner as a general worker. However, the petitioner's contention before the Labour Court was on the point that he was a watchman and he should be employed in that category and not as a general worker. The reference was only with respect to the denial of employment, which was found to be not proved on the basis of the evidence led by the worker.

4. The petitioner did not produce any document to substantiate his case or that he was even dismissed or terminated from the service of the management. The attempt of the petitioner in the proceedings before the Labour Court was to establish that the petitioner was in fact a 'watchman' and not a general worker. The witnesses examined on behalf of the workman merely asserted that

the workman was terminated illegally and sought to establish that he was, in fact, a watchman. The Labour Court found that Ext.M3 is a representation dated 08.08.2008, in which the petitioner had sought for being employed as a watchman in the establishment. Hence, the petitioner's claim that he was already a 'watchman' stood dispelled. If he had been working as a watchman, there was absolutely no necessity of a representation in the nature of Ext.M3, was the finding.

5. The management also produced Ext.M6 series muster roll of permanent workers maintained by the management during the period February 1997 to August 2009. The Labour Court after examination of the muster rolls found that the workman was a 'general worker' in the management establishment and was categorised as such in the muster rolls. The contention of the petitioner even before this Court is that Ext.P1 produced at Ext.W13 before the Labour Court would indicate that the charge against him was that he did not record a matter in the watchman's

book.

6. Ext.W13 is a show cause notice dated 18.07.2005 from which, there can be no inference that the petitioner was a watchman. In any event, that was not the show cause notice, which led to the present enquiry. The disciplinary authority's order dated 05.08.2008 indicates that the instant enquiry was on the charge that the petitioner had been present in the factory premises unauthorizedly between 5 p.m to 12 midnight on 24.03.2007. The charge itself indicates that the petitioner had been present there "on the pretext that you were on duty at the gate". Hence, the attempt of the petitioner was to style himself as a watchman and then on the basis of a reference made on the question of denial of employment, to get a posting as watchman in the management establishment. In such circumstance, the status of the petitioner as a watchman, in the reference order also cannot be relied upon. As was noticed above, the punishment did not result in any dismissal from the service

of the establishment. The petitioner's attempt was to style it as a denial of employment and then obtain a posting as a watchman. The Labour Court has after examination of even the muster roll found that there is sustainable evidence to prove that the petitioner was employed as a worker.

Taking all the circumstances into account, this Court is of the opinion that there can be no interference caused to the award of the Labour Court and the original petition would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge