

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

OP(LC).No. 3454 of 2012 (O)

CP.NO. 4/2010 OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, ERNAKULAM

PETITIONER (PETITIONER IN THE CLAIM PETITION) :

A.P.BALAN,
AREEPARAMBATH HOUSE, PERINGALAM DESOM
KUNNAMANGALAM P.O., KOZHIKODE.

BY ADV. SRI.T.A.RAJAN

RESPONDENTS (OPPOSITE PARTIES IN CLAIM PETITION) :

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1. BHARAT SANCHAR NIGAM LTD.,
REPRESENTED BY CHIEF GENERAL MANAGER TELECOM
THIRUVANANTHAPURAM - 695 033.
 2. THE PRINCIPAL GENERAL MANAGER (TELECOM),
BHARAT SANCHAR NIGAM LTD., KOZHIKODE - 673 001.
 3. THE DIVISIONAL ENGINEER,
BHARAT SANCHAR NIGAM LTD., KOZHIKODE - 673 001.

R1 TO R3 BY ADVS. SRI.SAJI VARGHESE, SC
SRI.MATHEWS K. PHILIP, SC

THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :

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- EXHIBIT P1. TRUE COPY OF THE AWARD IN I.D.(C) NO.7/1995 OF LABOUR COURT, KOZHIKODE DATED 29.10.1997.
- EXHIBIT P2. TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN O.P.NO.7391/1998 DATED 04.03.04.
- EXHIBIT P3. TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN W.A. NO.1062 OF 2004 DATED 27.06.2005.
- EXHIBIT P4. TRUE COPY OF ORDER OF HON'BLE SUPREME COURT OF INDIA IN CIVIL APPEAL NO.2026/06, DATED 06.08.2009.
- EXHIBIT P5. TRUE COPY OF ORDER OF THE HON'BLE SUPREME COURT OF INDIA IN R.P.(C) NO.753 OF 2010 DATED 21.04.2010.
- EXHIBIT P6. TRUE COPIES OF THE ORDER OF THE 2ND RESPONDENT REGULARIZING THE SERVICE OF THE PETITIONER'S JUNIOR DATED 26.04.2011.
- EXHIBIT P7. TRUE COPIES OF THE ORDER OF THE 2ND RESPONDENT REGULARIZING THE SERVICE OF THE PETITIONER'S JUNIOR 19.12.2001.
- EXHIBIT P8. TRUE COPY JUDGMENT OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A.NO.368/91 DATED 17.06.92.
- EXHIBIT P9. TRUE COPY OF ORDER OF THE DIVISIONAL ENGINEER TELECOM, TRANSMISSION PROJECT, KOZHIKODE DATED 16.08.96.
- EXHIBIT P10. TRUE COPY OF THE CASUAL LABOURERS (GRANT OF TEMPORARY STATUS AND REGULARISATION) SCHEME ISSUED BY THE TELECOM DEPARTMENT.
- EXHIBIT P11. TRUE COPY OF THE CLAIM PETITION NO.4/2010 FILED BY THE PETITIONER.
- EXHIBIT P12. TRUE COPY OF OBJECTION OF THE RESPONDENTS DATED 27.01.2011.
- EXHIBIT P13. TRUE COPY OF REJOINDER FILED BY THE PETITIONER DATED 10.04.2011.
- EXHIBIT P14. TRUE COPY OF THE ORDER DATED 30.07.2012 IN C.P.NO.4/2010 OF CENTRAL GOVERNMENT TRIBUNAL CUM LABOUR COURT, ERNAKULAM.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

K.VINOD CHANDRAN, J

O.P.(LC). 3454 of 2012

Dated 5th March, 2015

JUDGMENT

The petitioner is aggrieved with the order passed at Ext.P14 in an application under Section 33C(2) of the Industrial Disputes Act, 1947. Obviously, the claim made under Section 33C(2) was pursuant to an Award at Ext.P1, the operative portion of which is extracted hereunder :

“In the result, an award is passed holding that denial of employment to the workman by the Management is not justified. The management is directed to reinstate the workman as an approved casual masdoor within one month from the date of publication of this award in the official gazette. The workman is entitled to all the benefits and privileges and continuity of service to which a casual labourer is entitled to. For the reasons stated in the foregoing he is not entitled to back wages.”

2. The petitioner was directed to be reinstated as a. approved casual Mazdoor with

all the benefits and privileges and continuity of service to which a casual labourer is entitled. The petitioner's contention is that, on the petitioner being granted continuity of service, he would have to be considered as a temporary Mazdoor entitled to be considered for regularization. However, the petitioner also contends that the juniors who were appointed in time were granted such benefits.

3. The fact remains that the order dated 26.12.1997 passed by the Labour Court was enforceable as on 26.01.1998. Proceedings were taken by the Management before the High Court and the Honourable Supreme Court and only on such proceedings ending in failure, did the Management appoint the petitioner on 09.07.2010. The appointment, admittedly is one as a casual Mazdoor. Reinstatement hence, made was as per the direction of the Labour Court in the post of

casual Mazdoor. If at all the petitioner had a claim for regularization on the basis of the other workmen junior to him having been given such benefit, that would be a dispute which has to be adjudicated by the appropriate forum. That is not a benefit which accrues to the workmen and is computable in terms of money as per Ext.P1 Award. Ext.P1 granted reinstatement as a casual Labourer and from the date of reinstatement ordered as per Ext.P1, *de hors* the proceedings taken by the Management against the Award, the petitioner would be entitled to entire back wages, but only as a casual labourer; going by Ext.P1 Award. In fact, the Labour Court had also declined back wages for the prior period on the ground that, as a casual labourer, wages would be payable only when there is work.

In the above circumstances, this Court is not inclined to grant any relief as sought for.

The order of the Labour Court is unassailable.
The Original Petition is dismissed. Parties are
left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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