

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

OP(LC).No. 343 of 2010 (O)

I.D.NO. 42/2004 OF LABOUR COURT, KANNUR

PETITIONER(S) :

**C.K. MOOSA,
SHERIFA MANZIL, PALLITHAZHA,
CHIRAKKARA, THALASSERY.**

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S) :

**1. K.K. PAVITHRAN, S/O.KRISHNAN,
CHALUPARAMBATHU, VELLAKUNNU, CHERUPARAMBA.P.O,
PANOOR, THALASSERY.**

**2. THE LABOUR COURT,
KANNUR.**

**R1 BY ADVS. SRI.P.U.SHAILAJAN
SRI.KISHOR B.**

R2 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

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

Msd.

OP(LC).No. 343 of 2010 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE AWARD DATED 12.11.2009 IN I.D.NO.42/2004.

EXHIBIT P2: TRUE COPY OF THE AWARD DATED 22.04.2004 IN I.D.NO.42/2004.

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.15206/2008 OF
THIS HON'BLE COURT.**

**EXHIBIT P4: TRUE COPY OF THE ORDER RESTORING THE CASE TO FILE BY
THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.
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O.P.(L.C) No.343 of 2010 - O
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Dated this the 3rd day of March, 2015

J U D G M E N T

The petitioner, the management, challenges Ext.P1 order of the Labour Court. The petitioner admittedly was carrying on a motor transport undertaking, having various vehicles in which employees were engaged. The workman contends that, he was in service from February, 1981 and that he was denied employment on 20.04.2002, when he filed a complaint before the Executive Officer of the Motor Transport Workers Welfare Board, Kannur, regarding the non-implementation of the provisions under the Kerala Motor Transport Workers Welfare Fund Act, 1985 (for brevity, 'the Act') in the management establishment. But for such a bland statement, nothing was produced to substantiate the contention of a complaint having been filed or the termination being on account of

such complaint.

2. The petitioner/management contended that, he had been operating only two lorries, one of which was sold in 1990 and the other three years back. The workman is admitted to have been employed only for a short period prior to 1990 and is said to have been terminated from service after settling all the claims, on the sale of the vehicle. However, the management did not produce any evidence to substantiate the settlement. It is also relevant that, the management did not produce any muster roll or attendance register to evidence the employees, who were engaged by the management. There is total lack of evidence to substantiate either of the contentions and one has to go from the admissions made by the workman, management and the witnesses.

3. That the workman was engaged with the management is not disputed. However, the management is not able to establish as to when he was terminated. The

workman examined himself to contend that, he was in employment from 1981 till 20.04.2002. Though a claim was raised that his termination was on account of a complaint filed before a statutory authority, nothing was produced to substantiate the contention. WW2 and WW3, examined by the workman are said to be two former employees of the respondent. They were in fact examined to establish that, the petitioner had been continuously employed from 1981 onwards. WW2 admitted the position that, he was employed only from 1996 to 2001 and WW3 from 1983 to 1991. The management did not seriously dispute the employment of WW2 and WW3.

4. The workman also marked a number of documents, which were the registration particulars of the vehicles owned by the petitioner and his relatives. The documents marked as W1 to W9 only indicate that, the management had been carrying on a motor transport undertaking, wherein, definitely workmen also would have

been employed. However, there is nothing to indicate that, the particular workman, who had raised a dispute was in employment and terminated at the time when the dispute was referred for adjudication.

5. It is also pertinent that, earlier, the Labour Court had dismissed the case for default on 22.04.2009. Despite the Labour Court allowing the restoration of the case on payment of cost, the condition was not complied with. It was only later, by Ext.P3 judgment in 2009 that, a restoration was effected as per the orders of this Court. The learned Counsel for the petitioner would also contend that, in any event, the petitioner would not be liable for any back wages between 22.04.2002 and 26.03.2009, since the adjudication was stalled for default only of the workman. By sheer of passage, of time as also the nature of the motor vehicle industry, there would be no purpose served in directing reinstatement of a workman, on the evidence available before the Labour Court. The workman also

cannot have any entitlement to the back wages during the period, when the adjudication was delayed for his own default.

6. Taking all the facts into consideration, this Court is of the opinion that, the workman can be compensated for the denial of employment, which is fixed at Rs.75,000/-. The management shall pay the said amounts within a period of two months from today.

The writ petition is disposed of. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge