

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. 727 of 2011 (O)

AGAINST THE AWARD IN ID 48/2004 of LABOUR COURT, KANNUR DATED 23.07.2009

PETITIONER(S)/PETITIONER:

**K.SRIJA, ARJUN NIVAS
NEAR MINADAN HOUSE, AZHIKKODE SOUTH.P.O., CHAKKARAPARA
KANNUR.**

BY ADV. SRI.GEORGE ZACHARIAH ERUTHICKEL

RESPONDENT(S):

- 1. THE PROPRIETOR, SILVER JUBILEE PRINTING
PRESS, HAJI ROAD, KNNUR-670501.**
- 2. THE LABOUR COURT, KANNUR-670501.**

**R,R1 BY ADV. SRI.P.U.SHAILAJAN
R,R2 BY ADV. GOVERNMENT PLEADER SRI. MANOJ KUNJACHAN**

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

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1** **COPY OF THE CERTIFICATE DATED 2.11.02 ISSUED BY THE PROPRIETOR OF THE 1ST RESPONDENT MANAGEMENT AND WHICH WAS PRODUCED IN THE ID CASE AS EXHIBIT W4.**
- EXT.P2** **COPY OF THE AWARD PASSED BY THE HON'BLE LABOUR COURT KANNUR IN I.DNO. 48 OF 2004**
- EXT.P3** **COPY OF THE LETTER ISSUED BY THE TUTOR OF THE PETITIONER IN THE FIELD OF WORKS IN PRINTING PRESS, WHO REFERRED THE PETITIONER FOR THE JOB IN THE RESPONDENT MANAGEMENT.**

RESPONDENTS EXHIBITS

NIL

// TRUE COPY//

PA to Judge

SB

K. VINOD CHANDRAN, J.

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O.P.(L.C) No.727 of 2011

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Dated this the 5th day of March, 2015

J U D G M E N T

The petitioner, who is the worker, is aggrieved with the award of the Labour Court, Kannur numbered as I.D No. 48 of 2004, evidenced at Ext.P2. The justifiability of the denial of employment was the issue referred. The petitioner contended that, she was working as a compositor from 21.06.2000 to 23.10.2002, in the press of the management. On 23.10.2002, she is said to have developed a stomach pain and is stated to have undergone a surgery, pursuant to which, she was advised bed rest. The petitioner claims that the petitioner's husband had informed the management on 23.10.2002 about such ailment and on 30.10.2002, a leave application was sent to the management through her husband, along with the copy of the medical certificates.

2. It was also contended that, the Management

granted leave. But on seeking re-joining of duty on 04.12.2002, the petitioner was denied employment, was the plea. The management appeared and disputed the employer-employee relationship and contended that, the petitioner was only a trainee for 9 months till the end of September, 2002. It was also contended that, though the petitioner had sought for an Employment Certificate, to be produced before a financial institution, to avail a loan, the same was declined.

3. The petitioner having raised a claim of employment has to first establish that, she was having such an employment in the management establishment. Three documents were produced on her side, being a laboratory report, medical certificate and discharge summary as evidenced at Exts.W1 to W3. Exts.W1 to W3 were found to be insufficient to establish the employment, with the management. The entire claim of the worker rested on Ext.W4, a certificate allegedly issued by the management, on 02.11.2011 indicating her employment and her salary of

Rs.3,000/-. The management refuted the same and alleged that, she had obtained the letter head of the management and written the same by herself. In cross-examination, the petitioner admitted that the certificate was in her own hand writing.

4. The signature also was disputed by the management. The Labour Court compared the signature in Ext.W4 with that in the written statement and the vakalath filed by the management and found the same to be differing substantially. It was also noticed that, while a certificate produced by the petitioner was for the salary of Rs.3,000/- in the year 2001, the complaint given by her to the District Labour Officer on 20.01.2003, indicated that, she was drawing a pay of Rs.1,500/- per month.

5. The discrepancy is explained by the Counsel for the petitioner, on the ground that, the certificate was issued only to avail a financial facility from a Bank and that showed an enhanced salary being paid. Even going by the petitioner's own submission, no reliance can be placed on

Ext.W4, since, even according to her, she was not paid a salary of Rs,3,000/- in 2001. It is trite that, when a portion of the document is admitted to be false, the Court cannot rely on the other portion to sustain a claim based on that document.

6. Further it was also noticed that, the petitioner did not have a consistent case with respect to the leave application. The petitioner had claimed in the claim statement that, the petitioner's husband had informed the management as to her ailment on 23.10.2002 and then she had sent a leave application on 30.10.2002, after her discharge from the hospital. However, in cross-examination, the contention taken was that, the leave application was sent on 23.10.2002 by registered post. No evidence to substantiate the claim was produced.

7. The learned Counsel for the petitioner contends that, if a remand is ordered, the petitioner could establish her case. The petitioner now relies on Ext.P3, a document issued much later on 01.12.2002 by a third party

to the petitioner. In fact, the period of employment as stated by the petitioner before the Labour Court differs from that stated in Ext.P3. In any event, there is no case for any remand at this point. The petitioner ought to have established her claim when the same was being considered by the Labour Court, Kollam and the remand cannot be made at the will and choice of the worker. Ext.P3 also is a communication of a third party, on which no reliance can be placed and which was issued long after the conclusion of the adjudication before the Labour Court

The writ petition would stand dismissed upholding the award of the Labour Court. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

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P.A to Judge