

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. 757 of 2011 (O)

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ID. NO.6/2010 OF LABOUR COURT, KOLLAM.**

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PETITIONER:

**REJANI K.G. @ REJANI BALACHANDRAN,
(FORMERLY WORKING AS HOSPITAL ORDERLY,
CENTURY HOSPITAL, CHENGANNUR,
ALAPPUZHA DISTRICT, PIN-689 505),
KOTTARATHIL HOUSE, ELANTHOOR P.O.,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.P.RAMAKRISHNAN.

RESPONDENT(S):

- 1. CENTURY HOSPITAL,
CHENGANNUR, ALAPPUZHA DISTRICT, PIN-689 505,
REPRESENTED BY ITS ADMINISTRATOR.**
- 2. LABOUR COURT, KOLLAM,
PIN-691 001.**

**R1 BY ADVS. SRI.E.K.NANDAKUMAR,
SRI.K.JOHN MATHAI,
SRI.P.BENNY THOMAS,
SRI.P.GOPINATH.**

R2 BY GOVT. 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:**

rs.

OP(LC).No. 757 of 2011 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE REPRESENTATION DATED 07/08/2008 SUBMITTED BY
THE PETITIONER BEFORE THE MANAGEMENT.
- EXT.P2 COPY OF THE CLAIM STATEMENT FILED BY THE PETITIONER IN
I.D. NO.6/2010 OF THE LABOUR COURT, KOLLAM.
- EXT.P3 COPY OF THE AWARD DATED 06/11/2010 IN I.D. NO.6/2010.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

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O.P.(L.C) No.757 of 2011 - B

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Dated this the 3rd day of March, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P3 award passed by the Labour Court, Kollam, in a reference made, as to the justifiability of the denial of employment of the petitioner. The petitioner's specific case, in the claim statement was that, the petitioner had been working as a Hospital Orderly in the management hospital from 03.05.2000 and when she attempted to join duty after availing an eligible leave on 20.06.2008, she was not permitted to so join. The specific contention was that, on her reporting for duty, she was directed to wait for orders of the management to join duty.

2. Subsequently, the admitted fact is that, on 01.07.2008, the petitioner was issued with a notice by the management alleging that, there was unauthorised absence from 20.06.2008. The petitioner claims to have again

reported for duty and also speaks of a letter sent to the Manager, (Human Resources), to permit her to join duty. However, no such letter is seen produced nor has the petitioner made any specific averment as to when she reported for duty, after the notice was issued by the management on 01.07.2008. Subsequently, on 01.08.2008, the management issued a letter terminating her employment and paying her gratuity dues, as computed by the management. Then on 03.08.2008, the petitioner wrote back with Ext.P1 letter contending that, she was all along willing to join duty and also further raising an allegation with respect to the petitioner having not been paid the minimum wages as regulated by statute.

3. Before the Labour Court, the petitioner examined herself and did not mark any documents. The management examined one witness and marked 13 documents. The management before the Labour Court took a specific contention that, the termination was on account of the misconduct of unauthorised absence. True, no domestic enquiry was held on the said allegation. However,

the management attempted to substantiate the misconduct, by evidence adduced before the Labour Court, which is definitely a permissible exercise.

4. The management produced Exts.M2, M3 and M4 series of notices issued to the worker, on earlier instances, when the petitioner had unauthorisedly absented herself from work. The Work Appraisal Form produced at Ext.M7 also indicated such unauthorised absence. The petitioner did not seriously dispute any of these documents, nor was there any attempt made, to challenge the allegations of unauthorised absence, before the Labour Court.

5. Going from the dates aforementioned, it is very clear that, the petitioner had not been working from 20.06.2008 onwards. The petitioner contended that, she was on an eligible leave, for a day. The petitioner voluntarily submits that, on reporting for duty, the petitioner was asked to wait for further orders. The petitioner has not taken up the matter with any of the statutory authorities, when the petitioner was refused

permission to join duty. Again on 01.07.2008, there was a specific communication issued alleging unauthorised absence from 20.06.2008 and also directing the petitioner to report for duty. But, for a mere assertion that, the petitioner reported for duty in accordance with the same, it is not even clear as to the date on which she so reported. The petitioner contended that, she had sent a communication to the Human Resources Manager, which has not been produced by the petitioner.

6. The learned Counsel for the petitioner would contend that, in fact the allegation of non-payment of minimum wages led to her termination. However, the petitioner had not at any time between 20.06.2008 and 01.08.2008, or prior to the said date, when she was said to be in employment, raised any complaint regarding the non-payment of minimum wages. Only on 03.08.2008, when she was issued with an order of termination she attempted to raise such allegation.

7. Taking all the circumstances into consideration, this Court is of the opinion that, the finding of the Labour

Court is not liable to be interfered with. On the question of denial of employment, this Court does not find it to be unjustifiable. The worker was absent unauthorisedly and refused to respond to a notice on that count, neither with an explanation nor by reporting for duty. Only when the termination order was issued, the worker responded stating her willingness to join duty and raising an allegation with respect to minimum wages not being paid. The award of the Labour Court has to be upheld. The management shall pay the gratuity due to the worker for the period of admitted employment within a period of two months from today.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge