

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

OP(LC).No. 3125 of 2011 (O)

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ID. NO.56/2010 OF INDUSTRIAL TRIBUNAL, PALAKKAD.**

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PETITIONER:

**MANAGING DIRECTOR,
THRISSUR CO-OPERATIVE SPINNING MILLS LTD.,
VAZHANI. P.O., TRICHUR-680 589.**

**BY ADVS.SRI.K.ANAND,
SMT.LATHA KRISHNAN.**

RESPONDENT(S):

- 1. K.K. REJIKUMAR,
KANNAMTHODI HOUSE, CHERUTHURUTHI. P.O.,
TRICHUR-679 531.**
- 2. INDUSTRIAL TRIBUNAL,
PALGHAT-678 001.**

**R1 BY ADV. SMT.SHERLY S.A.
R2 BY GOVT. PLEADER SRI.MANOJ KUNJACHAN.**

**THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

OP(LC).No. 3125 of 2011 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER.
- EXT.P2 COPY OF THE MEDICAL AND FITNESS CERTIFICATE
DATED 25/06/2009.
- EXT.P3 COPY OF THE ADDITIONAL COUNTER FILED BY THE PETITIONER.
- EXT.P4 COPY OF THE AWARD DATED 19/07/2011.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K.VINOD CHANDRAN, J

O.P.(LC). 3125 of 2011

Dated 10th March, 2015

JUDGMENT

The petitioner challenges Ext.P4 Award of the Industrial Tribunal wherein the termination of the service of the respondent was held to be unjustifiable and a direction was issued to re-employ the respondent immediately. The issue referred was the justifiability of the termination of the respondent who, admittedly was working as a badli worker in the Management Company. It was the contention of the Management before the Industrial Tribunal that the badli workers were terminated only on account of the power crisis and the resultant financial stringency. On the power crisis being resolved to an extent, the badli workers were asked to report and many of them reported for duty.

2.The petitioner, however, did not report

for duty pursuant to a direction which was displayed in the notice board of the Company. On the petitioner not having reported, the petitioner was issued with notice dated 15.06.2001 under certificate of posting directing him to report for duty failing which his right would be extinguished. On the petitioner even then not reporting for duty, under clause 22.2 of the Standing Orders of the Company, a notice was issued by registered post. Admittedly, the communication sent by registered post was returned. The petitioner having not reported for duty, raised a dispute under the Industrial Disputes Act, 1947 which was considered by the Industrial Tribunal, Palakkad.

3. The Tribunal found that the workman, having been sent out of employment, was justified in going out of the State for alternative employment. Ext.W1 medical and

fitness certificate issued by a private medical practitioner was relied on to find that the petitioner had been disabled from re-joining duty for reason of the sickness. On the aforementioned ground, the Tribunal found that the workman is entitled to be re-employed in the Company.

4. Essentially, it is to be noticed that a worker, having been sent out of the employment, would definitely be entitled to go in search of alternative employment. But he has to give a forwarding address with the Management so as to intimate him of any re-employment of badli workers. Admittedly, many badli workers, who were terminated along with the respondent, were taken back in employment on their reporting for duty pursuant to the notice of the Management. In the case of the respondent herein, the Management had issued two notices in the

available address with the Management. The worker having not given a forwarding address, cannot contend that he was not intimated and hence, cannot be expected to re-join duty on such communication which was never received. The Standing Orders is very clear on this aspect, which clause has been extracted by the Tribunal.

5. The learned counsel appearing for the Management has a further contention that the medical certificate was never produced before the Conciliation Officer wherein the dispute was first conciliated. In fact, it is pointed out that clause 22.2 of the Standing Orders specifically confer discretion on the Management to accept a satisfactory explanation of the workman and take him back in employment. The petitioner having not preferred any explanation before the Management, would not be entitled to

re-employment.

For all the above reasons stated, Ext.P4 is found to be bad and the same is set aside. The writ petition is allowed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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