

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

O.P.(LC).No.3177 of 2011 (O)

AGAINST THE AWARD IN I.D.NO.26/2009 DATED 23.02.2011
OF THE LABOUR COURT, KOLLAM.

PETITIONER(S):-

1. D.MOHANAN NAIR,
MANJUVILA VEEDU, VAIKKALLOOR, KANJAMPURAM P.O.,
KANYAKUMARI DISTRICT.
2. S.PRATHAP KUMAR,
PRATHAP MANDIRAM, NEAR ITI JUNCTION, DHANUVACHAPURAM,
NEYYATTINKARA.
3. KUMARI MINI S.,
SREE VAISAKH, HOSPITAL JUNCTION, NEYYATTINKARA.

BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.T.K.ANANDA KRISHNAN
SRI.JELSON J.EDAMPADAM

RESPONDENT(S):-

1. THE PRINCIPAL,
INSTITUTE OF ENGINEERING, INDUSTRIAL TRAINING CENTRE,
AMARAVILA P.O., THIRUVANANTHAPURAM-695121.
2. LABOUR COURT, KOLLAM-690001.

R2 BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN.

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

O.P.(LC).NO.3177 OF 2011-O

APPENDIX

PETITIONER(S) EXHIBITS:-

EXT.P1 TRUE COPY OF THE CLAIM STATEMENT DATED 8-10-2009.
EXT.P2 TRUE COPY OF THE WRITTEN OBJECTION.
EXT.P3 TRUE COPY OF THE AWARD DATED 23-2-2011 IN I.D. NO.26/2009
 OF THE LABOUR COURT, KOLLAM.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

O.P(LC) No.3177 of 2011-B

Dated this the 10th day of March, 2015

JUDGMENT

The petitioners were admittedly imparting training in the management-establishment. The petitioners were terminated by the management, which termination, according to the management, was due to lack of sufficient students in the institute.

2. The management is a training institute in the private sector, imparting training for appearing in the Industrial Trade Certificate examination conducted by the Government of Kerala. The termination was challenged on the grounds that there was a dispute pending and an approval had to be obtained under Section 33 of the Industrial Disputes Act, 1947 [for brevity "ID Act"]. The other issue was the justifiability of the termination itself.

3. On the question of an approval under Section 33 of the ID Act, the finding of fact of the Labour Court was that the conciliation notice was issued after the termination. The petitioners were said to have been terminated on 31.07.2007, since there were not enough students in the batch of 2006-2008, on which date the 2005-07 batch completed the course. It was the contention of the

management that there were not enough students to continue the course for the subsequent years. The conciliation notice was received after the order of termination. In fact, the specific contention taken by the management was that the petitioners refused to accept the termination letter personally and the management had issued the same by registered post on 02.08.2007 and 04.08.2007. The demand submitted by the Union to the District Labour Officer itself was on 06.08.2007 and, hence, the initiation of conciliation was on termination and notice for conciliation was received after termination. In such circumstance, the Labour Court found that there was no violation of Section 33 of the ID Act. This Court does not find any reason to interfere with the said finding.

4. The Labour Court then considered the issue whether the petitioners herein could be treated as “workmen”. The petitioners would contend that they are demonstrators and cannot strictly be called “teachers”. However, the fact remains that the petitioners were imparting training to the students. The Labour Court relied on a decision of the Hon'ble Supreme Court in ***A.Sundarambal v. Govt. of Goa, Daman and Diu* [1988 (4) SCC 42]** to find that a teacher would not come within the purview of “workman” under the ID Act.

5. All the three petitioners were found to be handling MRTV trade in the management-institute. The management admittedly is an educational institution and the petitioners were teachers, teaching the students Theory and Practical in the respective branch in which they had qualification. WW1 also admitted in cross-examination that the employment of the petitioners were as “instructors”. Admittedly there is no manufacturing process going on in the establishment and what is imparted is merely training in skilled work in various subjects. Teachers in technical institutes would definitely come within the definition of “teachers” and the petitioners having been found to be imparting training to the students in their respective field, cannot be said to be “workmen” under Section 2(s) of the ID Act. This Court does not find any reason to interfere with the award of the Labour Court.

The writ petition would stand dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]