

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 1135 of 2005 (I)

PETITIONER :

**PRAKASH G.KAMATH, HOUSE NO.8/1642,
ALATHUKUDY ROAD, KOCHI - 682 002.**

**BY ADVS.SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA**

RESPONDENTS :

- 1. APPELLATE AUTHORITY UNDER THE SHOPS &
COMMERCIAL ESTABLISHMENTS ACT (DEPUTY LABOUR
COMMISSIONER), CIVIL STATION, KAKKANAD, ERNAKULAM.**
- 2. JAINEX PRIVATE LIMITED,XLV/1122,
NORTH PACHALAM, CHITOOR ROAD, KOCHI - 12.**

**R2 BY ADVS. SRI.M.V.JOSEPH
SRI.JIMMY GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

WP(C).No. 1135 of 2005 (I)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF ORDER DT 23/12/1999 PASSED BY THE R1.

P2: COPY OF LETTER DT 20/10/2004 SENT BY THE R2 TO THE PETITIONER.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K.VINOD CHANDRAN, J

W.P.(C).No. 1135 of 2005

Dated 30th January, 2015

JUDGMENT

The petitioner is aggrieved with the order of reinstatement passed by the Appellate Authority in default of which the petitioner was directed to be paid compensation of Rs.15,000/-. The challenge is not against the order of reinstatement but on the question of the quantum of compensation, which is said to be minimal even going by the decision reported in **Fatima Co-op. Credit Society Ltd. v. Appellate Authority (1993 (2) KLT 903).**

2. The appeal filed before the Appellate Authority under the Kerala Shops & Commercial Establishment Act, 1960, was claiming denial of employment in the Management establishment. Admittedly, the petitioner had been working in the Management establishment between November

1994 to 19.06.1995. The claim of the petitioner that he was not allowed to join duty after 19.06.1995 was refuted by the Management. The Management contended that in fact, there was a transfer order issued to the petitioner which he did not comply with. It is only in such circumstance, that the petitioner is said to have abandoned the employment. In any event, the Labour Court has granted reinstatement with a default clause of compensation which is not challenged by the Management. The contention of the petitioner is that there was no formal transfer order issued and no notice for unauthorized absence was also issued.

3. However, it is to be noticed that in fact, there was a communication intimating terms for which was sent by the Management on 29.06.1995 which direction was not complied with, by the petitioner and he replied to the

same by letter dated 30.07.1995. Though formal transfer order was not issued definitely the letter dated 29.06.1995 offered transfer to the workman which the workman did not accept. Especially considering the circumstance that the petitioner had been working only for about seven months, this Court would not interfere with the Award of compensation as directed in Ext.P1.

4. Even going by the dictum laid down in **Fatima Co-op. Credit Society Ltd.**, relevant factors to be taken into account are the following -

1. The total length of service rendered by the employee whose services were sought to be terminated.
2. The age of the employee concerned.
3. His chances of re-employment in other establishments.
4. Whether the employee was in fact employed or not during the pendency of, the appeal.

5. The reasonable expectation of continuous employment with the employer concerned, in the facts and circumstances of the case.

5. The total length of service in the present case is only seven months; age of the employee and the chances for re-employment also are in his favour. The employee does not specifically state that he was not employed during the pendency of the appeal. In such circumstances, this Court is of the opinion that no enhancement of compensation can be awarded.

The writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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