

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP(LC).No. 9 of 2014 (O)

AGAINST THE ORDER IN CP 8/2011 of LABOUR COURT, ERNAKULAM

PETITIONER(S):

1. K.P.ROYACHAN
KUTHUKALLUMGAL, CHINGAVANAM P.O., KOTTAYAM DISTRICT.

2. K.M.GEORGE
KUTHUKALLUMGAL, CHINGAVANAM P.O., KOTTAYAM DISTRICT.

3. M.N.SASIDHARAN NAIR
MUTTATHIL, S.PURAM P.O., CHANGANACHERRY
KOTTAYAM.

4. P.A.KUNJUNJUKUTTY
PALLIKKERIL, KURUCHY P.O., CHANGANACHERRY
KOTTAYAM.

5. P.T.KOCHUMON
PERUTHARA HOUSE, S.PURAM P.O., CHANGANACHERRY
KOTTAYAM.

BY ADVS.SRI.V.PREMCHAND
SRI.V.TEKCHAND

RESPONDENT:

THE GENERAL MANAGER
TECIL CHEMICALS AND HYDRO POWER LTD
CHINGAVANAM P.O., KOTTAYAM DISTRICT.

R1 BY ADV. SRI.BINU MATHEW
R1 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R1 BY ADV. SRI.ABRAHAM JOSEPH MARKOS
R1 BY ADV. SRI.ABRAHAM VARGHESE THARAKAN

THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD ON
07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE AWARD DATED 2/5/2000 BY INDUSTRIAL TRIBUNAL, IDUKKI.

EXHIBIT-P2: TRUE COPY OF THE REPLY NOTICE DATED 10/05/2010 ISSUED BY THE MANAGEMENT.

EXHIBIT-P3: TRUE COPY OF THE PETITION DATED 18.04.2011 BEFORE THE LABOUR COURT, ERNAKULAM.

EXHIBIT-P4: TRUE COPY OF THE OBJECTION DATED 29/05/2012.

EXHIBIT-P5: TRUE COPY OF THE COMMON ORDER DATED 21.02.2014 IN CLAIM PETITION NOS.8/11, 9/11, 10/11, 11/11 & 12/2011 OF LABOUR COURT ERNAKULAM.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

O.P(L.C) No.9 of 2014-O

Dated this the 7th day of July, 2015

JUDGMENT

The petitioners, who are retrenched workers of the respondent management, have filed this Writ Petition challenging Ext.P5 common order passed by the Labour Court, Ernakulam in Claim Petition Nos.8 to 12 of 2011, to the extent the completed years of their service for the purpose of terminal benefits, have been limited for the period from 1994 onwards, as against their continuous service on contract and on casual basis which commenced in 1980 and 1981 respectively.

2. The issue as to denial of regularisation of petitioners was considered in Ext.P1 award passed by the Industrial Tribunal on 2.5.2000. 17 workers including the petitioners sought regularisation under the management, based on their continuous employment under the respondent since the year 1980, on contract/casual/temporary basis. Dispute arose when the management absorbed persons from outside as permanent workers, while retaining them as temporary hands. The

Industrial Tribunal, after analysing the materials on record and hearing on behalf of the parties, found in the penultimate paragraph of the award, as follows:

“The workmen involved in this industrial dispute have been initially working as casual workers from 1981 onwards and from 1994 onwards they have been continuing as temporary workers under the management. Therefore, for the last 19 years they have been working continuously as casual and temporary workers under the management. It has come out in evidence that from the year 1994 onwards, they have been paid a consolidated amount towards monthly wages. In view of the fact that those workmen have been employed regularly and continuously under the management as casual workmen and temporary workmen for such a long period, it has to be presumed that there has been regular vacancy under the management to accommodate them as permanent workmen.....”

3. On the basis of the aforesaid findings, an award was passed directing the management to regularise the services of all the workmen involved in the dispute except one Sri K.K.Pathrose, as permanent workers w.e.f the date of the award namely 2.4.2000. But the petitioners were not regularised; instead there was a lockout in the company, consequent to which, they were retrenched. The petitioners filed C.P.Nos.8 to

11 of 2011 before the Labour Court, Ernakulam claiming a total sum of Rs.15,60,400/- towards arrears of salary, compensation for illegal closure of the company, provident fund, etc. The petitioners claimed that the arrears of wages alone for 10 years will come to about Rs.84,000/-, which was liable to be paid along with interest. The management filed objections as contained in Ext.P4 explaining the circumstances relating to lockout from 5.7.99 onwards due to labour unrest and about a conciliation settlement arrived at on 24.6.2011. As per the settlement, the management agreed to pay gratuity, retrenchment compensation and exgratia to the workers calculated at the rate of 52 ½ days for every completed years of service. It was stated that the petitioners were bound by the settlement and they can claim the amount only as per the settlement. It was also stated that the company was willing to pay the amount as per the settlement. After adducing evidence on the entitlement of the petitioners to recover the amount as claimed, the Labour Court considered the issue and found that the petitioners can claim the benefits on the basis of Ext.D1 settlement alone, which was arrived at under Section 18(3)(d) of Industrial Disputes Act. The next question considered by the Labour Court was regarding the quantum of

benefits admissible to the petitioners in terms of Ext.D1 settlement. It was found that the gratuity, retrenchment compensation and exgratia were admissible on the basis of the last drawn wages to be calculated as on 5.7.99 and that the consolidated pay of the petitioners as on 5.7.99 was Rs.2,250/-. But according to the management, the amount payable to the petitioners, as per their calculation statement which was produced as Ext.D15, was only a sum of Rs.66,938/- each. The management reckoned the number of completed years of service of petitioners as 17, for the purpose of calculating the amount due to them. At the same time, the case of the petitioners was that since they commenced service in the year 1980 they are entitled to the benefits reckoning the completed years of service as 32 instead of 17. The Labour Court found that the petitioners were unable to substantiate their claim regarding number of years of service. At the same time, the Labour court relied on certain appointment orders produced by the management, marked as Exts.D9 to D13, according to which except Sri Sasidharan Nair, who is the petitioner in C.P.8 of 2011, other petitioners were appointed on 17.3.1994, whereas Sri Sasidharan Nair was appointed on 1.3.1995. In paragraph 26 of

the order, the Labour Court found as follows:

“26. In the absence of supporting evidence on the side of the petitioners to prove that they were in the services of the opposite party prior in 1994 as evidence from the evidence led in on the side of the opposite party, the total period of service rendered by the petitioners is to be arrived at to 17 years based on Ext.D9 to D13 and not 32 years as contended by the petitioners.”

4. In addition to the sum of Rs.66,938/- suggested by the management, the Labour Court found that the petitioners were entitled to claim gratuity also and towards this, a sum of Rs.22,067/- was found payable to the petitioners. Accordingly, it was found that the petitioners were entitled to a sum of Rs.89,005/- each and hence the C.Ps were disposed of directing the opposite party -respondents to pay a sum of Rs.89,005/- each to the petitioners within a period of one month.

5. It is as against the finding of the Labour Court regarding the commencement of services of the petitioners and their completed years of sarvice, that the petitioners have approached this Court.

6. I heard the learned counsel appearing on either side. The learned counsel for the petitioners pointed out that the

Industrial Tribunal had already found that the petitioners had been working under the management right from the year 1980 onwards. Therefore it was not proper for the Labour Court to rely on the evidence produced by the management in the calim petitions to enter upon a finding that the petitioners have commenced service only in the year 1994. On the other hand, the learned Counsel for the respondent supported the order of the Labour Court.

7. The main dispute arising in the case is the date of commencement of continuous service of the petitioners. In view of the rival contentions on either side it is necessary to examine the award Ext.P1 as to the service details of the petitioners since Ext.P5 common order is passed relying on the orders of appointment - Exts.D5 to D9 produced by the management, and arrived at the conclusion that commencement of service of the petitioners is in 1994. All along the claim of the petitioners was that they commenced service in the year 1980 on contract/casual basis under the management. Their engagement on temporary basis since the year 1994 is not disputed.

8. In view of the clear finding by the Industrial Tribunal, rendered on the basis of materials on record, as reproduced in

paragraph 2 supra, that the workmen including the petitioners were initially employed under the management as contract workers from 1980 onwards; thereafter from 1981 onwards they have been working as casual workers and from 1994 onwards they have been employed as temporary workers and have been in continuous employment for the 19 years. The award was passed on 24.6.2000. It is common knowledge that no management will issue orders of appointment for engagement of workers on casual basis. Moreover when there is a finding in Ext.P1 award, the Labour Court ought not have entered into any finding on the basis of the documentary evidence adduced by the respondents. When it was found that they were entitled to claim the benefits in terms of the settlement entered into, thereafter the Labour Court ought not have allowed the management to improve their case and to render a finding on the length of continuous service of the petitioners, over and above the findings in Ext.P1 award and to rely on the materials subsequently produced by the management. The findings in Ext.P1 are never challenged by the management. Therefore there is no justification in coming to the conclusion that the continuous service of the petitioners can be reckoned only from

the year 1994 onwards.

9. Accordingly I find that the Labour Court erred in directing grant of benefits limiting the continuous service of the petitioners to 17 years. Therefore it is declared that the continuous service to be reckoned for the purposes of the benefits under Ext.D1 settlement would be reckoned for the period from 1981 onwards and the petitioners will be entitled to all the benefits. Therefore the number of continuous years of service will be 30 years instead of 17 years. The respondent shall give all the benefits due to the petitioners reckoning the number continuous years of service as 30 and disburse the benefits due to the petitioners within a period of 3 months.

The Writ petition is allowed accordingly.

Sd/-
(P.V.ASHA, JUDGE)

rtr/