

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

WP(C).No. 3458 of 2005 (J)

PETITIONER(S):

1. SR.DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, PALAKKAD.
2. UNION OF INDIA REPRESENTED BY
THE GENERAL MANAGER, SOUTHERN RAILWAY, MADRAS.
3. THE PERMANENT WAY INSPECTOR,
SOUTHERN RAILWAY, THIRUPATHUR, TAMIL NADU.

BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS

RESPONDENT(S):

1. M.SWAMINATHAN S/O. MURUGAN,
C/O. GENERAL SECRETARY S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
2. G.SAMINATHAN S/O. GOWRAN,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
3. L.V.SUBRAMANIAN S/O. VARADAN,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
4. M.SIGARAM, S/O. MUNIYAN,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
5. C.JAYARAMAN, S/O. CHINONDURAI
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
6. S.MANGUDA S/O. SETHU,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.

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7. C.BALARAMAN S/O. CHINNADURAI,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
8. S.PARIPALAN S/O. SUNDARAM,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
9. K.NALLIYAPPAN S/O. KANDON,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
10. P.SETTU S/O. PERUMAL,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
11. S.MASILAMANI, S/O. SAMINATHAN,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
12. K.MADU, S/O. CHINNARAYAN,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
13. T.SHANMUGHAM, S/O.S TIRUPPATHI,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
14. C.RAJENDRAN, S/O. CHINNAGOUNDER,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
15. M.KRISHNAN, S/O. MURUGESAN,
C/O. GENERAL SECRETARY, S.R.L.U., EDAPPALLY NORTH
COCHIN-24.
16. THE PRESIDING OFFICER, LABOUR COURT,
KOZHIKODE.

R1TO 15 BY ADVS. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR
SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
BY ADV. SRI.K.V.SADANANDA PRABHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-03-2015
THE COURT ON 10-03-2015, DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF CLAIM PETITION NO.25/1996 IN LABOUR COURT, KOZHIKODE INCLUDING SUMMONS AND ANNEXURES
- P2: COPY OF WRITTEN OBJECTION DATED 9/4/98 IN CP.25/96
- P3: COPY OF STATEMENT DATED 21/1/2003 ALONG WITH DETAILS OF AMOUNT FILED IN CP.25, 26 & 27/96 FILED BY CLAIMANT'S COUNSEL
- P4: COPY OF COUNTER DATED 4/2/2003 FILED BY RAILWAY TO REVISED STATEMENT DATED 21/1/03 IN CP.25, 26,27/96
- P5: COPY OF THE ORDER DATED 30/6/2003 OF LABOUR COURT IN CP.NOS.25, 26 & 27/96
- P6: DETAILS OF ARREARS PAID TO R1 IN RESPECT OF THE PERIOD FROM 5/11/83 TO 31/3/93
- P7: DETAILS OF BALANCE ARREARS DUE TO R1 IN RESPECT OF THE PERIOD FROM 1-4-/93 TO 16/1/96
- P8: COPY OF ORDER DATED 7/10/2004 IN M.P.NOS.3/04 & 4/04 IN CP.26/96
- P9: COPY OF ORDER DATED 7/10/2004 IN MP.NOS.1/04 & 2/04 IN CP.NO.25/96
- P10: COPY OF ORDER DATED 7/10/2004 IN MP.NOS.5/04 & 6/04 IN EP.NO.27/96
- P11: COPY OF LETTER DATED 29/7/2003 OF THE 1ST PETITIONER
- P12: COPY OF FIXATION STATEMENT DATED 5/1/2004 OF THE 1ST PETITIONER
- P13: COPY OF REPLY OF LETTER DATED 29/7/2003 OF THE RESPONDENT
- P14: COPY OF AWARD DATED 1/10/92 IN ID.NO.202/90 OF INDUSTRIAL TRIBUNAL ALAPPUZHA.
- P15: COPY OF THE ORDER DATED 24/6/86 ISSUED BY THE 1ST PETITIONER
- P16: COPY OF THE ORDER DATED 25/2/87 ISSUED BY THE 1ST PETITIONER
- P17: COPY OF LETTER DATED 27/5/2009 OF THE 1ST PETITIONER

RESPONDENTS' EXHIBITS

- R3(A): COPY OF JUDGMENT IN OP.13238/98-A DATED 18/6/2002 IN THE HONOURABLE HIGH COURT OF KERALA.

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R3(B): COPY OF JUDGMENT IN CCC.NO.297/03-S DTD.4/4/2003 OF THIS COURT.

**R3(C): COPY OF NOTICE DTD.12/1/2004 ISSUED BY B.GOPAKUMAR, ADVOCATE TO
THE DIV.PERSONNEL OFFICER, S.RLY,PALAKKAD & ANOTHER.**

R3(D): COPY OF NOTICE NO.J/P C.P./26/96/CLT DTD.28/1/2004

**R3(E): COPY OF NOTICE DTD.12/3/2004 ISSUED BY COUNSEL TO ASST.PERSONNEL
OFFICER, PALAKKAD.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. Vinod Chandran, J.

W.P.(C)No.3458 of 2005

Dated this the 10th day of March, 2015.

JUDGMENT

1. Petitioner Railways is aggrieved with Ext.P5 order of the Labour Court, Kozhikode, which computed certain benefits due to the claimants under Section 33C(2) of the Industrial Disputes Act, 1947 (for brevity, the “Act”), as per an award in I.D.No.202 of 1990. The background facts necessary are that; the claimants were casual employees, who were allegedly denied employment from 5.11.1983 onwards. The claimants were before the appropriate Government, who referred the justifiability of denial of employment for adjudication under the Act. Admittedly, reinstatement was ordered, as per the award in I.D.No.202/1990, dated 5.12.2000. Backwages were also awarded for the entire period, during which, the claimants were said to be kept out of

employment. The claimants filed separate claims before the Labour Court under Section 33C(2), at an earlier instance, where the entire wages due from 1983 to 1993 was computed and an award passed. The same was complied with by the Railways.

2. The re-instatement, however, was granted only in the year 1996.

Hence, the claimants were again before the Labour Court with an application under Section 33C(2), claiming the wages between 1993 and 1996, since, the wages prior to 1993, were already granted in the earlier claim petition. However, while claiming for such backwages, the claimants also prayed for grant of leave salary allowance, as also productivity linked bonus from 1983 onwards. It is pertinent to notice that, in the earlier claim petition, no such claim was made. When the present petition under Section 33C(2) was filed, the Railways objected to the same. Subsequently, the claimants are said to have filed a

statement, showing the backwages between 1993 to 1996, as also the productivity linked bonus and leave salary due to them, on an imaginary computation of the same from 1983 to 1996. The Railways objected to the same, by filing a counter statement as is indicated in Ext.P4. Both the said claims were specifically objected in Ext.P4.

3. The Labour Court, however, without considering the objection of the Railways, noticed the facts leading to the long drawn out litigation and on finding that, no statement whatsoever regarding the amount to be paid to the applicants has been filed by the Railways, the statement filed by the claimants was accepted *in toto*. Especially noticing the fact that the Labour Court had not considered the objection of the Railways, a review was filed in all the three claims, which came to be disposed of, on 7.10.2004, evidenced by Exts.P8 to P10.

4. Learned Standing Counsel for the petitioner Railways would contend that, the claimants, having not worked in the Railways, cannot, during the said period, be said to be entitled to productivity linked bonus or the leave salary, which right would accrue, only on the actual working of an employee, in the service of the establishment.
5. Learned counsel for the respondents, however, resist the writ petition on various grounds. Primarily, it is pointed out that, the challenge, against Ext.P5, is long delayed. The Railways had filed a review before the Labour Court, which, obviously, was not maintainable, since, there was no provision for such review being effected. It is also contended that, the Railways, the largest employer in the country, could have very well re-instated the workmen and mitigated the misery of the workmen, belonging to the lowest strata of the society. It is argued that, the

writ petition itself would show that, the liability, which the petitioner Railways seek to absolve itself of, comes to only about Rupees ten lakhs and the benefit, which would accrue to each individual workmen would be around about Rupees sixty thousand. Learned counsel would also place before me a decision of the High Court of Bombay in **National Textile Corporation v. Vijay Kumar Agarwal (2002-IV-LLJ (Suppl.)**, wherein a similar claim is said to have been upheld by the High Court.

6. At the outset, it is to be noticed that, one cannot go by the quantum alone or on the moral ground that, the largest employer in the country failed to rise upto the expectations and implement an award, passed by the adjudicating authority, under the Act. Even going by the award, it is clear that, the Railways had been agitating their cause before the various authorities. As to the

contention, of the writ petition itself being delayed, this Court finds that, the explanation, offered by the learned Standing Counsel, is satisfactory.

7. Despite a statement of amounts due to the claimants, having not been filed, the Railways had specifically filed objection to the statement filed by the workmen. The objection was only with respect to the leave salary and the productivity linked bonus, which entitlement, according to the Railways, would arise, only if they were actually put to work. The Labour Court has not considered the issue at all and has merely stated that, the absence of a computation statement would necessitate an order in favour of the claimants, by accepting their statement as proper and correct.

8. The circumstance in which the review was filed, according to this Court, cannot be faulted, though, as rightly found by the

Labour Court, there was no power conferred on the Labour Court to consider a review. Apposite would be reference to the decision in *Young Men's Christian Association v. Holy Mother of Aurobindo Ashram and others* [(2013) 1 SCC 382]. In the present case, this Court finds that, though the writ petition was filed after the order in the review petitions, there is a specific challenge made to the original order passed at Ext.P5 and this Court is obliged to look into it.

9. As for the entitlement of leave salary and productivity linked bonus, the decision placed by the learned counsel appearing for the respondents claimants, clearly indicate that therein the National Textile Corporation, which was the petitioner before the High Court, had seriously challenged the employer-employee relationship between the employees and the Corporation. However, the fact that, all of them were employed and working

were admitted. True, in the present case, there was an order of re-instatement, which was not complied with by the Railways, but, however, due to a challenge being made against such an order. Such challenge, having gone against the Railways, necessarily, re-instatement would have to be granted and the employees would be entitled to the backwages also. However, this Court cannot countenance the view that, the entitlement, would also be of all attendant benefits, which would accrue to a workman, who was in employment. Productivity linked bonus is definitely granted to a workman, who had contributed to such production. The workmen herein had not voluntarily kept themselves out of employment, but, The fact remains that, they did not contribute to the production of the establishment. Leave salary wages also would depend on the leave accrued, on account of the number of days worked. It could be computed in

terms of money, only if the workers have not availed of the leave due to them. It is also pertinent that, Ext.P4 objection specifically noticed that, such entitlement for encashment arises, only on the employee, being severed from the employment.

10.Further, in granting such leave salary wages to the persons, who have not worked in the establishment, the Court would necessarily have to make an assumption that, the workmen, on being employed, would have worked for the required period and would have not availed the leave, which accrued on account of the days worked. Under Section 33C(2), what is intended is mere computation of benefits due to a worker and it cannot be said that, the benefits, which could be granted on surmises or conjectures, could also be computed and granted in terms of money under Section 33C(2). In such circumstances, this Court finds that, the absence of a statement, showing the exact

amounts, which the claimants were not entitled to seek, should not have hampered the Labour Court, insofar as considering the defence of the Railways. This Court is not persuaded to make a remand. The matter has been pending for long and there would be no point in remanding the matter, since, entitlement for productivity linked bonus and leave salary wages have been specifically found to be not possible of computation in terms of money under Section 33C(2). In such circumstances, the writ petition would stand allowed. Ext.P5 is set aside only to the extent of the grant of leave salary and productivity linked bonus. No costs.

K. Vinod Chandran, Judge.

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