

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

R.P.No.179 of 2014 IN O.P.37436/2002 (F)

AGAINST THE JUDGMENT IN O.P.NO.37436/2002-F, DATED 24-01-2014,
OF HIGH COURT OF KERALA.

REVIEW PETITIONER(S)/WRIT PETITIONERS:-

1. T.K.ASOKAN, S/O. K.KORU,
THOTTIKKATTIL VEEDU, MANASSERY P.O., MUKKOM VIA.
2. P.P.CHANDRAN, S/O. P.P.APPU,
PADINJAREPERINGATTE VEEDU, POOLAKKODE,
NAYARKUZH P.O., R.E.C. VIA.
3. K.VASUNNI, S/O. O.NARAYANANNAIR,
KOTHANGAL VEEDU, POOLAKKODE, NAYARKUZH P.O.
4. A.K.RAMAN, S/O. KUTTAN,
CHENNARAKASSERY VEEDU, P.O. R.E.C., VIA. R.E.C.
5. E.ANIL, S/O. E.THAMUKUTTY,
ELAYADATH VEEDU, R.E.C. P.O., CHENOTH VIA.
6. A.JAYAPRAKASAN, S/O. MADHAVAN NAIR,
AZHINJALATHU VEEDU, CHATHAMANGALAM P.O., R.E.C.
7. K.V.SUPINGALAN, S/O.K.VELAYUDHAN NAIR,
KUZHIPALLITHODIKAYIL VEEDU,
NEELESWARAM P.O., KODUVALLY VIA.
8. P.SHAJU, S/O. KUNJAPPU, PALOLI VEEDU,
CHULUR P.O., R.E.C. VIA.
9. P.DINESAN, S/O. P.RAMAN, PALARAMMAL VEEDU, BILLASSERI P.O.,
KUNNAMANGALAM (VIA).

10. C.GIRISHKUMAR, S/O. C.VELUKUTTY, CHENOTHE VEEDU, R.E.C. P.O.
11. P.K.JAYACHANDRAN, S/O. P.K.KUNJAMMAN,
PADINJAREKOTHANGAL VEEDU, NAYAKUZHI P.O., R.E.C.
12. N.K.UNNIKRISHNAN, S/O. E.NARAYANAN NAIR,
NAGATHANKANDIYIL VEEDU, NAYARKUZHI P.O., R.E.C. VIA.

BY ADVS.SRI.THOMAS ANTONY
SRI.M.P.PRAKASH.

RESPONDENT(S):-

1. THE PRINCIPAL
REGIONAL ENGINEERING COLLEGE, R.E.C. P.O.,
KOZHIKODE-673 601.
2. THE CHIEF WARDEN,
REGIONAL ENGINEERING COLLEGE HOSTEL, R.E.C. P.O.,
KOZHIKODE-673 601.
3. THE LABOUR COURT, KOZHIKODE-673 001.
4. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HUMAN RESOURCES DEVELOPMENT ,
DEPARTMENT OF HIGHER SECONDARY AND HIGHER EDUCATION,
NEW DELHI-110 001.

R1 & R2 BY ADV.SRI.MILLU DANDAPANI.
R3 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.
R4 BY ASSISTANT SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH.
R4 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 03-02-2015,
THE COURT ON 26-02-2015 PASSED THE FOLLOWING:

K.Vinod Chandran, J.

R.P.No.179/2014 in O.P.No.37436 of 2002-F

Dated this the 26th day of February, 2015

ORDER

The review arises from a common judgment in an Original Petition and a Writ Petition. The review is filed by the petitioners in O.P.No.37436 of 2002. The petitioners in the Original Petition were Mess Boys of the Regional Engineering College [for brevity "REC"], Kozhikode, affiliated to the University of Calicut, which, later, was declared as an autonomous institute under the National Institutes of Technology Act 2007; as a National Institute of Technology [for brevity "NIT"].

2. The REC as also the NIT were residential institutions, which provided accommodation for students in hostels, set up by the institute itself. The petitioners claimed to be Mess Boys employed in such hostels who were denied employment. There was also a claim that the petitioners were not paid the minimum wages as prescribed under the Minimum Wages Act, 1945 [for brevity "MW Act"]. A claim under Section 33C(2) of the ID Act was raised by the petitioners, which was rejected by order in C.P.No.6 of 1994, produced as Exhibit P1. The reference raised was also answered against the petitioners, by Exhibit P2 award in I.D.No.59 of 1995.

3. The petitioners challenged both the said orders in the Original Petition. The question answered in the Original Petition is only with respect to the justifiability of the denial of employment. The petitioner does not, in the review petition, seek for any reconsideration on the aspect of the minimum wages payable to them. The review is on the ground that despite the Court having answered the issue referred in favour of the workmen, no reliefs were granted; meaning, neither was reinstatement ordered nor was a consideration made on the entitlement of backwages, which, according to the review petitioners, has to necessarily flow from an order finding the denial of employment to be unjustifiable.

4. That the petitioners were employed in the canteens was not of dispute. However, the REC contested the reference on the ground that employees of the canteen had no employer-employee relationship with the REC. The mess of the hostels were run by the Mess Committee, consisting of the inmates of the hostels. A Professor of the College was appointed as the Honourary Chief Warden of the hostel, only to ensure smooth functioning of the hostel and the maintenance of discipline. The obligation was one asserted to be; only to provide hostels and not to provide canteens. The maintainability of the dispute, in the absence of an employer-employee relationship, as projected by the management;

found favour with the Labour Court, which rejected the reference. This Court, however, found that the REC is the principal employer of the employees in the hostel and the reference was answered in favour of the employees of the hostel.

5. Both the counsel have relied on a number of decisions to contend for their respective positions. The review petitioners contend that on the denial of employment being found to be unjustifiable, the relief could only be reinstatement and payment of entire backwages. The learned counsel relies on the decisions of the Hon'ble Supreme Court in ***Reetu Marbles v. Prabhakant Shukla* [(2010) 2 SCC 70]**, ***Harjinder singh v. Punjab State Warehousing Corporation* [(2010) 3 SCC 192]** and ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* [(2013) 10 SCC 324]**. The learned counsel for the management, however, contends that there is no warrant for the assumption that reinstatement and backwages is automatic. ***M.P.Administration v. Tribhuban* [(2007) 9 SCC 748]**, ***Mahboob Deepak v. Nagar Panchayat, Gajraula* [(2008) 1 SCC 575]** and ***Ramesh Kumar v. State of Haryana* [(2010) 2 SCC 543]** are relied on to contend so.

6. On going through the above decisions submitted by the parties, this Court does not see any conflict in the proposition laid down.

The issue of reinstatement and grant of backwages, as has been held in all the aforesaid decisions, is an issue which has to be answered after examining the factual situation. The conduct of the employer, the hardship of the employee as also the nature of the initial appointment and so on and so forth are the various aspects which have to be considered while granting relief of reinstatement and backwages.

7. Apposite would be a reference to paragraph 15 of **Reetu**

Marbles (*supra*):

“15. From the above observations it becomes apparent that payment of full back wages upon an order of termination being declared illegal cannot be granted mechanically. It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry”.

8. Useful reference can also be made to paragraphs 6 and 12

of **Tribhuban** (*supra*):

“6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment

and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and permanent employee. It may be that the definition of “workman” as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in *Secy., State of Karnataka v. Umadevi* [(2006) 4 SCC 1] and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

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12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein”.

9. In the present case, the Labour Court did not have any opportunity to look into all these factors. The issue referred was:

“Justifiability of denial of employment to 12 workers in Regional Engineering College Hostel and the benefits entitled to them”.

The same was answered against the workmen and the reference was rejected. This Court, in the writ petition under Article 226 of the Constitution, reversed the decision of the Labour Court and found that the REC is the principal employer of the employees and answered the reference in favour of the workmen. In such circumstance, the question of relief of reinstatement and backwages definitely would depend upon the pleadings, the evidence adduced and the circumstances existing after the denial of employment; as to the employees being alternatively employed, etc. In such circumstance, it is only proper that the Labour Court consider the same at the first instance.

The review petition, hence, would stand allowed to the extent of issuing an additional direction to the Labour Court to consider the relief entitled to the petitioners afresh, on the basis of the pleadings and evidence adduced at the enquiry.

Sd/-
K.Vinod Chandran,
Judge

vku.

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