

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

RP.No. 863 of 2014 (P) IN WP(C).11549/2013

AGAINST THE JUDGMENT IN WP(C) 11549/2013 of HIGH COURT OF KERALA
REVIEW PETITIONER/PETITIONER IN THE RP & PETITIONER IN THE WPC:

M/S.HOTEL SUDARSAN
PARAMESWARA NAGAR,
HOSPITAL ROAD, KOLLAM 691001
REPRESENTED BY ITS PARTNER,
PRASHANT PRABHAKAR

BY ADVS.SRI.V.V.ASOKAN (SR.)
SMT.MEERA V.MENON
SRI.MAHESH V.MENON
SRI.HARISANKAR V. MENON

RESPONDENTS/RESPONDENTS IN RP & RESPONDENTS IN THE WPC:

1. THE SUB INSPECTOR OF POLICE
KOLLAM EAST POLICE STATION, KOLLAM 691001

2. THE SUPERINTENDENT OF POLICE,
KOLLAM 691001

3. S. SUGESH,
KOCHUVILA VEEDU, THEKKEMURY, EAST KALLADA P.O
KOLLAM DISTRICT

4. QUILON HOTEL & TEA SHOP WORKERS UNION,
MUNDAKKAL, KOLLAM 691001
REPRESENTED BY IS GENERAL SECRETARY

5. DISTRICT LABOUR OFFICER,
KOLLAM 69`1001`

R3 & 4 BY ADV. SRI.B.ASHOK SHENOY
R3 & 4 BY ADV. SMT.C.G.PREETHA
R3 & 4 BY ADV. SRI.K.V.GEORGE
R3 & 4 BY ADV. SRI.P.N.RAJAGOPALAN NAIR
R1& R2 BY GOVERNMENT PLEADER SRI ABDUL SHUKOOR

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

REVIEW PETITIONER'S ANNEXURES:

ANNEXURE-A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER WITH ENGLISH TRANSLATION.

ANNEXURE-B TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER WITH ENGLISH TRANSLATION.

ANNEXURE-C TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER

ANNEXURE-D TRUE COPY OF THE COMPLAINT FILED BY K. UNNIKRISHNAN, MAHESWARA MUSHROOM, MALA WITH ENGLISH TRANSLATION.

ANNEXURE-E TRUE COPY OF THE FIR IN ENGLISH TRANSLATION

ANNEXURE-F TRUE COPY OF THE LETTER ISSUED BY THE DISTRICT LABOUR OFFICER, KOLLAM TO THE R1 WITH ENGLISH TRANSLATION.

ANNEXURE-G TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER.

ANNEXURE-H TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER WITH ENGLISH TRANSLATION.

ANNEXURE-I TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER.

ANNEXURE-J TRUE COPY OF THE LIST OF 56 EMPLOYEES HAVING PROVIDENT FUND AND EMPLOYEES STATE INSURANCE REGISTRATION.

ANNEXURE-K TRUE COPY OF THE LIST OF 19 EMPLOYEES WHO ARE NOT IN SERVICE.

ANNEXURE-L TRUE COPY OF THE LIST OF 8 EMPLOYEES WHO ARE NOT IN SERVICE.

ANNEXURE-M TRUE COPY OF THE LIST OF 29 EMPLOYEES WHO DID NOT REPORT ON DUTY.

/TRUE COPY/

P.S TO JUDGE

C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

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R.P.No.863 of 2014

in

W.P.(C)No.11549 of 2013

.....

Dated this the 20th day of August, 2015.

O R D E R

Abdul Rehim,J:

The review petitioner herein is the petitioner in W.P. (C).No.11549/2013, which was filed seeking direction to respondents 1 and 2 to grant adequate police protection for the smooth functioning of a Hotel run by the petitioner, by preventing the 3rd respondent from blocking the entries and abusing the workers and guests from entering the Hotel compound etc. The allegation was that, on the instigation of the 3rd respondent, who was a cook suspended from service, the 4th respondent had started strike in front of the Hotel by blocking the entry of willing workers and guests to the Hotel complex. It was alleged that, despite approaching the police authorities, they have failed to afford adequate police protection.

2. When the writ petition came up for consideration on 3.5.2013, the respondents 3 and 4 entered appearance and

submitted that no 'pandal' has been erected in front of the Hotel and the workers who are on strike are not preventing the access to any of the employees who are willing to work or the guests and customers visiting the Hotel. On the basis of the submission made, an interim order was passed by this Court on 3.5.2013, directing the respondents 1 and 2 to take steps to prevent the members of the 4th respondent union from creating any obstructions with respect to entry of the customers and guests to the Hotel and also the entry of any of the willing workers. For the said purpose, the respondents 1 and 2 are directed to afford adequate police protection to ensure that the guests and customers visiting the Hotel and the willing workers are having free ingress and egress to the Hotel. However, in the interim order it was clarified as follows:

"It is clarified that nothing contained in this order will enable the petitioner to dispense with the services of the employees, who are on strike or to induct a new set of employees"

Subsequently the writ petition was disposed of through judgment dated 28.10.2013 in terms of the interim order dated 3.5.2013.

3 In the present review petition, the petitioner seeking a deletion/clarification of the above extracted portion contained in the interim order, on the basis that it is preventing the petitioner from engaging sufficient number of new employees in the existing vacancies and also in availing of service of employees on contract basis in order to run the establishment, by substituting the vacancies arising due to various reasons. Learned counsel appearing for respondents 3 and 4 opposed the prayer contending that, the workers under agitation have been denied of all legitimate rights, including payment of minimum wages. It is also contended that the workers who are on strike are being illegally terminated without recourse to proper procedure under law and without payment of their legitimate benefits. An apprehension is also expressed that any deletion/clarification if allowed will give hand to the petitioner to justify their illegal actions and also will give hand for them to have more illegal appointments without considering legitimate claims of the existing workers. It may in turn result in defeating their legal claims and also the agitation for securing such claims.

4.Per contra, learned counsel for the review petitioner had pointed out that the averments contained in paragraph 17 of the review petition would reveal that there exists a considerable dearth of employees to run the establishment in a proper manner, which need to be filled up.

5.However, this court is of the considered opinion that, relief granted in the writ petition is basically with respect to protection from any illegal activity of respondents 3 and 4 to the extend of preventing the ingress and egress of willing employees, guests and customers to the Hotel. This court had never considered any of the aspects regarding the right of the workers either with respect to their legitimate claims or with respect to termination from service or even with respect to the right of the workers to have peaceful agitation based on their claims. What was intended is only that, if the agitating workers takes law into their own hands and engage in any unlawful activity, the same should be prevented. It is evident that, while granting the interim order pending disposal of the writ petition, this court incorporated a precaution to see that such an order would not be misused in any manner for engaging new workers

without proper termination of the existing workers. But when the writ petition was disposed of on the terms of the interim order, the above extracted portion ought to have either deleted or clarified. It is true that if such a direction continues to be in force, it will stand in the way of the petitioner making any appointment or engagement of new workers and will also stand in the way of the petitioner dispensing with service of any of the existing employees under proper recourse of law. Therefore, we are of the considered opinion that the review petitioner is justified in seeking such a deletion/modification. However, we make it clarified that any such deletion or clarification shall not be utilized in any manner by the petitioner to have illegal denial of any of the legitimate rights of the existing workers or for effecting any illegal termination. It is also to be clarified that despite such a clarification or deletion any of the legal rights and claims of the existing workers to have enforced, they can resort to all legally acceptable procedure and this order shall not intervene or hamper such rights or claims in any manner.

Under the above mentioned circumstances, we modify the judgment by deleting the condition extracted in the last sentence of page 2 contained in paragraph-2 of the judgment, subject to the observations contained herein above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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