

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 147 of 2009 (P)

AGAINST THE AWARD IN ID NO. 76/2004 of INDUSTRIAL TRIBUNAL, ALAPPUZHA
DATED 16.06.2008.

PETITIONERS:

K.J.ALEX, KAITHAVELIKKAKATHU HOUSE,
STATUE JUNCTION, PANDIKUDY, COCHIN.

BY ADVS.SRI.A.VIJAYAKUMAR
SRI.A.N.SANTHOSH

RESPONDENTS:

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1. INDUSTRIAL TRIBUNAL, ALAPPUZHA.
 2. DENNY PASCAL, ERASSERY VEEDU,
H.NO.23/275, ST.JOHN, PATTOM
COCHIN - 21.
 3. NEXON COSMOS, ARACKAL HOUSE,
11/1113, ST.JOHN, PATTOM
COCHIN - 1.
 4. SUNIL GEORGE, NELKUNNASSERY HOUSE,
15/802, MUNDAMVELI, KOCHI-7.
 5. SHYMON, C/O.SEBASTIAN,
PANDYALACKAL VEEDU, H.NO.21/1378, MUNDAMVELI
KOCHI-7.
 6. JOLLY N.A., NADIPARAMBIL VEEDU,
KANDAKKADAVU P.O., KOCHI - 8.
 7. PRAVEEN P.J., PUTHENVEETIL VEEDU,
CHELLANAM, KOCHI- 8.

R2 TO 7 BY ADVS. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SRI.ABU MATHEW
SRI.ANIL KURIAN THOMAS
BY ADV. SRI.SOBHAN GEORGE
BY GOVERNMENT PLEADER SRI. ARUNKUMAR M.R. KARANAVAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27.11.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 : TRUE PHOTOCOPY OF THE CLAIM STATEMENT DATED 18.03.2005 IN I.D. NO.76/04 OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA.

P2 : TRUE PHOTOCOPY OF THE WRITTEN STATEMENT DATED 03.08.2005 IN I.D. NO.76/04 OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA.

P3 : TRUE PHOTOCOPY OF AWARD 16.06.08 IN I.D. NO.76/04 OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA.

P4 : TRUE PHOTOCOPY OF APPEAL MEMORANDUM IN R.F.A NO.229/04 OF THIS HON'BLE COURT DT. 15.05.01

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.147 of 2009

Dated this the 27th day of November, 2015

JUDGMENT

This petition is filed by the petitioner challenging Ext.P3 award passed by the Industrial Tribunal, Alappuzha in I.D. No.76 of 2004 dated 16.06.2008, whereby the petitioner was directed to pay notice pay and closure compensation to respondents 2 to 7.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner and his brother were partners of an engineering workshop in the name and style of Titto Engineering. Dispute arose between the partners and thereupon petitioner's brother instituted O.S. No.24 of 1985 before the Sub Court, Kochi. Initially in the suit, petitioner's brother was appointed by the court to manage the affairs of the firm and later on, during 1990 petitioner was appointed by the court to manage the affairs of the firm. Petitioner contends that for X'mas holidays, during December 2003, respondents 2 to 7 left

the establishment and thereafter they have not returned. Consequent to which, he closed the business in the workshop.

4. Any how the workers namely Denny Paskal, Nickson cosmos, Sunil George, Jolly. N.A. and Praveen. P.J. raised an industrial dispute and thereby the following dispute was referred to the Tribunal for adjudication:

“Whether the proprietor of M/s.Titton Engineering, Nazareth, Kochi has denied employment to workers namely S/s.Denny Paskal, Nickson Cosmos, Sunil George, Jolly. N.A. and Praveen P.J.”

5. The Industrial Tribunal after complying with necessary procedures and after taking evidence, has belied the case of the petitioner, that respondents 2 to 7 has abandoned the job and thereby they are not entitled to get any compensation. On the other hand, Tribunal has found that, petitioner has closed the establishment and therefore, respondents 2 to 7 are entitled to get notice pay and closure compensation in accordance with law. It is thus aggrieved by the said award, this writ petition is filed.

6. Heard Adv. Sri. A.N. Santhosh appearing for the petitioner and Adv. Sri. Ashok B. Shenoy appearing for respondents 2 to 7.

7. Learned counsel for the petitioner submitted that in fact the petitioner was ready to re-employ respondents 2 to 7 but they were not prepared to do so. Further more, they were engaged in other establishments and therefore, it is contended that after gaining sufficient experience respondents 2 to 7 were alternatively employed with better employment benefits and therefore, it is a case of clear abandonment of work by respondents 2 to 7. It is also contended that the Industrial Tribunal did not at all advert to the contentions put forth by the petitioner and therefore, the award is not a properly speaking award. It is also contended that the management was a partnership firm and if at all any adjudication is referred to the Tribunal, the same should have been referred against the partnership firm and not against the petitioner who is only a partner of the management establishment.

8. Per contra, learned counsel for respondents 2 to 7 has invited my attention to Ext.P2 written statement filed by the petitioner before the Tribunal and Ext.P4 copy of memorandum of appeal preferred before this Court from the final decree passed in O.S. No.24 of 1985 by the Sub Court, Kochi. Learned

counsel has pinpointedly drawn my attention to paragraph 4 of the written statement filed by the management wherein it was stated that “workers left the establishment on 21.12.2003 for X'mas holidays. They were expected to resume duty after X'mas. But they have never come back. The establishment was not opened thereafter. It is closed once and for all”. Therefore, the counsel contended that there is an admission on the part of the petitioner himself that the establishment was closed by him. Learned counsel for the petitioner contended that since partnership firm was carrying on the business, the firm ought to have been made liable instead of the petitioner individually. To meet the said contention, learned counsel for the respondents has invited my attention to Section 25FFF of the I.D Act and canvassed for the proposition that the term employer takes in any person who carries on the business actually and really and therefore, the petitioner cannot turn around and say that he was not carrying on the business of the establishment. Learned counsel has also pointed out that from Ext.P4 appeal memorandum itself, it is clear that while the dispute was raised petitioner was carrying on the business. To establish the same,

counsel has brought my attention to the cause title of Ext.P4 appeal memorandum wherein the date of the decree is mentioned, which is 04.11.2003. Counsel contended that petitioner was managing the affairs of the firm from 1990 onwards and on the date of the passage of the decree, he was the person carrying on the business of the firm and therefore, he is liable to comply with the award of the Industrial Tribunal.

9. I have considered the rival submissions and gone through the records and award of the Industrial Tribunal. After appreciating the rival submissions, facts and circumstances, evidence on record and the law involved Tribunal has arrived at a conclusion that the petitioner has closed the establishment and thereby the workers lost the employment and therefore, the petitioner is liable to pay closure compensation and notice pay. The Tribunal has arrived at such a finding by taking into account the evidence adduced by the parties and the records produced before it. Taking into account the entire factual situations and the law involved, I am of the opinion that petitioner could not make out a case before the Tribunal that he is not liable to pay the closure compensation since the workers have abandoned the

work and left the employment. After going through the award of the Tribunal, I do not find that the Tribunal has committed any illegality so as to warrant interference of this Court invoking its powers either under Article 226 or 227 of the Constitution of India. The Tribunal has also directed the petitioner to pay the amounts due, with interest at the rate of 12% per annum after expiry of the period of one month from the date of the award. Learned counsel for the petitioner as a last submission, argued that the Tribunal has ordered interest at a very high rate of 12%. Further it is submitted that, if this Court is not inclined to interfere with the award, interest at a reasonable rate may alone be provided and that too after granting one year time for payment, taking into account also the poor financial circumstances the petitioner is facing.

10. Thus taking into account the adverse economic situation prevailing and the financial difficulties pleaded by the petitioner, the interest granted by the Tribunal can be reduced to a reasonable rate and a time period stipulated for payment so as to give a quietus to the whole issue. Accordingly, I direct the petitioner to comply with the award of the Industrial Tribunal,

Alappuzha in I.D No.76 of 2004 within a period of 6 months from the date of receipt of a copy of this judgment, failing which, petitioner will be liable to pay interest at the rate of 9% per annum.

Writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
27.11.2015