

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 9722 of 2004 (G)

PETITIONER(S):

**SRI.VARGHESE.A.KURUVILA,
ANACHIRA HOUSE, NELLIKUZHI P.O.,
KOTHAMANGALAM.**

**BY ADVS.SRI.A.V.XAVIER
SRI.JOLLY JOHN**

RESPONDENT(S) :

**1. THE VICE PRESIDENT,
KERALA STATE PETROL BUNK WORKERS UNION,
ONKATHIL HOUSE, KOTHAMANGALAM P.O.,
THODUPUZHA, IDUKKI.**

2. LABOUR COURT, ERNAKULAM.

*** ADDITIONAL R3 IMPEADED**

**3. SRI.P.G.RAVI,
ONKATHIL HOUSE, KUMARAMANGALAM (P.O),
THODUPUZHA, IDUKKI, PIN-685 597.**

*** IS SUO MOTU IMPEADED AS ADDITIONAL R3 AS PER ORDER DATED 07.07.2011.**

**R1& ADDL R3 BY ADVS. SMT.A.K.PREETHA
SRI.C.ANIL KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: COPY OF CLAIM STATEMENT DATED 25.07.199 FILED BY
THE EMPLOYEE BEFORE THE 2ND RESPONDENT IN I.D.29/1998.**

**EXHIBIT P2: COPY OF THE WRITTEN STATEMENT DATED 26.02.2002 FILED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT IN I.D.NO.29/98
1998.**

**EXHIBIT P3: COPY OF THE REPLICATION DATED 09.10.2002 FILED BY
1ST RESPONDENT BEFORE THE 2ND RESPONDENT.**

**EXHIBIT P4: COPY OF THE EXAMINATION OF THE EMPLOYEES MR.RAVI IN
I.D.29/1998 BEFORE THE 2ND RESPONDENT.**

**EXHIBIT P5: COPY OF THE DEPOSITION OF THE PETITIONER IN I.D.29/1998
BEFORE THE 2ND RESPONDENT.**

EXHIBIT P6: THE AWARD DATED 28.10.2003 IN I.D.NO.29/1998.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K. Vinod Chandran, J.

=====

W.P.(C)No.9722 of 2004

=====

Dated this the 12th day of January, 2015.

JUDGMENT

1. Petitioner, an employer, is aggrieved with Ext.P6 award passed by the Labour Court. On a reading of Ext.P6 award, the undisputed fact would be that, the workman was appointed in the petrol bunk in 1978 owned by the management; the petitioner herein. The licence of the petitioner was cancelled due to an allegation of adulteration and as a consequence, criminal proceedings were initiated in the year 1991, when the workman along with two other employees were severed from employment after granting closure compensation.
2. The management's case itself is that, since the management had arranged finance for the workman herein and there were amounts

pending due thereon, no compensation was paid to the workman, as was paid to the other employees. However, there is absolutely no document produced to substantiate such contention.

3. The management had an alternate contention that the workman did not approach the management for the closure compensation. The workman, on the contrary, asserts that the workman did not take the compensation, since the workman was desirous of getting re-employment, on the petrol bunk being reopened. It is also an admitted fact that, in the year 1996, the petrol bunk was re-opened and subsequently transferred in the year 1999. Despite the dispute having been raised in the year 1995, on re-opening the workman was not granted re-employment. The workman pursued the industrial dispute and since the transfer of undertaking is an admitted fact, the workman was granted a compensation of Rs.25,000/- as per Ext.P6 award.

4. The learned counsel for the workman, however, would contend that

the closing down of the undertaking was only in the context of withdrawal of licence of the establishment. The workman is entitled to compensation only as per the proviso to Section 25FFF of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act").. The closure, having been occasioned for reasons beyond the control of the employer, the closure compensation payable would be confined to the average pay for three months, is the contention.

5. In this context, it has to be noticed that, though the petrol bunk was closed down in the year 1991, the same was re-opened in 1996, on the criminal case having ended in acquittal. Hence, it cannot be said that, in the year 1991, there was a closure of petrol bunk attracting Section 25FFF. At best, it could only be invocation of Section 25F, in which event, on further reopening, it would have been incumbent upon the management to offer employment to the workman under Section 25H of the Act. Despite the fact that the workman did not ask for re-employment under Section 25H, there would be no such

requirement, since, Section 25H mandates an offer by the employer. In such circumstances, considering the fact that the workman had service from 1978 to 1991, he was entitled to claim reinstatement least on the re-opening of the establishment. The fact that the petrol bunk has now been transferred from the management, would stand against any order of re-instatement at this stage. The workman also has not challenged the award of the Tribunal. The workman, hence, would be entitled to compensation under Section 25F, which has to be computed for the period of employment between 1978 to 1991, on the basis of the last pay drawn. The petitioner, if re-instated on the re-opening of the bunk, would have been employed at least till the transfer and thereafter entitled to the consequential benefits as entitled to a workman under the Act.

6. Considering the totality of the facts and circumstances, this Court does not find any reason to interfere with the compensation granted by the Labour Court, especially since, the petitioner did not choose

to re-employ the workman after reopening in 1996 when a dispute was pending between the workman and the management. This Court does not see any error or illegality in the award of compensation.

Writ petition is dismissed.

K. Vinod Chandran, Judge.

sl.