

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WA.No. 874 of 2015 IN
WP(C).12692/2012

AGAINST THE JUDGMENT IN WP(C) 12692/2012 of HIGH COURT OF KERALA
DATED 12-01-2015

APPELLANT/PETITIONER:

THE MANAGING DIRECTOR,
KERALA STATE COIR-MARKETING FEDERATION
ALAPPUZHA.

BY ADV. SRI.A.N.RAJAN BABU

RESPONDENTS/RESPONDENTS:

1. P.K.SUBRAN
PAYYAPPILLY VEEDU, MADATHUNU PODY P.O.
THRISSUR- 680 609.

2. THE INDUSTRIAL TRIBUNAL,
PALAKKAD, PIN - 678 001.

R1 BY ADV. SRI.S.GOPAKUMAR

R1 BY ADV. SMT.T.M.BINITHA

R2 BY SR. GOVERNMENT PLEADER SRI M. MOHAMMED SHAFI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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W.A. No. 874 OF 2015

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Dated this the 30th day of June, 2015

JUDGMENT

P.R. Ramachandra Menon,J.

Interference declined by the learned single Judge in W.P.(C) No. 12692 of 2012 with regard to the challenge against Ext.P5 order passed by the Industrial Tribunal, Palakkad, directing to satisfy a sum of Rs.7550/- towards three months' notice pay and closure compensation in terms of Section 25-FFF of the Industrial Disputes Act (for short, I.D. Act) is sought to be challenged at the instance of the Management.

2. The first respondent herein was admittedly engaged as a casual worker by the appellant/Management from

18.11.1998 to 12.9.2001 in the Defibering Unit and Rubber Backed Car Mats and Tile Manufacturing (RBCM) Unit, Thumpoor, Thrissur District. Pointing out that the worker was denied employment, a dispute was raised, which came to be referred to the Industrial Tribunal, Palakkad, as I.D. No. 9 of 2009. The issue referred is as follows:

"Whether the denial of employment to Shri P.K.Subran, Temporary Worker, RBCM Unit Thumpoor by the management of Kerala State Co-operative Coir Marketing Federation is justifiable? 2. If not, whether he is entitled to get reinstatement in the other units run by the management and whether he is entitled to get any other relief?"

The worker filed a claim statement pointing out the facts and figures, also contending that they had worked for 240 days in the years 2000, 2001 and that the Management had denied him employment without pursuing the steps as envisaged under the relevant provisions of law while retaining the juniors. A written statement filed by the Management, copy of which has been produced as Ext.P2.

The main contention of the Management was that, by virtue of the nature of engagement, the first respondent could not be appointed as an employee on a permanent basis and that there was no production in the Unit as on date. It was also stated that the petitioner had not requested for casual employment after 12.9.2001 in the Defibering Unit, which was operational upto the year 2007. The workman was examined as WW1 and documents were marked as Exts. W1-W3. No evidence was adduced from the part of the Management and there was no representation for the Management when it was listed for hearing. It was accordingly that, the Tribunal after considering the available records, passed Ext.P5 Award arriving at a finding that the statutory requirements with regard to the alleged closure of the Unit was not complied with. Since the evidence tendered from the part of the worker as to the denial of employment and also as to the last drawn salary, which was stated as Rs.3500/- per mensem was let unrebutted,

adverse inference was drawn and an Award was passed directing the Management to compute the closure compensation and notice pay, which accordingly was done by the Tribunal, quantifying the amount as Rs.7550/-. It was ordered to be satisfied, also with the rider that the worker will be having right of preferential treatment in the matter of reemployment, in the event the Defibering Unit or the RBCM Unit of the Management at Thumpoor was re-opened (presumably under Section 25 H of the I.D.Act). The said verdict passed by the Tribunal was sought to be challenged by the Management by filing writ petition before this Court.

3. The matter was considered in detail and the learned single Judge observed that, but for filing Ext.P2 written statement, the Management did not adduce any evidence to substantiate the version as put forth in the written statement. The case projected before the learned single Judge was that, the workman was not entitled to have any

benefit as ordered by the Tribunal in so far as there was no continuous service of 240 days in an year as envisaged under Section 25B of the I.D. Act. The learned single Judge observed in paragraph 7 of the judgment that the contention raised by the Management before the Court that there was no continuous service of 240 days in the preceding 12 months with reference to Section 25B of the I.D. Act was only an afterthought and that, no such specific pleading was raised before the Industrial Tribunal, as observed in paragraph 8 of the judgment. It was also noted that the Management had chosen to remain absent and did not lead any evidence before the Industrial Tribunal. It was in the said circumstances, that interference was declined and the writ petition was dismissed, also observing that there was long delay in challenging the order passed by the Tribunal.

4. Heard the learned counsel appearing for the appellant and the learned Government pleader appearing

on behalf of the 2nd respondent. We also heard Smt.T.M. Binitha, the learned lawyer who entered appearance on behalf of the 1st respondent.

5. At the very outset, it is to be noted that Ext.P5 Award was passed by the Tribunal on 25.11.2010 whereas the appellant sought to approach this Court by filing writ petition only after about two years, which is never explained anywhere either in the petition or in the appeal. The jurisdiction of this Court under Article 226 of the Constitution of India is not to be extended in favour of persons who are simply resting on arm chair without any regard to their rights and liberties. This Court finds support in this regard from the law laid down by the Apex Court as per the decision reported in **Rabindra Nath v. Union of India (AIR 1970 SC 470)**. With regard to the contention of the appellant that the 1st respondent did not satisfy the minimum requirement of 240 days of continuous service in the preceding 12 months as envisaged under Section 25-B

of the I.D. Act and to have the benefit flowing from the relevant provisions of the I.D. Act. It is to be noted that a specific case was put forth from the part of the worker, that he was having continuous service as aforesaid, which is never sought to be rebutted by the Management as evident from the pleadings raised before the Tribunal by way of Ext.P2. Nowhere in Ext.P2, has it been stated that the workman did not have continuous service of 240 days. The contention was something else, particularly with reference to the eligibility of the worker to get permanent employment. There is no case for the Management that no notice as envisaged under the relevant provisions of the Act with regard to the alleged closure was served to the worker. Admittedly, no evidence was also adduced. There was no representation even, when the matter was listed for hearing. It was in the said circumstances that the Tribunal was compelled to proceed with the matter on the basis of the available materials on record, leading to Ext.P5 Award.

This Court finds that there is no illegality, irregularity or impropriety with regard to the course pursued by the Tribunal, so as to have interference. The verdict passed by the learned single Judge declining interference is affirmed.

6. Before parting the case, this Court cannot but deprecate the attitude and approach of the Management in seeking to challenge the Award granting just a paltry sum of Rs.7,550/- driving the workman to defend his case at different levels. He was compelled to approach the competent forum to establish his rights, pursuant to the denial of employment. The Management did not raise any specific pleading as to the alleged lack of continuous service, nor did lead any evidence and was even absent when the case was called for. Still further, it took nearly 'two years' for the Management to approach this Court by filing writ petition and the worker was made to appear before this Court and contest the matter. Even after losing the battle at different two levels, it is sought to be agitated

further for evading payment of Rs.7550/-ordered to be paid by the Industrial Tribunal. This Court finds that there is absolutely no justification on the part of the Management in pursuing the alleged cause, presumably spending huge amounts and compelling the worker to face the ordeal.

In the said circumstances, interference is declined and the writ appeal is dismissed with a cost of Rs.5,000/- (Rupees five thousand) to be paid to the first respondent/worker, along with the amount awarded by the Tribunal vide Ext.P5 Award.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

ks. True copy

P.S. (Hr.Gr.)To Judge

