

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

WA.No. 1839 of 2014 () IN OP.14296/2001

IN OP 14296/2001 OF HIGH COURT OF KERALA

APPELLANT:

**THE GENERAL SECRETARY
COCHIN SHIPYARD CANTEEN WORKERS UNION (AITUC)
TRADE UNION HOUSE, CANNON SHED ROAD, KOCHI-682 011.**

BY ADV. SMT.AYSHA YOUSEFF

RESPONDENT(S)/PETITIONER/RESPONDENTS 1, 3 & 4:

- 1. THE COCHIN SHIPYARD LIMITED
KOCHI 682 015
REPRESENTED BY THE ASSISTANT GENERAL MANAGER (PERSONNEL)**
- 2. THE LABOUR COURT, ERNAKULAM**
- 3. SRI.K.M.JANARDHANA PANICKER
RAJU BHAVAN, KUTIKATTUKARA, ALUPURAM PO - DECEASED**
- 4. GOVERNMENT OF KERALA
REPRESENTED BY ITS SECRETARY
LABOUR AND REHABILITATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM**

***ADDL.R5:JANAKA, AGED 49, RESIDING AT MANIVEENA,
KUTTIKATTUKARA, ALUPURAM, KALAMASSERY,**

***ADDL. R6:RAJU, AGED 48, RESIDING AT MANIVEENA,
KUTTIKATTUKARA, ALUPURAM, KALAMASSERY.**

***ADDL.R7:JAYA, AGED 45, RESIDING AT MANIVEENA,
KUTTIKATTUKARA, ALUPURAM, KALAMASSERY.**

**LEGAL REPRESENTATIVES OF R3(DECEASED) IS IMPEADED AS ADDL. R5 TO
R7 AS PER ORDER DATED 10.7.2015 IN I.A. 326/2015.**

WA.No. 1839 of 2014 () IN OP.14296/2001

**R1 BY ADV. SRI.SAJI VARGHESE
R1 BY ADV. SMT.MARIAM MATHAI
R5&R7 BY ADV. SRI.N.SUKUMARAN (SR.)
R5&R7 BY ADV. SRI.S.SHYAM
R5&R7 BY ADV. SRI.N.K.KARNIS
ADDLR6 BY ADV. SRI.KIRAN PETER KURIAKOSE
BY SENIOR GOVERNMENT PLEADER SRI. M. ABDUL KHADER**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-07-2015,
ALONG WITH WA. 2009/2014, WA. 2010/2014 & WA. 197/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

P.R. RAMACHANDRA MENON

&

P.V.ASHA, JJ

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W.A.NO.1839 OF 2014

W.A.NO.2009 OF 2014,

W.A.NO.2010 OF 2014

AND

W.A.NO.197 OF 2015

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Dated this the 24th day of July, 2015

JUDGMENT

Ramachandra Menon, J

Does the verdict passed by the learned Single Judge in O.P.No.14296/2001 and connected cases ordering a remand to the Labour Court, Ernakulam in respect of I.D.No 215/2003 require any interference, is the point to be considered.

2. Among the four appeals, three of them have been preferred by the concerned Union, in respect of the verdict passed in the concerned Original Petitions. The fourth one has been preferred by some workers. The factual sequence revealed from the proceedings is that, the workers concerned were engaged by a contractor in the premises of Cochin Shipyard Limited in connection with the running of a canteen. The arrangement at that point of time was that, the canteen was being operated by engaging a contractor identified by the Cochin

Shipyards Limited after notification and inviting tender, so as to cater the needs of the staff/employees. It was accordingly, that a contractor by name Kunju Mohammed was engaged and on expiry of the tenure which was originally for a period of one year, another contractor by name Janardana Panicker came to run the canteen. The workers in the canteen submitted some charter of demands, originally before Kunju Mohammed on 3.7.1985. After expiry of his tenure and on entering into a new contract with Janardana Panicker, a fresh charter of demand was submitted before him, claiming various benefits such as Regularisation, Enhancement of Salary, Dearness Allowance etc. In the meanwhile, the workers committed some offence and a crime was registered. The passes issued to them by the Cochin Shipyards Limited were caused to be blocked through the intervention of CISF deployed to guard the doors and gates of the Cochin Shipyards Limited, thus denying employment. This led to an industrial dispute, which ultimately came to be referred by the Government to the Labour Court, Ernakulam where the dispute was registered as ID No.213/2003.

3. In ID No.213/2003, the Contractor and the Convenor of the Canteen Committee (Deputy Manager, Industrial Relations) were shown as the managements. The Union preferred a claim statement and its version was sought to be recalled by the managements. On culmination of the proceedings, Ext.P3 order was passed by the Labour Court, holding that there was denial of appointment to the workmen at the hands of the 1st respondent Contractor. It was also held that there was no claim for the Union, to have the benefit of regularisation. However, it was held that the workmen concerned were entitled to be reinstated, but finding that tenure of the contract was already over, the said liability was shifted to the shoulders of the 2nd respondent, after arriving at a finding that the Cochin Shipyard Limited was liable to meet the burden.

4. The said award gave rise to different litigations from different corners. The Cochin Shipyard Limited sought a challenge to the same by filing OP.No.14296/2001, mainly contending that the award was per-se wrong and illegal in all respects, in so far as they were never made a party to the

proceedings and that the finding rendered by the Labour Court that the Cochin Shipyard Limited was liable to effect reinstatement was beyond all canons of law. The finding rendered by the Labour Court with respect to the appointment, termination and other instances of employment were in relation with the contractor and as such it was not at all correct for the Labour Court to have fixed the liability upon the Cochin Shipyard Limited, that too without hearing them. Yet another contention was also raised to the effect that, by virtue of settled provisions of law and the binding precedents, it was never within the power, jurisdiction of competence of Labour Court to widen the issues referred by the Government. The issue referred to the Labour Court was whether the denial of employment by the 1st management/contractor was justified and if not, what could be the reliefs. The 2nd issue was whether the suspension of the employees in the meanwhile was justified. After considering these issues and after arriving at a finding that it was at the hands of the first management/contractor, it was never proper for the Labour Court to have had held that the said burden was to

be satisfied by the Cochin Shipyard Limited who was not in the party array, and no such issue was ever raised to be dealt with.

5. The Union has O.P.No.14296/2001 pointing out that the Labour Court, Ernakulam went wrong in not granting backwages to the workers concerned, and thus seeking to have the award modified to the said extent. O.P.No.14297/2001 was filed by the 2nd management, to the extent adverse observations were made by the Labour Court Ernakulam against him, contending that the 2nd Management was not in a position to represent the Cochin Shipyard Limited and that the Cochin Shipyard Limited was not in the party array. Some of the workers also approached this Court claiming backwages on their own, by filing W.P.(C).No.33357/2002; inspite of the fact that they were being represented by the Union who had already approached this Court claiming backwages.

6. After hearing both the sides and also after referring to the binding judicial precedents rendered by the Apex Court, it was held that by the learned Single Judge that, it was never appropriate for the Labour Court to have widened the scope of

reference and that the Labour Court had to confine the issues referred. The power of the Labour Court to consider the 'incidental issues' could not have enlarged the scope of reference and further, no liability could have been mulcted upon the shoulders of Cochin Shipyard Limited, who was never in the party array, without affording an opportunity of hearing. It was accordingly, that the impugned Award was set aside and the matter was remanded to the Labour Court for fresh consideration, alerting that the matter had to be finalised within 6 months, since it was a long pending matter. Correctness and sustainability of the said verdict is under challenge in these appeals preference by the Union and the Workers concerned.

7. Heard both the sides in detail.

8. Mr.Mohammed Youseff, the learned Senior Counsel appearing for the Union and the workers submits that the approach and the attitude displayed from the part of the Company right from the beginning was very much arbitrary and discriminatory. Action by way of harassment being pursued against the workers belonging to the appellant Union. The

workers were caused to or compelled to resign from the Union and those who joined other Union viz., CITU were accommodated and regularised in service, in the due course. The denial of employment was with the silent concurrence of the Cochin Shipyard Limited who was the ultimate authority/Principal Employer and who was bound to run a canteen as per the relevant principles of law; particularly in terms of Section 46 of the Factories Act, read with the relevant Rules. Merely for the reason that they had let out and chosen to pass on the responsibility engaging some contractors, by itself could not have excluded them from the liability, which other wise they were liable to satisfy under the statute. For the said reason itself, if at all there is any mistake or lapse on the part of the contractor, it was liable to be rectified and remedied by the Cochin Shipyard Limited. The learned counsel further submits that the 2nd management before the Labour Court was none other than the Deputy Manager (Industrial Relations) who was representing the Company in all industrial matters and further that he was the Convenor of the Canteen Committee, governing the affairs of the

canteen. As such he could not have washed off his hands contending that he was a stranger to the cause of action. It is pointed out that the facts and figures have been analysed meticulously by the Labour Court and it is accordingly that a finding has been reached that there was a conscious attempt to deny employment to the workers and hence that they were liable to be reinstated. This being the position, the Cochin Shipyard Limited, who was responsible for running the show could not have been let off and they cant be heard to say that they did not have an opportunity of hearing; they were not aware of the facts and figures or that they had nothing to do with the engagement and termination of the contract.

9. The version of the Union/Workers is sought to be rebutted by Sri. Saji Varghese learned counsel appearing for the Management, pointing out that there is no dispute for the Union as to the fact that the workers concerned were appointed by the Contractor. So also there is no dispute that the denial of employment was effected by the Contractor himself. It is seen that the charter of demands was placed admittedly before the

Contractor and not by the Cochin Shipyard Limited. There were some disputes between the workers and the Contractor and some workers manhandled the Contractor, leading to registration of a Crime against them. It was in the said circumstance that the contractor made a submission in writing to the management of Cochin Shipyard Limited that, the workers mentioned therein, who had taken the law in their hands, might not be permitted to have an entry to the premises of the Cochin Shipyard Limited, which may adversely affect the running of canteen. It was based on the intimation of the Contractor as above that the Cochin Shipyard Limited took further steps to see that no untoward incident was happened. There is nothing wrong on the part of the Cochin Shipyard Limited in preserving and maintaining their property, submits the learned counsel.

10. It is brought to the notice of this Court that no document was ever produced by the workers or Union before the Labour Court, so as to connect the Cochin Shipyard Limited to the cause of action. All the documents produced (W1, W2, W3, and W4) are in relation to the affairs with the Contractor and not in

relation to the Cochin Shipyard Limited. It was on the basis of the said documents, pleadings and proceedings, that a specific finding was rendered by the Labour Court in paragraph 14 of the award, that there was no claim for the Union that the workers were entitled for regularisation. It is contended that, if there cannot be any regularisation and if the appointment and terminations were at the hands of the Contractor, under no stretch of imagination could the Cochin Shipyard Limited be mulcted with the liability.

11. The learned Senior Counsel for the appellants submits that the Cochin Shipyard Limited themselves had produced a copy of the 'Conciliation Settlement' dated 13.2.1984 executed between the Management and workers represented by their Union, agreeing to provide regularisation in service of the Cochin Shipyard Limited and accordingly, all the canteen workers except the workers represented by the petitioners herein were given the benefit of regularisation.

12. The learned counsel for the Cochin Shipyard Limited submits that the idea and understanding of the appellants in this

regard is wrong and misconceived and that the settlement produced clearly refers to existence of another dispute as 'ID No.19/1999' pending before the Industrial Tribunal, Aleppey, which was in respect of an entirely different cause of action, pertaining to a subsequent reference made by the Government. The learned counsel also pointed out that the regularisation of workers covered by the settlement was made only since there was a clear finding by the Industrial Tribunal to the effect that the Contract in the said case (made between the Cochin Shipyard Limited and the Canteen Committee) was a 'sham contract' and that the workers concerned had to be reinstated/regularised. In the case of the workers herein, the learned counsel submits, that the contract entered into between the Cochin Shipyard Limited and the concerned contractor to run the canteen was a 'genuine contract'. It is also stated that the Cochin Shipyard Limited has obtained clearance from the competent authority with respect to the provisions of the Contract Labour Abolition Act and further that the contractor had obtained requisite license in this regard. This by itself is a pointer, as to the genuineness of the contract,

which is never liable to be branded as a 'sham contract'. Even otherwise, there was no occasion for the Cochin Shipyard Limited to explain the position before the Labour Court or to produce the relevant materials, in view of the fact that it was never a party to the issue referred by the Government. It was after considering the said fact, that the matter was remanded by the learned Single Judge, which is perfectly within the four walls of the law and is not liable to be assailed under any circumstances, submits the learned counsel.

13. After going through the proceedings, particularly the issues referred to the Labour Court and the finding rendered, it cannot but be said that the finding in paragraph 16 that the workers concerned are liable to be treated as the employees of Cochin Shipyard Limited is not in conformity with the finding and the reasoning given in the previous paragraphs, particularly in paragraph 14, referring to the appointment, denial of employment etc. at the hands of the 1st Management/Contractor. It is also evident that the Labour Court has gone beyond the track, not confining itself to the issues referred, which is not

correct or permissible in view of the law declared by the Apex Court. It is further relevant to note that the 2nd Management, in their reply statement, had contended (as borne from paragraph 4 of Ext.P3 award) that the said party was not representing the Cochin Shipyard Limited and that there was no employer –employee relationship between the 2nd Management, and the workmen and that no relief by way of reinstatement or re-employment could be granted against the 2nd Management. The Union has got a case that, in view of the turn of events, they had approached the Government to get the Cochin Shipyard Limited impleaded in the party array, but they were told by vide letter dated 21.1.1995 of the Government, that it was not necessary. It appears that the Union got satisfied with the said reply and remained dormant. This Court does not intend to express anything in this regard. It was quite possible for the Union to get the issue amended, also causing impleadment of the necessary parties in accordance with law, if so desired. For the time being, it has to be observed that the course pursued by the Labour Court fixing the liability upon the Cochin Shipyard

Limited, without them in the party array, and further going beyond the terms of reference is not liable to be sustained, which accordingly has been set aside and remanded by the learned Single Judge, for fresh consideration. The only question is whether the said verdict calls for any interference, which cannot be answered in the positive.

In the above facts and circumstances, interference is declined and all the appeals are dismissed without prejudice to the rights and liberties of the appellants to pursue appropriate steps to have their claims/grievance projected and finalised in accordance with law.

Sd/-
(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-
(P.V.ASHA, JUDGE)

SKV