

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 3297 of 2008 (P)

AGAINST THE AWARD IN ID 3/2005 of INDUSTRIAL TRIBUNAL, ALAPPUZHA
DATED 20.08.2007

PETITIONER :

MADANA MOHAN NAIR,
RAMA NILAYAM, KALAVOOR (PO), ALAPPUZHA DISTRICT.

BY ADVS.DR.V.N.SANKARJEE
SMT.R.UDAYA JYOTHI

RESPONDENT :

THE MANAGING DIRECTOR,
EXCEL GLASSES LIMITED, UDAYA NAGAR, PATHIRAPPALLY
ALAPPUZHA.

R BY ADVS. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE GOVERNMENT ORDER DATED 14.1.2005

EXT.P2 : TRUE COPY OF THE STATEMENT FILED BY THE PETITIONER DATED 19.9.2005

EXT.P3 : TRUE COPY OF THE AWARD PASSED BY THE INDUSTRIAL TRIBUNAL,
ALAPPUZHA IN I.D.NO.3/2005 DATED 20.8.2007

EXT.P4 : TRUE COPY OF THE ORDER PASSED BY THE LABOUR COURT, KOLLAM IN
CLAIM PETITION NOS.88, 89, 90, 91 AND 92/1999 DATED 23.10.2003

EXT.P5 : TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT DATED 20.9.1996

EXT.P6 : TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT DATED 2.4.1996

EXT.P7 : TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT DATED 3.4.1997

EXT.P8 : ' TRUE COPY OF THE CERTIFICATE ISSUED BY THE RESPONDENT DATED
20.7.1996

EXT.P9 : TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT DATED 1.3.2001

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.3297 of 2008

Dated this the 23rd day of February, 2015

J U D G M E N T

The petitioner, a semi skilled worker of the respondent establishment has filed this writ petition challenging Ext.P3 award of the Industrial Tribunal, Alappuzha. The petitioner was working as a Fitter in the General Maintenance Department of the respondent from 08.08.1983. While so, by Ext.P6 dated 02.04.1996 he was appointed as a semi skilled workman with effect from 21.03.1996. As per Ext.P6, the petitioner was to be on probation for a period of six months. However, just before the period of six months expired, by Ext.P5 the petitioner's probation was extended by a further period of six months. Ext.P5 is dated 20.09.1996. Later on, by Ext.P7 dated 03.04.1997, the petitioner was confirmed with effect from 21.01.1997.

2. The petitioner contended that, his probation was extended by a further period of six months by Ext.P5, without any justification. The object of extending the period of probation was only to deny to the petitioner, the benefits of a pay revision that was being implemented as per a bipartite settlement entered into between the Union and the Management. An industrial dispute was raised. The same was referred to the Industrial Tribunal, Alappuzha, numbered as I.D.No.3/2005 and was tried. As per Ext.P3, the Industrial Tribunal has found that, the allegation of the petitioner was without any basis. The petitioner has filed this writ petition challenging Ext.P3.

3. According to Dr.V.N.Sankarjee who appears for the petitioner, the petitioner had been working under the Management from 08.08.1983 onwards. Reliance is placed on Ext.P8 certificate issued by the respondent to contend that, his performance was found to be acceptable and that the Management was fully satisfied of his work. It was thereafter that, he was appointed as a semi skilled workman. Without any reason, as per Ext.P5 his probation was extended. The statements in Ext.P5, according to the counsel are contradictory to Ext.P8. It is also contended that, the Industrial Tribunal has failed to take into account the above facts, while passing the impugned award. Therefore, according to the counsel, Ext.P3 is liable to be set aside.

4. Adv.Smt.Latha Krishnan appears for the respondents. According to the counsel, it was a condition of the appointment of the petitioner that, he would be made permanent only on the satisfactory completion of his period of probation. The petitioner had not completed his probation satisfactorily. Therefore, his probation was extended. The Management had no intention of denying to him the benefits of the pay revision as alleged. He has also been subsequently confirmed in service. The said conduct only shows that, the Management was acting only in accordance with law. It is therefore, contended that, no interference with Ext.P3 is called for.

5. Heard. It is not in dispute that the petitioner was appointed as a semi skilled workman on 02.04.1996, with effect from 21.03.1996, as

per Ext.P6. Clause 1 of Ext.P6 reads as follows :

“1. You will be engaged on an initial probationary period of six months which may be further extended if considered necessary. Unless you are confirmed in writing by the Management, you will continue to be on probation. During the probationary period, if your work and conduct is not found to be satisfactory, your services are liable to be terminated without giving any notice or wages in lieu thereof.”

The above clause therefore makes it clear that, the petitioner would be on probation for a period of six months which may be further extended, if considered necessary. It is also clear from the above clause that, unless the petitioner was confirmed, he would continue to be on probation. It is further clear that, if his work and conduct were not found to be satisfactory, his services were liable to be terminated without giving any notice or wages in lieu of notice. It is in accordance with the conditions stipulated by the above clause that, the petitioner's probation was extended by Ext.P5. Since the petitioner had been put on advance notice regarding the terms subject to which he was appointed as a semi skilled workman, as rightly found in Ext.P3, I do not find any infirmity in the action of the Management extending his probation by Ext.P5. The fact that, his performance as a Fitter in the General Maintenance Department was good as evidenced by Ext.P8, cannot and does not help the petitioner in putting forward a contention that, the Management was adopting contradictory decisions. Ext.P8 certificate relates to a period prior to the date of Ext.P6. The probation

contemplated by Ext.P6 relates to a period subsequent to the issue thereof. It was the performance of the petitioner in the post as a semi skilled workman that was being evaluated during the period of his probation. It was the said work that was found to be unsatisfactory necessitating the extension of his period of probation. Therefore, there is nothing wrong in the action of the Management in extending the period of probation of the petitioner. It is further worth noticing that, the petitioner was confirmed in service by Ext.P7 dated 03.04.1997 with effect from 21.01.1997. Therefore, the allegation that the Management was trying to deny to him the benefits of pay revision that was being implemented, cannot be accepted.

6. An examination of Ext.P3 award shows that, the issue has been considered properly by the Industrial Tribunal. Hence, I am not satisfied that any interference with Ext.P3 is called for.

In view of the above, this writ petition fails and the same is accordingly dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.