

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 3926 of 2009 (P)

CP. NO.23/2005 OF LABOUR COURT, KOZHIKODE.

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PETITIONER(S):

**CHITHIRAMPILLAI, P.F.NO. 2801,
LILLY DIVISION, PADAGIRI POST,
NELLIYAMPATHY.**

**BY ADVS.SRI.ASOK M.CHERIAN,
SRI.S.KANNAN,
SMT.S.RAKHEE.**

RESPONDENT(S):

- 1. THE MANAGER, MANALAROO ESTATE,
NELLIYAMPATHY TEA & PRODUCE COMPANY LIMITED,
PADAGIRI - 678 509.**
- 2. THE LABOUR COURT, KOZHIKODE.**

**R1 BY ADVS. SRI.E.K.NANDAKUMAR,
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR
R2 BY SR. GOVT. PLEADER SRI.K.K. SAIDALAVI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/09/2015, THE COURT ON 07/10/2015 DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 3926 of 2009 (P)

APPENDIX

PETITIONER'S EXHIBITS:-

**EXT.P1 COPY OF THE AWARD DATED 19/01/2000 PUBLISHED IN KERALA
GAZETTE NO.21 DATED 23/05/2000.**

**EXT.P2 COPY OF THE ORDER OF LABOUR COURT, KOZHIKODE
DATED 26/10/2007 IN C.P. NO.23/2005.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.3926 of 2009

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Dated this the 7th day of October, 2015

JUDGMENT

Ext.P2 order to the extent it denies 50% wages payable to the petitioner is under challenge in this writ petition.

2. The petitioner alleges that he was dismissed from service of the first respondent w.e.f 18.3.1996. The Industrial Tribunal, Palakkad by Ext.P1 award dated 19.1.2000 published in the Kerala Gazette dated 23.5.2000 held that the dismissal is illegal and directed reinstatement of the petitioner with 50% backwages. The petitioner points out that the award became enforceable under Section 17A of the Industrial Disputes Act w.e.f 23.6.2000. However, the management did not reinstate him in service.

3. The petitioner further points out that writ petition filed against the award was dismissed and the judgment in that writ petition was upheld in a writ appeal. Thereafter, he was paid 50% of

the backwages for the period from the date of dismissal (18.3.1996) to the date when the award became enforceable (23.6.2000).

4. The petitioner filed C.P No.23 of 2005 before the Labour Court, Kozhikode, claiming full wages for the period 23.6.2000 to 16.3.2005. However, the Labour Court in Ext.P2 order held that the petitioner is liable to be treated as reinstated in service w.e.f 23.6.2000 and continued in service thereafter. The Labour Court, however, fixed the quantum of amount payable to the petitioner from the period 23.6.2000 to 16.3.2005 @ 50% of his wages instead of allowing full wages for that period. It is with this background, the petitioner has approached this Court.

5. No counter affidavit has been filed by the respondents.

6. Arguments have been heard.

7. Opposing the writ petition, the learned standing counsel for the respondent would submit that the petitioner was dismissed from service on account of his misconduct after conducting a proper

enquiry. The same was challenged by the petitioner in I.D No.24 of 1997 before the Industrial Tribunal, Palakkad and in the award, there was a direction to reinstate the worker. The respondent challenged this award before this Court in O.P No.32786 of 2000. However, the same was dismissed. Writ appeal filed against the judgment was also dismissed. Therefore, on account of the above, the petitioner was paid an amount of ₹37,960/- towards 50% backwages for the period from the date of dismissal i.e. 18.3.1996 till the date of award came into effect and the respondent management by letter dated 11.3.2005 advised the petitioner to report for the work immediately. Though the petitioner received the cheque, he did not report for the work as advised. Therefore, according to them, there was no basis of the claim of ₹1,20,450/- towards wages upto 16.3.2005. According to them, 50% backwages from the date of dismissal till the date of award came into effect was only ₹37,960/- which was already been paid to the petitioner.

8. The learned counsel the petitioner, *per contra*, would point out that as per Ext.P1 award, the Industrial Tribunal held that dismissal of the petitioner from service of the respondent management on 18.3.1996 was unjustifiable and he was entitled to the relief of reinstatement in service with continuity of service and 50% backwages. The award which was published in the Gazette dated 23.5.2000 became enforceable w.e.f 23.6.2000 by the operation of Section 17A of the Industrial Disputes Act, 1947. Therefore, according to the learned counsel for the petitioner, the petitioner was entitled to be reinstated in service with full wages w.e.f 23.6.2000. When the petitioner was denied reinstatement and refused work illegally w.e.f 23.6.2000, he was entitled to be treated as in service of the management w.e.f 23.6.2000 and was entitled to get his wages in full. However, the Labour Court refused to grant him full wages for the period during which he should have been deemed to be in service without any reasons whatsoever.

9. Admittedly, backwages awarded by the Industrial Tribunal was paid by the respondent management i.e. 50% of backwages from 18.3.1996 to 23.6.2000. From 18.3.2000 onwards, the petitioner is entitled for full wages treating him as reinstated in service in implementation of the directions in Ext.P2 award. According to the petitioner, the direction of the Labour Court in C.P No.23 of 2005 to pay only 50% of the wages for the period from 23.6.2000 to 16.3.2005 is illegal. It is crucial to note that the Labour Court while acting under Section 33C(2) of the Industrial Disputes Act, has no jurisdiction to fix the quantum of the amount payable to the petitioner workman at a reduced rate at its will.

In the result, the writ petition is allowed. It is hereby declared that Ext.P2 order to the extent it directs the petitioner to pay only 50% of the wages payable for the period from 23.6.2000 to 16.3.2005 is illegal. Ext.P2 order shall stand modified to the extent that the direction to pay a sum of ₹1,08,804/- towards full backwages

to the petitioner for the period 23.6.2000 to 16.3.2005. The first respondent shall make the payment, within two months from the date of receipt of a copy of this judgment, failing which the respondent shall pay interest @ 9% per annum from the date of the claim petition till realisation.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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