

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 2916 of 2011 (L)

ID 70/2002 of INDUSTRIAL TRIBUNAL, ALAPPUZHA

PETITIONER:

LUPIN LIMITED,
159 CST ROAD, KALINA, SANTACRUZ (EAST)
BOMBAY-400098, REP.BY ITS SENIOR GENERAL MANAGER

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH MENON

RESPONDENT:

1. SRI.G.SURESH, C/O.K.A.RAMAKRISHNAN,
H.NO.5/925, PATHUMRI LANE, G.K.AVENUE ROAD
COCHIN-608002

2. THE INDUSTRIAL TRIBUNAL,
ALAPPUZHA-688005

R1 BY ADV. SRI.B.N.SHIVSANKAR
BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 2916 of 2011

APPENDIX

PETITIONER'S EXHIBITS:

P1 : TRUE COPY OF THE CLAIM STATEMENT DATED 25.04.2003 FILED BY
THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT IN I.D. NO.70 OF 2002

P2 : TRUE COPY OF THE WRITTEN STATEMENT DATED 17.06.2003 FILED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT IN I.D. NO.70 OF 2002.

P3 : TRUE COPY OF THE AWARD DATED 05.08.2010 PASSED BY THE 2ND
RESPONDENT IN I.D. NO.70 OF 2002.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

K. VINOD CHANDRAN, J.

W.P.(C) No.2916 of 2011

Dated this the 2nd day of March, 2015

JUDGMENT

The petitioner is the management who is aggrieved by Ext.P3 award. The workman is the first respondent herein. The first respondent was a Medical Representative under the management who joined services on 16.07.1986 and on 26.09.2001 was terminated on the basis of a clause in the appointment order that the termination of service from either side shall be with notice of one month or in lieu of one month's wages being paid. The management had also paid the workman compensation under Section 25F along with notice pay of one month, on his termination, on 26.09.2001.

2. Simultaneous to the termination order the management issued another letter which was also dated 26.09.2001; wherein specific lapses in the work of the Medical Representative was listed out. Hence while the termination order was styled as termination simpliciter, obviously such termination was made on the basis of the poor performance of the workman. The

management contended before the Industrial Tribunal that such termination was made without any whisper about the misconduct to avoid any stigma on the workman.

3. The issue was referred for adjudication by the appropriate Government and the resultant order Ext.P3 order is under challenge. The Tribunal considered the issue and directed reinstatement in service with continuity of service and all other attendant benefits entitling the workman however, to only 50% of the back wages. It is an admitted fact the workman had been paid wages under Section 17B during the pendency of these proceedings.

4. The learned counsel for the petitioner-management in fact would strenuously urged that the issue of termination of the workman was agreed to be settled and he was granted re-appointment which he did not take. A reading of the Tribunal award would indicate that the issue regarding the termination of the workman was placed before the Central Grievance Committee. The Central Grievance Committee is a committee having members of both the management and the employees. It

was the management's specific contention that the workman was offered re-appointment in Andhra Pradesh by a letter dated 25.07.2002 requiring the workman to join for duty on 01.08.2002. The workman refused to do so.

5. Before the Tribunal, the workman admitted that he received such an appointment letter. The reason cited by the workman for refusing to join was that he apprehended that the same would be a fresh appointment and there was nothing in the letter as to the continuity of service, which he was entitled from 16.7.1986 onwards. The Tribunal in addition to accepting these apprehensions expressed by the workman, also found that there is no clarity in the decision of the Central Grievance Committee. The decision of the Central Grievance Committee produced before the Tribunal only indicated that the matter, with respect to the workman had been settled.

4. With respect to the termination of the workman, though the management professes to have had the landable object in not to visit the workman with a stigma; the fact remains that the workman's termination was on account of certain lapses in his

work. The management had issued letters simultaneously terminating employment of the workman and also pointing out the lapses in the work which was found to be serious. Hence definitely the termination was on account of such lapses in the discharge of duties of the Medical Representative. That could have been a reason for termination, only after affording a reasonable opportunity to explain on the same and after conducting an enquiry in which the workman had to be given reasonable opportunity to defend his case. The termination hence cannot be said to be one, simpliciter, based only on the clause in the appointment letter, entitling either the management or the workman to terminate the service with one month's notice.

5. Further the workman was offered appointment when the industrial adjudication was pending. The mere fact that the decision of the Grievance Committee did not have any clarity cannot be a factor to disbelieve the settlement as such. The management admittedly on the basis of the decision of the Central Grievance Committee issued an appointment letter to

the workman. If such appointment letter was not in terms of the settlement, definitely the members of the Grievance Committee from the employees side would have taken up the matter before the management.

6. Admittedly despite the appointment letter, the workman refused to join for duty on the basis of imagined apprehensions. There was no warrant for such conduct, since the industrial adjudication with respect to his termination was pending. Any appointment accepted by the petitioner would be subject to the result of the industrial adjudication. In fact there was no specific condition in the said appointment letter that the adjudication on the dispute will not be proceeded with. The workman ought to have joined and then agitated the cause before the Tribunal. The petitioner having refused to join duty as on 01.08.2002, this Court is of the opinion that the Tribunal ought not to have granted reinstatement. The offer for appointment was withdrawn, only on the workman responding to the appointment letter with a communication refusing to join, since the disputes were pending adjudication before the Tribunal.

6. With respect to the termination, this Court has to uphold the order of the Tribunal which held the termination to be bad. The workman's termination on 26.9.2001, having been held to be bad, the workman would be entitled to the entire back wages from 26.09.2001 to 01.08.2002 when the workman voluntarily refused to take up the appointment offered by the management. In paying such back wages no amounts paid as Section 17B shall be deducted, since admittedly Section 17B wages were paid for the period subsequent to the award. Further retrenchment compensation granted even as is evidenced from the communication of the management was for 8 to 10 years. The workman admittedly was appointed on 16.7.1986 and continued till 26.09.2001 and is now deemed to have been in service till 01.08.2002. Though the amounts granted were as compensation under Section 25F, the amounts due shall be computed as gratuity under the Payment of Gratuity Act for the period of service from 16.7.1986 to 01.08.2002. The payment made as retrenchment compensation shall be deducted and the balance paid. The workman shall also be granted an additional

compensation of Rs.1,00,000/- (Rupees One lakh only). The amounts so computed shall be paid to the workman with a statement showing the different computation within a period of two months from the date of receipt of a certified copy of this judgment.

The writ petition is partly allowed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

//true copy//

P.A. To Judge

smv