

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 7138 of 2007 (Y)

PETITIONER(S) :

POOMALA ESTATE,
K. CHAPPATHU P.O., PIN-695 506, IDUKKI DISTRICT
REPRESENTED BY MANAGING PARTNER MR.ABRAHAM OOMMEN.

BY ADVS.SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN
SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENT(S) :

1. THE GENERAL SECRETARY,
NATIONAL ESTATE WORKERS CONGRESS (INTUC)
PEERMEDU P.O., IDUKKI DISTRICT.

2. THE INDUSTRIAL TRIBUNAL, IDUKKI.

3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LABOUR & REHABILITATION DEPARTMENT, SECRETARIAT
TRIVANDRUM.

ADDL.R4. P.SIVARAJAN, S/O.PURANDARAN
RESIDING AT THAIPPARAMBIL HOUSE
AYYAPPAN KOVIL P.O., MARY KULAMKARA
IDUKKI DISTRICT

(IMPLEADED VIDE ORDER DT.16.7.09 IN I.A.8545/09)

R BY GOVERNMENT PLEADER SHRI.ABHIJETT LESSIL
ADDL.R4 BY ADV. SHRI.C.S.MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 7138/2007

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF AWARD DT.25.5.2006 OF THE 3RD RESPONDENT IN
I.D.NO:59/2003

EXT.P2: -DO- OF THE NOMINATION AND DECLARATION FORM SUBMITTED BY THE
1ST RESPONDENT ON 10.3.1997

EXT.P3: -DO- ADMISSION REGISTER ISSUED FROM THE SCHOOL DT.NIL

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 7138 OF 2007

Dated this the 17th March, 2015.

JUDGMENT

The petitioner has filed this writ petition aggrieved by Ext.P1 award of the Industrial Tribunal, Idukki dated 25.5.2006. As per the impugned award, the workman, one Sivarajan who was superannuated by the petitioner, has been directed to be paid back wages for the period from 17.5.2002 to 24.5.2006, excluding a period of one year during which he was otherwise employed. He has also been directed to be paid his terminal benefits treating the said period also as service. The question is essentially regarding the correct age of Shri.Sivarajan.

2. The workman Sivarajan was employed by the petitioner at their estate. As per notice dated 17.5.2002, he

was superannuated from service with effect from 16.5.2002. According to the union, the date of birth of Shri.Sivarajan is 25.4.1948. Therefore, he was eligible to continue in service till 24.5.2006 on which date alone he would have attained 58 years of age.

3. According to the petitioner, as per the records maintained at the estate, the petitioner's date of birth is 5.5.1944. He had therefore attained superannuation prior to 16.5.2002. Therefore, he was superannuated from the said date. He had also received all his retirement benefits. It was only thereafter that, he had raised a dispute regarding the correctness of his age. The fact that the workman had not raised any dispute regarding his age until he was superannuated proves that the claim of the workman is not genuine, according to the counsel for the petitioner. It is also pointed out that, as per Ext.P2 which is the nomination and declaration form executed by the workman himself under the Employees Provident Fund Scheme, 1952, the date of birth of

the workman is shown as 5.5.1944. The said document having been executed by the workman himself it is contended that he has to be held bound by the entries therein. It is also pointed out by the counsel that, the workman having admittedly worked for a period of one year, the said period has to be excluded from his service, for all purposes. The counsel therefore seeks the issue of appropriate orders setting aside Ext.P1.

4. The counsel for the respondent disputes the contentions of the counsel for the petitioner. According to the counsel, a copy of the admission register of the workman was produced and marked as Ext. W5. The said document shows the date of birth of the workman as 25.4.1948. Reliance is also placed on Ext.W7 proceedings of the Employees Provident Fund Organisation which shows that the workman was aged 24 years on 1.1.1972. The said documents show that the case pleaded by the workman is correct, according to the counsel.

5. Heard. The records of the Industrial Tribunal also have been perused by me. It is true that, as per Ext.P2 nomination and declaration form executed by the workman his date of birth is shown as 5.5.1944. However, I notice from Ext.P2 that, the workman is a person who was not able to put his signature. Therefore, he has affixed his thumb impression on Ext.P2, a copy of which is part of the records and has been marked as Ext.W5. Since the workman has affixed his thumb impression, it follows that the entries in the said form have been made by someone else. Therefore, there is no justification to bind the workman to the entries therein. A perusal of the document Ext.W5 shows that, the date of birth of the workman recorded therein is 24.5.1948. He is seen to have left the School on 28.5.1958. It is clear from the records that the workman had only very little education.

6. The workman was examined as WW1. Nothing has been brought out in his cross examination to discredit his testimony. He has fairly admitted that he is working in Tamil

Nadu. He has also fairly admitted that he has raised the dispute regarding his age only after he had attained superannuation. The Industrial Tribunal had placed reliance on his testimony. I do not find any grounds to take a different view of the matter.

7. With respect to the question as to whether the period that the workman had worked at Tamil Nadu should be excluded for all purposes, what requires to be taken note of is that, the workman would have worked until he attained superannuation as per the common rules had his service not been cut short by his premature superannuation. It cannot be denied that he would not have left the service of the petitioner to work in Tamil Nau, had he not been superannuated. Therefore, the entire service that he could have worked had he not been superannuated by the management would have to be treated as part of the service of the workman for all purposes. For the limited purpose of deciding whether he is entitled to back wages alone, the said period has to be excluded since he

had admittedly earned wages during the said period by working elsewhere. The Industrial Tribunal has rightly excluded the said period. Therefore, I do not find any infirmity in Ext.P5.

For the foregoing reasons this writ petition is dismissed.

No costs.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy/

