

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No.13921 of 2004 (G)

PETITIONER:

**ST.JOSEPH INDUSTRIES,EDAPALLY TOLL,
KOCHI,REPRESENTED BY ITS PROPRIETOR,
JOSEPH LOPUS.**

**BY ADVS.SRI.VIJU ABRAHAM
SRI.JOY C. PAUL**

RESPONDENTS:

- 1. GENERAL SECRETARY,
PROGRESSIVE GENERAL WORKERS UNION,
2/66,KALVTHY,KOCHI-1.**
- 2. THE LABOUR COURT,ERNAKULAM.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

W.P(C) NO.13921/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF WRITTEN STATEMENT FILED BY PETITIONER
DATED 16.4.1997 BEFORE THE LABOUR COURT,ERNAKULAM.

EXT.P2:TRUE COPY OF AWARD DATED 31.12.2003 IN I.D.NO.17/1996 OF THE
LABOUR COURT,ERNAKULAM.

EXT.P3:TRUE COPY OF LEAVE APPLICATION DATED 23.7.94 SUBMITTED BY
K.G.SANTHOSH BEFORE THE PETITIONER.

EXT.P4:TRUE COPY OF LETTER DATED 10.8.94 SENT BY PETITIONER TO
SRI.K.G.SANTHOSH.

EXT.P5:TRUE COPY OF LETTER DATED 2.8.94 SENT BY -DO- TO K.JOY (TURNER)

EXT.P6:TRUE COPY OF LETTER DATED 12.8.1994 SENT BY K.JOY (TURNER) TO
THE PETITIONER.

EXT.P7:TRUE COPY OF LETTER DATED 10.8.94 SENT BY PETITIONER TO
SRI.K.JOY.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

K.VINOD CHANDRAN, J

W.P.(C).No. 13921 of 2004

Dated 12th January, 2015

JUDGMENT

The petitioner herein is a Small Scale Industry in which the Proprietor himself was employed. In addition to the Proprietor, there were only two other employees being one K.Joy and K.G.Santhosh. The dispute referred for adjudication to the Labour Court, Ernakulam was the denial of employment of these two workmen. The Labour Court by Ext.P2, found that both the workmen were entitled to compensation; K.Joy, an amount of Rs.30,000/- and K.G.Santhosh, an amount of Rs.8000/-. The Management challenges the Award on the ground that, there was no denial of employment and the evidence would amply demonstrate that there was voluntary abandonment of employment.

2. With respect to the workman

K.G.Santhosh, the Tribunal itself has found that there was no denial of employment. The said workman absented himself from 11.07.1994 after preferring a leave application. The leave was sought to be extended when the Management declined to grant it. The workman contended that on the denial of employment, he had gone to the Gulf countries for alternate employment. However, on the basis of the evidence recorded, the Tribunal clearly found that, it was in preparation of going abroad that the workman had left the employment of the Management. The Tribunal also clearly found that though the workman had undertaken to produce the passport to substantiate his contention, nothing was produced in evidence. The Tribunal having clearly found that, the workman had abandoned employment, could not have granted reinstatement.

3. With respect to the other workman Joy,

the Management had a contention that he had abused the Proprietor on 04.07.1994 and 20.07.1994. The workman however, claimed that on 20.07.1994, when he reported for work, he found the establishment closed and hence he alleged denial of employment by raising a dispute immediately. The Tribunal, on going through the version of the Management in the written statement and in the deposition, found that there is inconsistency insofar as the Management claim that there was no work on 20.07.1994.

4. In the written statement, the Management had contended that, on 04.07.1994 the workman had used abusive language against the Proprietor. The Management contended in the written statement that on 04.07.1994 and on 20.07.1994 the workman had abused the Proprietor. The Labour Court on the basis of the said statement as also Ext.M7, which evidenced unloading of materials, found that the claim of

the Management that there was no work on 20.07.1994, was not correct.

5. However, it is to be noticed that the specific case of the Management was that, on 04.07.1994 the workman while engaged in the work had used abusive language against the Management. On 20.07.1994 the allegation was that the workman abused the Proprietor at the latter's residence. It was contended by the Management that on 14.07.1994 itself the workman was informed that there would be no work on the next day. The workman turned up on 20.07.1994 and alleging denial of employment, left the premises after abusing the Proprietor and raised the dispute. The aforesaid facts also indicate that there is a clear abandonment of work, since the workman had never after that, reported for duty.

5. The further fact which comes out from

the Award of the Labour Court is that the work in the industry itself had to be stopped since both the workmen had abandoned the employment. It could only be resumed later with fresh appointments. In such circumstance, this Court is of the opinion that it was not proper on the part of the Labour Court to have awarded compensation in favour of the workmen. In the present case, despite notice having been issued to the respondents, none appeared.

The writ petition hence is allowed, setting aside Ext.P2 Award. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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