

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 11951 of 2005 (W)

PETITIONER :

**V. MOHANAN, PALVILA, KRISHNA VILASATHU VEEDU,
OORUTTAMBALAM P.O., THIRUVANANTHAPURAM.**

**BY ADVS.SRI.BOBY MATHEW
SMT.K.MEERA
SRI.HARIPPAD K.R.C. PILLAI**

RESPONDENTS :

**1. DIVAKARAN PROPRIETOR-SREE NARAYANA
OIL MILL, VELLAYANI, SAKTHI NILAYAM
NEMOM P.O. THIRUVANANTHAPURAM.20.**

***2. G.BHASKARA PANICKER, SAKTHI FLOUR AND
OIL MILLS, SAKTHI NILAYAM, SANTHIVILA NEMOM P.O.
THIRUVANANTHAPURAM.**

*** [2ND RESPONDENT DELETED FROM THE ARRAY OF PARTIES AT THE RISK
OF THE PETITIONER AS PER ORDER DATED 03.07.2015. IN THE WPC]**

3. THE LABOUR COURT, KOLLAM.

**R1 BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
BY ADV. SRI.P.MSANEER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

WP(C).No. 11951 of 2005 (W)

APPENDIX

PETITIONER'S EXHIBITS :

**P1: COPY OF THE AWARD D 22/11/2004 PASSED BY THE LABOUR COURT,
KOLLAM IN INDUSTRIAL DISPUTE NO. 97/1996.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.11951 of 2005

Dated this the 22nd day of September, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P1 award passed by the Labour Court, Kollam.

2. The petitioner was working in an Oil Mill as a machine operator from 1974 onwards. The proprietor of the Oil mill passed away in the year 1990. Thereafter the Oil mill was shifted to another place and the petitioner was denied employment. The dispute regarding denial of employment eventually came to be adjudicated by the Labour Court. The essential contention raised by the management was that upon the death of the original proprietor, the oil mill was closed down. The petitioner alleges that it became evident that the essential conditions for closure of the establishment as contemplated by the statute was not followed and that the petitioner was not paid any compensation at all.

According to the petitioner, there was no valid closure and as such the alleged termination of service of the petitioner is also not valid. Therefore, the petitioner was entitled for the reliefs in the case; it is alleged. However, according to the petitioner, without adverting to this crucial aspect of the matter, the Labour Court passed Ext.P1 award holding that since the establishment closed down, there is no denial of employment to the petitioner and that he is not entitled for any relief. It is with this background the petitioner has come up before this Court.

3. The notice sent to the second respondent was returned stating that he is no more. However, later, at the request of the petitioner, the second respondent was removed from the array of parties. No counter affidavit has been filed by respondents 1 and 3 who entered appearance.

4. Arguments have been heard.

5. According to the learned counsel for the petitioner, though he worked in the establishment of the respondents from 1974 to 1990, he was unceremoniously discharged.

It was pointed out that in Ext.P1 award, the Labour Court lost sight of the fact that the first respondent is the legal heir of the original employer who was bound to compensate the petitioner who was the employee.

6. As rightly pointed out by the petitioner, after the death of the original employer, the relationship between the petitioner and the first respondent was that of the employer-employee. Therefore, the first respondent could not simply close down the oil mill denying employment to the petitioner. It is relevant to note that the petitioner was not duly discharged as envisaged under the relevant legal provisions. The case of the respondent is that after the death of his father, the oil mill was closed down and that therefore, there is no employer-employee relationship and no denial of employment. It is relevant to note that the Labour Court had missed the point that the conditions precedent for a valid closure of the establishment under the provisions of Sections 25F and 25FFF of the Industrial Disputes Act, 1947 have not been complied with. According to the petitioner, no compensation whatsoever

has been paid to the petitioner.

7. In the light of the closure of the establishment, there cannot be any question of reinstatement. However, the Labour Court ought to have considered whether the petitioner is entitled to get any compensation as he had worked in the establishment for a considerable period. Therefore, this Court is of the view that the matter requires a re-look by the Labour Court.

In the result, Ext.P1 is quashed and the matter is remitted back to the Labour Court, Kollam for fresh consideration as to whether any just and fair compensation could be paid to the petitioner in the light of what has been stated above. It shall be open to the Labour Court to explore the possibility of settlement also between the parties.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE