

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 12304 of 2005 (M)

PETITIONER :

SRI.BABUKUTTAN PILLAI,
PROPRIETOR, GOOD CASHEW COMPANY, THURUTHEEL AMBALAM
KULAKKADA EAST P.O., KOTTARAKKARA.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SMT.PRIYAMA HESH

RESPONDENTS :

1. SRI.K.THULASEEDHARAN PILLAI,
GENERAL SECRETARY, KTUC (B), SAI P.SMRITHI
POOVATHUR WEST, MADAVADY P.O., KOTTARAKKARA.
2. SMT.LAKSHMI KUTTY AMMA,
LATHIKA NIVAS, KULAKKADA EAST P.O., KOTTARAKKARA.
3. SMT.SANTHAMMA,
VALLAVEERUVILA, KULAKKADA EAST P.O., KULAKKADA
KOTTARAKKARA.
4. SMT.MARIYAMMA,
MULAKKAL VEEDU, KULAKKADA EAST P.O., KOTTARAKKARA.
5. THE PROPRIETOR,
UNIVERSAL FOOD CASHEW FACTORY, THURUTHEELAMBALAM
KULAKKADA EAST P.O., KOTTARAKKARA. (DELETED)

*5TH RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
16/11/05 IN I.A.NO.16640/2005.

6. LABOUR COURT, KOLLAM

R2 TO 4 BY ADVS. SRI.V.E.ABDUL GAFOOR
SRI.A.MOHAMMED SAVAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE PRELIMINARY ORDER OF THE 6TH RESPONDENT DATED 21-02-05 IN ID.101/98

EXT.P2 : TRUE COPY OF THE CLAIM STATEMENT FILED BY THE 1ST RESPONDENT BEFORE THE 6TH RESPONDENT DATED 7TH OCTOBER, 02.

EXT.P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE 6TH RESPONDENT DATED 18.5.99

EXT.P4 : TRUE COPY OF THE FINDINGS OF THE ENQUIRY OFFICER DATED 23.2.98

EXT.P5 : TRUE COPY OF THE PROCEEDINGS OF THE ENQUIRY DATED 17.2.98

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.12304 of 2005

Dated this the 28th day of January, 2015

J U D G M E N T

The petitioner, proprietor of a Cashew Company, has filed this writ petition challenging Ext.P1 preliminary order passed by the Labour Court, Kollam, the 6th respondent herein. The short facts of the case are the following.

2. The petitioner had initiated disciplinary proceedings against respondents 2 to 4, workers of the cashew factory, alleging misconduct. According to the petitioner, though a domestic enquiry was ordered, the enquiry had to be completed ex-parte, due to the non co-operation of the workers. On the basis of the report of enquiry, respondents 2 to 4 were dismissed from service. Thereupon, they raised an industrial dispute. The dispute was referred by the Government to the 6th respondent, the Labour Court, Kollam. Before the Labour Court, the parties entered appearance. The matter was considered and Ext.P1 order has been passed.

3. As per Ext.P1 preliminary order, the 6th respondent has found that the enquiry conducted was defective, the workers not having been given proper opportunity to place and prove their case. The allegation of the petitioner of non co-operation of the workers has been found against, for the reason that, they had admittedly appeared at the enquiry though notice was served on them only on 16.02.1998 and the

enquiry was scheduled to be conducted on 17.02.1998. Taking note of the attendant circumstances of the case, the 6th respondent has found that the enquiry was defective. Therefore, the report of the enquiry officer has been set aside and the management directed to let in fresh evidence on the charges. It has also been made clear that the preliminary finding will form part of the award.

4. Having heard the learned counsel appearing for the respective parties, I do not find any grounds to interfere with Ext.P1 preliminary order. Since the petitioner has been granted an opportunity to adduce fresh evidence and to prove the charges, I do not consider it appropriate to refer to the circumstances taken note of by the 6th respondent or to consider whether the conclusions drawn are justified or not. It is settled law that, the petitioner shall be at liberty to challenge Ext.P1 preliminary order also, along with the final order that is likely to be passed by the 6th respondent in the matter. In view of the above, it is sufficient that the said right of the petitioner is preserved for the present. I notice that the proceedings were initiated as far back as on 22.01.1998. The matter has been pending before the Labour Court, in view of the interim order of stay granted by this Court. It is only appropriate that the proceedings are brought to an end, without further delay.

In view of the above, this writ petition is dismissed, but it is made clear that the petitioner shall be at liberty to challenge Ext.P1 also

along with the final order that is likely to be passed in I.D.No.101/1998 pending before the Labour Court, Kollam, if he is aggrieved by the same. The 6th respondent is directed to give priority to the above case, in view of the fact that it has been pending for such a long time and to finally dispose of the case as expeditiously as possible and at any rate within a period of six months of the date of receipt of a copy of this judgment

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV