

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 5121 of 2011 (M)

ID.NO. 52/2003 OF INDUSTRIAL TRIBUNAL, KOLLAM

PETITIONER(S):

1. THE PRESIDENT,
THE KALAMACHAL HANDLOOM WEAVERS'
CO-OPERATIVE SOCIETY LTD.NO.3704, KALAMACHAL P.O.,
VAMANAPURAM, THIRUVANANTHAPURAM.
2. THE KALAMACHAL HANDLOOM WEAVERS'
CO-OPERATIVE SOCIETY LTD.NO.3704, KALAMACHAL P.O.,
VAMANAPURAM, THIRUVANANTHAPURAM.
REPRESENTED BY THE SECRETARY.

BY ADVS.SRI.P.K.VIJAYAMOHANAN
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
SMT.DHANYA P.ASHOKAN
SMT.ANITHA MATHAI MUTHIRENTHY
SMT.O.V.BINDU

RESPONDENT :

SRI.B.VISWAMBHARAN,
KATTAKKARA PUTHANVEEDU, POIKAMUKKU P.O.,
MUDAKKAL,PIN-690 051, THIRUVANANTHAPURAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL
SRI.P.R.PRATEESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE UNDERTAKING EXECUTED BY THE RESPONDENT ON 10/06/1999.**
- P2 COPY OF THE SETTLEMENT ENTERED INTO BETWEEN THE MANAGING COMMITTEE MEMBERS AND THE RESPONDENT ON 26/07/2001.**
- P3 COPY OF THE COMMUNICATION NO.CS 8/9898/01 DATED 25/01/2002 OF THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE.**
- P4 COPY OF THE COMMUNICATION NO.CS 8/9898/01 DATED 05/08/2002 OF THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE.**
- P5 COPY OF THE CLAIM STATEMENT DATED 18/04/2005 FILED BY THE RESPONDENT BEFORE THE INDUSTRIAL TRIBUNAL, KOLLAM.**
- P6 COPY OF THE STATEMENT DATED 12/07/2005 FILED ON BEHALF OF THE SOCIETY**
- P7 COPY OF THE ARGUMENT NOTES DATED 03/03/2009 SUBMITTED ON BEHALF OF THE SOCIETY**
- P8 COPY OF THE AWARD DATED 04/11/2009 IN INDUSTRIAL DISPUTE NO.52/2003 OF THE INDUSTRIAL TRIBUNAL, KOLLAM.**
- P9 COPY OF THE CLAIM PETITION NO.21/2010 DATED 20/09/2010 FILED BY THE RESPONDENT BEFORE THE LABOUR COURT, KOLLAM.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.5121 of 2011 - M

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Dated this the 19th day of January, 2015

J U D G M E N T

The petitioner is a society, aggrieved with the award passed at Ext.P8, directing reinstatement of the respondent with full back wages and continuity of service.

2. The learned Counsel for the petitioner society submits that, the respondent was reinstated and has now retired from the service of the society. In such circumstance, the petitioner society only impugn the back wages granted and the continuity of service. The facts to be noticed are that, the respondent was originally appointed in a leave vacancy on 02.12.1993 as a driver. The delivery van of the petitioner society was sold on 10.05.1996 and then the respondent was employed as a watchman till 04.06.1999, when the person, who had proceeded on leave, joined back. The respondent was hence, sent out of employment and immediately thereafter on 10.06.1999 was

re-employed as a watchman on daily wages.

3. But, however, it was contended that, the respondent's appointment was not approved by the Industries Department and hence, he was sent out of employment. In any event, there was a dispute raised and in the conciliation, it was agreed to re-employ the respondent as a watchman. Such re-employment was made w.e.f 01.06.1999 in the permanent vacancy of watchman, who had retired on 30.05.1999. Further, a resolution No.282 dated 02.02.2001 was taken by the committee (Ext.W4) appointing the respondent in the permanent vacancy of a watchman in the pay scale of Rs.775-12-995-14-1025-20-1065 and it was also resolved to obtain ratification from the District Industries Centre (DIC). Later on by Ext.W6(a), a resolution No.91, dated 26.10.2002, the respondent was decided to be terminated, alleging that the ratification was not given by the General Manager of the DIC; who is the Registrar of the petitioner Society; under the Kerala Co-operative Societies Act, 1969.

4. The petitioner would contend that, the appointment of the respondent being not as per the statute, no reliance can be placed on the conciliation agreement, as held in **Koodaranji Service Co-op. Bank Ltd. v. Lissy [1993 (2) KLT 706]**, **State of Uttar Pradesh v. Jai Bir Singh [(2005) 5 SCC 1]** and **Municipal Council, Sujanpur v. Surinder Kumar [(2006) 5 SCC 173]**. The learned Counsel appearing for the respondent however, would support the award passed, on the ground that, having been granted a regular appointment in a sanctioned post, there is no question of any further ratification by the DIC.

5. The facts disclosed from Ext.P8 award would indicate that the respondent was appointed for intermittent periods and when the respondent's engagement was terminated, the petitioner had invoked the remedies available under the Industries Disputes Act, 1974 (for brevity, 'the I.D Act'). It is pursuant to a conciliation initiated under the I.D Act, the management had agreed to appoint the respondent and such appointment was granted

immediately in the retirement vacancy of another. There is no dispute as to the date on which the appointment was granted; which is on 04.06.1999, w.e.f 01.06.1999. The said appointment was also said to have been granted in a retirement vacancy arising on 30.05.1999. It has also come out in evidence, before the Labour Court that, subsequent to that, the General Manager, DIC had by an order dated 31.05.2001, sanctioned a regular post of watchman on a scale of pay and the copy of the order was produced by the management itself as Ext.M6 before the Labour Court.

6. The management would contend that in fact another person was appointed to the said post. If that be so, then nothing prevented the management from adducing evidence as to such appointment having been made. There is no evidence adduced as to any appointment so made to the sanctioned post. **Koodaranji Service Co-op. Bank Ltd.** and **Surinder Kumar** (both supra) were instances where the appointment was not to a sanctioned post; the termination from which post was held to give rise to no

claim for reinstatement, even when the termination is found to be illegal. That is not the fact situation herein and the evidence too supported the appointment in pursuance to a conciliation settlement under the I.D Act. **Jai Bir Singh** (supra) is a reference order. Hence, none of the decisions cited aid the management.

7. The specific contention raised by the management is that due to financial stringency, there was no work available and the respondent could not be continued. Suffice it to notice that there are sufficient provisions in the I.D Act to take care of such contingencies, which the management did not avail of. The Labour Court has found that the respondent was appointed to a vacancy, which fell vacant, on retirement and also that the Registrar of the petitioner society, being the General Manager of DIC had sanctioned a post of watchman after the respondent's appointment.

8. This Court is not inclined to interfere with Ext.P8 award. It is also to be noticed that the management

has not produced before the Labour Court or before this Court, the order by which the DIC is said to have rejected the prayer for appointment of the respondent. The reliance placed on Exts.P3 and P4 cannot be countenanced, since, the same was not produced before the Labour Court.

For all the above reasons, the writ petition is found to be devoid of merit, and the same is dismissed, leaving the parties to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A To Judge.