

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No.15486 of 2004 (R)

PETITIONER :

T.K.BHASKARAN, HEMA BINDING WORKS,
G.H.ROAD, KOZHIKODE.

BY ADVS.SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

1. THE INDUSTRIAL TRIBUNAL, KOZHIKODE.

2. T.P.KAIRALI, THUMPIRUMPU PARAMBIL HOUSE,
P.O.WEST HILL, KOZHIKODE.

R2 BY ADV. SMT.LATHA PRABHAKARAN
R2 BY ADV. SRI.K.M.JAMALUDHEEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15486 of 2004 (R)

APPENDIX

PETITIONER'S EXHIBIT :-

EXT.P1 : COPY OF AWARD DTD.30.4.2003 IN ID NO.38/2000
PASSED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.15486 of 2004

Dated this the 30th day of June, 2015

JUDGMENT

The petitioner has filed this Writ Petition seeking a writ of certiorari to quash Ext.P1 award passed by the Industrial Tribunal, Kozhikode in I.D.No.38/2000.

2. The Government of Kerala by G.O.(Rt)No.2965/2000/LBR dated 16.8.2000 referred the following dispute between the petitioner and the 2nd respondent for adjudication to the Industrial Tribunal, Kozhikode:-

"Whether the denial of employment to Smt.T.P.Kairali, Binder from service with effect from 28.8.1999 is justifiable? If not, what relief she is entitled to."

3. The Tribunal by Ext.P1 award held that, there was employer-employee relationship between the management and the worker and that her employment was wrongfully denied by the management from 25.8.1999 onwards. Therefore, the management was directed to pay 33¹/₃% backwages to the worker from 25.8.1999 till the date of the award and wages for one year towards

compensation for future loss of employment. The Tribunal has also directed that, the management shall compute the above benefits to the worker on the basis that she was drawing ₹1,000/- per month and disburse the monetary benefits within one month from the date of the award, failing which, it will carry interest @12% thereafter, till the date of actual payment. It is aggrieved by Ext.P1 award passed by the Tribunal the petitioner has approached this Court in this Writ Petition.

4. A reading of Ext.P1 award passed by the Tribunal would show that, the claim made by the worker that she was employed in Hema Binding Works run by the management from 20.7.1994 to 25.8.1999 and was doing book binding and other office works. With effect from 25.8.1999, she was denied employment without assigning any reason. Since the denial of employment is wrongful she is entitled for full backwages and all consequential benefits. According to the worker, she was given ₹250/- at the time of termination of her employment. Therefore, she prayed for an award holding that the denial of employment is illegal and to direct the management to reinstate her in service with full backwages and

other consequential benefits.

5. The management filed written statement denying the employee-employer relationship. According to the management the worker was never employed in Hema Binding Works and that the proprietor of the said firm was doing all the work by himself. He has also engaged another worker by name Ramesan to assist him in the process of binding. Therefore, the complaint of the worker regarding denial of employment is false and unsustainable. According to the management, she had worked as a part time domestic servant in the residence of the proprietor of the firm and she used to come early in the morning and leave the house by 8.30 AM after finishing the work in the residence. Thereafter, she used to go employment elsewhere. During the aforesaid period of her employment, the wife of the proprietor of the firm utilised her service to remit phone bills and electricity bills. She was never engaged as a Binder in Hema Binding Works. The management has also contended that, the worker was working as a Spinner in M/s.Kurlon and she has also worked as a Sales Girl in a Textile Shop run by the management as M/s.Kurlon. Therefore, the management denied the allegation regarding the

denial of employment and prayed for passing an award rejecting the claim of the worker.

6. On the side of the worker, she was examined as WW1 and one Vasudevan was examined as WW2. On the side of the management the proprietor of the firm was examined as MW1 and his wife was examined as MW2. On an appreciation of the facts of the case and also the evidence on record, the Tribunal came to the conclusion that, the worker has succeeded in proving the employer-employee relationship with the management and therefore she is entitled for the consequential relief.

7. I heard the arguments of the learned counsel for the petitioner.

8. The learned counsel for the petitioner would contend that Ext.P1 award passed by the Tribunal is not supported by evidence and has no basis at all. There is absolutely no evidence in support of the claim made by the worker that there is employer-employee relationship between the parties and that even in the absence of independent evidence, the Tribunal in Ext.P1 award came to the conclusion that there existed an employer-employee relationship

between the parties.

9. The sole issue that arises for consideration in this Writ Petition is the legality or otherwise of Ext.P1 award passed by the Industrial Tribunal. It is worthwhile to notice that, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India over an award by the Industrial Tribunal is not sitting in appeal on the award passed by the Tribunal and any interference is permissible only when the findings or the reasoning of the Tribunal are either perverse or patently illegal.

10. In the case on hand the worker who was examined as WW1 has testified before the Tribunal that, she was working as a Binder in Hema Binding Works run by the management, for the period from 20.7.1994 to 25.8.1999. She has also stated that, she had attended the book binding, book preparation, embossing of number in bill books, etc. and also writing bills, remitting telephone bills, etc. and that, she was paid wages in every work, initially ₹150/- per week, which was later enhanced to ₹175/-. She has also stated that, at the time when she was denied employment she was getting a wage of ₹250/- per week. She has also deposed that,

there were 2 other workers, namely, Ramesan and Omana and that, while she was working under the management establishment, she had issued bills to M/s.Tip Top, Tropicana, Baby Memorial Hospital, Alsa Construction, Penta Agencies and Febin Readymades.

11. One Vasudevan, an ex-worker of Hema Printing Works was examined as WW2 on the side of the worker. He has deposed before the Tribunal that, he was employed in Hema Printing Works and was attending Printing and connected works. WW2 has also deposed that, the proprietor of Hema Printing Works and Hema Binding Works was one and the same namely Sri.T.K.Bhaskaran. He has also deposed that, Kairali, the worker in the present case was an employee attached to Hema Binding Works and she was terminated from service stating dearth of work as a reason. As noticed by the Tribunal, though WW2 who was examined on the side of the worker was cross-examined by the learned counsel for the management, nothing could be brought out to controvert his specific case that the worker was employed in Hema Binding Works during the relevant period.

12. The Proprietor of the firm Sri.T.K.Bhaskaran, who was examined as MW1, denied the employer-employee relationship with the worker. According to MW1, the worker was actually attending some domestic work in the house for some time. Since his wife developed some doubt about the relationship between himself and she told her not to come for domestic work any longer. As rightly noticed by the Tribunal, the management has not produced any employment details of the workers alleged to have been employed in the establishment owned by him. Admittedly the management is statutorily bound to keep the relevant particulars of the workers employed in the establishment and in the absence of such documents the Tribunal was fully justified in drawing an adverse inference. The other witness examined on the side of the management is none other than the wife of MW2. Though she has deposed in tune with the evidence adduced by MW1, her evidence was rightly discarded by the Tribunal stating that, she is only an interested witness.

13. The evidence on record clearly indicates that, the worker was employed in the establishment during the relevant period. The

version of WW1 was also corroborated by the evidence adduced by WW2, who is stated to be an ex-worker in one of the establishments run by the management. Though WW2 was cross-examined at length nothing could be brought out in order to discredit his version. It was in such circumstances, the Tribunal came to the conclusion that, there was employer-employee relationship between the worker and the management and that she was denied employment without any valid reason. In such circumstances, the Tribunal held that the worker is entitled for consequential reliefs. The aforesaid finding of the Tribunal, based on the evidence on record can at no stretch of imagination be termed as perverse, arbitrary or illegal. Therefore, Ext.P1 award of the Tribunal is not liable to be interfered with by this Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

14. A reading of Ext.P1 award passed by the Tribunal would show that, instead of ordering the reinstatement with backwages, the Tribunal has awarded only $33\frac{1}{3}\%$ of backwages to the worker from 25.8.1999 till the date of award, together with 12 months wages as compensation for future employment. This was done

taking into account the fact that, the parties are at bitter terms and that, the establishment of the management is only a small scale unit. It was in such circumstances, though the worker was eligible for an award for reinstatement with full backwages, the Tribunal in Ext.P1 award limited it to the extent indicated above.

15. I find absolutely no ground to interfere with Ext.P1 award passed by the Tribunal in I.D.No.38/2000. In the result, the Writ Petition fails and the same is dismissed.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

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