

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 17578 of 2004 (P)

PETITIONER(S):

**THE ADMINISTRATIVE OFFICER,
AMMACHIVEEDU MOORTHY TEMPLE TRUST HOSPITAL,
CATCHERY WARD, KOLLAM.**

**BY ADVS.SRI.S.P.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.S.A.ANAND
SRI.PETER JOSE CHRISTO**

RESPONDENT(S):

- 1. THE LABOUR COURT,
KOLLAM.**
- 2. SECRETARY,
KERALA PRIVATE HOSPITAL EMPLOYEES UNION, INTUC,
JETTY ROAD, KOLLAM.**

**R2 BY ADVS. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 17578 of 2004 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF AWARD PASSED BY THE 1ST RESPONDENT IN
ID NO.151/92 DATED 27.12.2003.**

RESPONDENT(S)' EXHIBITS

**EXHIBIT R2(A): TRUE COPY OF THE CERTIFICATE ISSUED BY DAS DENTAL
CLINIC AND ORTHODONTIC CENTRE, KOLLAM
DATED 14.09.2004.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K.Vinod Chandran, J.

W.P.(C).No.17578 of 2004-P

Dated this the 07th day of January, 2015

JUDGMENT

The petitioner is the management and the 2nd respondent is the Union which agitated the cause of a worker who is alleged to have been terminated illegally. The cause of one Kanakavally, a Nursing Assistant, who was sent out of employment from 04.12.1991, was the issue espoused by the Union and referred for adjudication to the Labour Court, Kollam.

2. The Union claimed that the employee was appointed on 13.05.1979 and was terminated without any reason, on 04.12.1991. The management contended that there was no regular employment granted to the worker and that she had, in any event, left the employment of the management in 1987. It was also contended that the worker having left the employment in 1987, joined another hospital and raised a dispute after a long time in the year 1991. The Labour Court having considered the evidence recorded, directed reinstatement of the worker with 30% of the backwages. In fact, entitlement of backwages was confined to 30%

only on account of the considerable delay in deciding the dispute, for which the Labour Court found that the Union and the worker were responsible.

3. The learned counsel for the petitioner contends that the documents produced before the Labour Court, especially muster roll and register of wages, specifically indicate that the worker was not employed after 1987. While the muster roll upto 1987 was relied upon by the Labour Court to find the employment of the worker, the muster roll and wage register for the subsequent periods were totally ignored. The said registers would indicate that the worker was not in the roll of the petitioner-hospital; nor was paid any wages, is the contention. It is also contended that on production of such documents, the burden shifted to the worker to prove that she had in fact been employed after 1987. The evidence of MW3 is relied on which, according to the petitioner, would clearly indicate that the worker was employed gainfully after she left the employment of the petitioner-hospital in 1987.

4. Before the Labour Court, the worker examined herself and a Deputy Manager, who is said to have appointed the worker, as WW1 and WW2. The appointment order dated 10.05.1979 and the

order of probation were produced as Exhibits W1 and W2. The management examined its Administrative Director as also the Manager and the owner of the other hospital in which the worker is said to have been employed after 1987 as MW1, MW2 and MW3. Muster roll and wage register were produced as Exhibit M1 series and Exhibit M2 series.

5. The contention with respect to the worker having not been employed regularly in the petitioner-hospital was negated by the Labour Court. The Labour Court found that the appointment orders, though denied to have been issued by the management, the person who issued such appointment, had deposed as WW2, affirming the issuance. The authority of WW2 to make such appointments was also not seriously challenged by the management. Further, the muster rolls produced by the management itself showed that the worker was employed till 1987. In such circumstance, the finding of the Labour Court that the worker was a regular employee of the petitioner cannot at all be interfered with.

6. True, the petitioner had produced the muster roll and registers of wages for the period subsequent to 1987, which did not indicate the name of the worker. However, no reliance could be

placed on the same, since the genuineness of the same is suspect and there is no certification made by any of the officers under the various statutes; evidencing an inspection and certifying the maintenance of the registers as stipulated in the various statutes.

7. True, the learned counsel for the petitioner submits there is no finding to that end in Exhibit P1 award. However, if such genuineness was urged before the Labour Court and no finding was entered into by the Labour Court, then necessarily the petitioner ought to have averred the same in the writ petition. There being no averment to that end, in the writ petition, it cannot be said that the Labour Court had ignored the documents subsequent to the date of alleged abandonment of employment.

8. Furthermore, as has been stated by the Labour Court, the evidence adduced by MW2 and MW3 was obviously self-serving statements, which inspired no confidence in the Labour Court. The fact that MW2 and MW3 merely asserted employment of the worker in their hospital without even a scrap of paper evidencing such employment being produced, commends this Court to approve the finding of the Labour Court with respect to the alternate employment of the worker.

In the above circumstances, this Court does not find any illegality or perversity in the findings of the Labour Court, which are amply supported by cogent evidence recorded in the case. The appreciation of evidence cannot at all be said to be improper. Considering the confined jurisdiction under Article 226 of the Constitution, this Court is not inclined to interfere with the award passed at Exhibit P1. The writ petition would stand dismissed. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

vku/-

(true copy)