

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 8053 of 2013 (F)

PETITIONER:

SHOBI KUTTY K.G
S.S.R.NIVAS, T.C.05/1795, SARASWATHI BHAVAN LANE
PEROORKADA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.R.SASITH PANICKER

RESPONDENTS:

1. MANAGING DIRECTOR, KERALA STATE HANDLOOM WEAVERS
CO-OPERATIVE SOCIETY, (HANTEX), P.B.NO.64, OOTTUKUZH, I,
THIRUVANANTHAPURAM, PIN-695001.

2. THE REGIONAL MANAGER,
KERALA STATE HANDLOOM WEAVERS CO-OPERATIVE SOCIETY
(HANTEX), KOLLAM-691001.

3. THE MANAGER
HANTEX DEPOT, AMBALAMUKKU, PEROORKADA,
THIRUVANANTHAPURAM-695001.

R1-R2 BY ADV. SRI.T.M.RAMAN KARTHA, SC, HANTEX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM DTD.14.11.96
EXHIBIT P1(A): TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM DTD.9.1.97
EXHIBIT P2: TRUE COPY OF THE OUTPATIENT RECORD ISSUED FROM MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM.
EXHIBIT P3: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM DEPARTMENT OF PHYSICAL MEDICINE AND REHABILITATION, MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM DT.6-3-2007.
EXHIBIT P4: TRUE COPY OF THE OUTPATIENT RECORD ISSUED FROM MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM DTD.30.4.07
EXHIBIT P5: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM GOVERNMENT HOSPITAL PEROORKADA DT.27.10.07
EXHIBIT P6: TRUE COPY OF THE ORDER DT.13-1-2007 ISSUED BY R2
EXHIBIT P7: TRUE COPY OF THE RELIEVING ORDER ISSUED BY R3 DT.18-1-2007.
EXHIBIT P8: TRUE COPY OF THE CERTIFICATES ISSUED BY ESI CORPORATION.
EXHIBIT P9: TRUE COPY OF THE REPRESENTATION DATED 22-1-2007.
EXHIBIT P10: TRUE COPY OF THE REPRESENTATION DATED 9.4.2007.
EXHIBIT P11: TRUE COPY OF THE JUDGMENT DATED 12-7-2007 IN WRIT PETITION 21396/2007.
EXHIBIT P12: TRUE COPY OF THE ORDER DATED 25-8-2007 OF R1.
EXHIBIT P13: TRUE COPY OF THE AWARD DATED 30-9-2010.
EXHIBIT P14: TRUE COPY OF THE ORDER DATED 27-8-2012 IN RP 28/2012 OF KERALA CO-OP.TRIBUNAL, THIRUVANANTHAPURAM.

RESPONDENT(S) ' EXHIBITS : NIL

okb.

//true copy//

P.A. to Judge.

K.HARILAL, J.

W.P.(C) No.8053 of 2013

Dated this the 26th day of October, 2015.

JUDGMENT

The petitioner was an employee of the 1st respondent Co-operative Society in the year 1980 as a tailor. According to her, she was suffering from a chronic disease "Fybromyalgia Syndrome" which affected her spinal cord. The Doctor advised her to avoid works which give exertion to the buttocks as well as spinal cord and she was under regular medical treatment from 1996 onwards. While so, she was transferred to the depot at Vazhuthakkad by order dated 29.3.2004 as Helper, and later, she was transferred to Ambalamukku depot, then to Kollam unit, and again to Ambalamukku depot and then by Ext.P6 order dated 13.01.2007, she was transferred to the garments unit at Ambalamukku Depot. Due to ill health, the petitioner was not in a position to join duty in the garments unit as tailor and she was absent

in service from 19.1.2007 to 30.11.2010. The petitioner was under treatment during these period and the same is evidenced by Ext.P8 certificate. The petitioner filed Ext.P9 representation requesting to reconsider her transfer to garments unit. On inaction from the part of the respondents, the petitioner approached this Court and this Court by Ext.Pl1 directed the respondents to take a decision and thereafter, by Ext.Pl2, the respondents rejected the request for reconsideration of her transfer. Feeling aggrieved, the petitioner had approached the Arbitration Court, Thiruvananthapuram by filing ARC.No.107/07 and by the Award dated 30.9.2010, the Arbitration Court directed the 1st respondent to retain the petitioner in the Ambalamukku Depot on the ground that Ext.Pl2 order did not consider the health condition of the petitioner. But the prayer to disburse salary of the petitioner by treating the period of absence on medical leave was not allowed by the Arbitration Court on the ground that the petitioner had not produced any proof before the court to show that she was permitted

to take any kind of leave after 29.1.2007. Feeling aggrieved by the Award she preferred a revision before the Kerala Co-operative Tribunal, Thiruvananthapuram. After re-appreciating the evidence on record, the Tribunal also concurred with the findings of the Arbitration Court and dismissed the revision. The legality and correctness of the findings whereby the Tribunal dismissed the revision are under challenge in this writ petition filed under Article 226 of the Constitution of India.

2. Heard the learned counsel for the petitioner and the learned Standing counsel appearing for the respondents. Both the counsel advanced arguments in support of their contentions and pleas raised before the Arbitration Court and later before the Tribunal.

3. In view of the submissions made at the Bar, the short question that arises for consideration is, whether the Tribunal can be justified in denying the salary by treating the period of absence as medical leave or not.

4. Going by Ext.P13 Award passed by the

Arbitration Court it is seen that the Arbitration Court has rightly framed the issue as to whether the petitioner is entitled to get the salary by treating the period of absence as medical leave or not. The specific case of the respondents is that even though the petitioner was directed to rejoin duty from the Garments Unit, she failed to join duty and thereby she was unauthorisedly absent from duty from 21.1.2007 onwards and she failed to produce any proof before the court to show that she was permitted to take any kind of leave after 29.1.2007. In view of the above findings the Arbitration Court dismissed the prayer for disbursement of leave salary.

5. Coming to the order passed by the Tribunal, it is seen that the Tribunal also framed an issue as to whether the petitioner is eligible for leave salary and other monetary benefits for the period during which she was absent and if so what is the quantum. In short, the Arbitration Court as well as the Tribunal has adjudicated the point which is raised in this writ petition.

6. Going by the findings of the Tribunal, it is seen that even in the revision petition the petitioner has not disclosed the period during which she was absent from duty from the Garments Unit and it is discernible from the evidence on record that she was absent for duty from 29.1.2007 onwards. She has not submitted any application for leave in proper time, though she had produced copies of medical certificates which were obtained long after 29.1.2007. As rightly observed by the Tribunal, on a mere production of medical certificates, which were obtained on a subsequent date, no employee is entitled to get leave as of right, and it is incumbent upon the employee concerned to submit an application for leave, stating the reason as and when leave is required. Needless to say, the petitioner was eligible for salary and other benefits from 29.1.2007 only, if that kind of leave, which was making her eligible for leave salary was granted to her. But, no such leave was granted to her due to the absence of application for the same. So, I do not find any kind of arbitrariness, inequity or

injustice in denying the salary and other benefit for the period in which she was absent, without sanctioned leave. There is no illegality or impropriety in the above finding by which the Tribunal dismissed the revision petition.

In the result, this writ petition is devoid of merits and dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.