

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 11857 of 2012 (F)

PETITIONER:

**THE MANAGING DIRECTOR,
KERALA STATE HANDLOOM WEAVERS
CO-OPERATIVE SOCIETY (HANTEX),
OTTUKUZH, THIRUVANANTHAPURAM-695 001.**

BY SRI.T.M.RAMAN KARTHA, SC

RESPONDENT(S):

1. LABOUR COURT, KOLLAM-691 001.

**2. THE SECRETARY ,
KERALA STATE CO-OPERATIVE
EMPLOYEES UNION, HANTEX UNIT,
THIRUVANANTHAPURAM-695 001.**

**R1 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
R2 BY ADV. SRI.S.MOHANDAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 11857 of 2012 (F)

APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT P1: A TRUE COPY OF THE CLAIM PETITION IN ID NO.23/2008
DATED 27.9.2008.
- EXHIBIT P2: A TRUE COPY OF THE WRITTEN STATEMENT IN ID NO.23/2008
DATED 31.10.2008.
- EXHIBIT P3: A TRUE COPY OF THE AWARD IN ID NO.23/2008 DATED 13.4.2010.
- EXHIBIT P4: A TRUE COPY OF THE REVIEW PETITION IN ID NO.23/2008
DATED 29.6.2011.
- EXHIBIT P5: A TRUE COPY OF THE REFERENCE ORDER DATED 8.12.2010 IN
W.A.NO.764/2010.
- EXHIBIT P6 : TRUE COPY OF THE COMPLAINT DATED 15.10.2012 FILED BY THE
DISTRICT LABOUR OFFICER BEFORE THE CHIEF JUDICIAL
MAGISTRATE COURT, THIRUVANANTHAPURAM.
- EXHIBIT P7 : TRUE COPY OF THE SUMMONS ISSUED TO THE PETITIONER ON
EXT. P6 COMPLAINT.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

W.P.(C) No. 11857 of 2012

Dated this the 21st day of January, 2015

J U D G M E N T

The petitioner is the Management, who is aggrieved with Ext.P3 Order of the Labour Court. The dispute raised and the reference made on 23.06.2008, is with respect to the demand raised by the Union regarding enhancement of the pay scales of Lower Division (L.D.) Typists.

2. The brief facts to be noticed are that the L.D. Typists of the Management, were granted a Higher Grade on completion of ten years and were also granted pay scales of the Upper Division (U.D.) Typists; which was the next promotion post of the L.D. Typists. The practice is said to have been followed by the management on the basis of the State Government norms. However, the grant of such higher pay scale was said to be subject to the approval of the Director of Handlooms and Textiles, who is the Registrar

of the Management - Society under the Co-operative Societies Act, 1969 of Kerala. The said authority had, by an order dated 1.1.1998, issued in pursuance to a recommendation for grant of higher grade to certain L.D. Typists, directed that the L.D. Typists may be granted a higher grade, but however, given a pay scale which is lower to that of the U.D. Typists. Hence, a new pay scale was indicated, which alone would be the entitlement of the L.D. Typists on grant of Higher Grade.

3. The issue relates to the year 1998 and the individual employees had made some representations, which having not been responded to, the Union had taken up the matter with the District Labour Officer, Thiruvananthapuram, as is indicated in the Award, by Ext.P7 dated 28.3.2000. The reference was made by the appropriate Government, which was answered by the Labour Court.

4. The learned counsel appearing of the Management contends that there was no approved norms by which such higher grades could have been claimed by the L.D. Typists. The grant of higher grade and the grant of the higher pay scales definitely has to be approved by the Registrar under the Co-operative Societies Act. Without the Registrar in the party array, the Labour Court could not have proceeded with the adjudication of the dispute, is the further plea. It is also contended that by virtue of Section 69 of the Co-operative Societies Act, the service disputes pertaining to the employees of the Co-operative Societies has to be agitated before the Co-operative Arbitration Court, constituted under the said provision and the remedy under the Industrial Disputes Act would not be available. It is also submitted that, the said issue arising under section 69 has been referred by a Full Bench of this Court, to a larger Bench and hence the Writ Petition ought to be considered only after a

decision of the larger Bench.

5. Essentially, it is to be noticed that both the contentions urged before this Court, being that the Director was not a party before the Labour Court and that Section 69 inhibits the Union's right under the Industrial Disputes Act, were not raised before the Labour Court; when adjudication was taken up therein. An issue which was not raised before the original authority cannot be taken up in a proceeding under Article 226, since the management is deemed to have acquiesced to such adjudication before the original authority.

6. It is also to be noticed that the Director is not a necessary party, since the industrial adjudication which has been referred to the Labour Court is one between the employee and the employer and the legality of the Order passed by any authority can be supported by the employer in the proceedings before the Labour Court. Though the

Orders issued by the Registrar would be binding on the administrative authorities under the Act and Rules as also the Society, it does not fetter the jurisdiction of the Court to consider whether the same is sustainable, especially when considering the issue of service conditions.

7. A reading of the Labour Court Award would indicate that there was an accepted practice in the Management establishment, by which the L.D. Typists were granted the Higher Grade and fixed in the pay scale of U.D. Typists. There is also reference to a settlement dated 03.06.1997, by which the Management had agreed to continue the benefit of Higher Grade, which however is disputed by the Management on the ground that it is not a valid settlement which could be enforced by the workman. However, on 20.07.2000, the Management had agreed for the observance of State Government norms in the matter of Higher Grade. The practice which was followed in the

Management also entitled the employees, similarly situated to such benefits when they completed ten years and were given a Higher Grade.

8. The contention that, only on the approval of the Registrar could the pay scales be granted, is of no consequence since the Management had recommended the Higher Grade to the Registrar and the Registrar is seen to have refused approval to the same; for reason of the financial condition of the Management. An adverse consequence in the service conditions of the employees necessarily would have to be with notice to them and if at all the Management establishment was reeling under financial stringency, then necessarily the Management ought to have initiated appropriate proceedings; taking the employees into confidence, to revise the existing service conditions, at least till such time as the Management establishment gets out of the red. It is also an admitted

fact that there has been no revision of pay after that issued in 1.1.1998, due to the bad financial condition of the Management.

9. Grant of Higher Grade is a mitigating measure by which the employees, devoid of a career advancement, by virtue of a promotion, is granted the higher scale by which at least a stagnation of pay is avoided. That the L.D. Typists were given such higher grade, provided they are eligible to be promoted, after ten years service is undisputed. The said practice, though not governed by any norms or regulations of the Management, is found to have been as per the Government norms adopted in the petitioner's establishment. The adoption of Government norms is evident from Ext.W5. The minutes of the meeting, Ext.W8, between the Management and the leaders of the Union reveals the assurance of the Management, that the grant of higher grade, as existing, would be confirmed. The

Government norms were specifically gone into by the Labour Court to find that it provided for a lower pay scale on higher grade and there was a further stipulation to accommodate those who were eligible to be promoted in the scale of the promoted post itself. It was hence the Labour Court found that in the Management establishment also there would be no automatic entitlement for higher grade at the pay scale in the promoted post; but it shall only be on the eligibility for promotion being found. It was also clarified that such L.D. Typists who are thus granted a higher grade would not be entitled to any further fixation, on actual promotion. This Court does not discern any reason to interfere with the Award passed.

The Writ Petition is devoid of merit and would stand dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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