

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 12692 of 2012 (J)

PETITIONER(S):

**THE MANAGING DIRECTOR,
KERALA STATE CO-OPERATIVE COIR MARKETING FEDERATION
ALAPPUZHA**

**BY ADVS.SRI.A.N.RAJAN BABU
SRI.P.GOPALAKRISHNAN (MVA)
SRI.A.R.EASWAR LAL**

RESPONDENT(S):

**1. P.K. SUBRAN
PAYYAPPILLYVEEDU, MADATHUNU PODY P.O,
THRISSUR PIN 680609**

**2. THE INDUSTRIAL TRIBUNAL
PALAKKAD PIN 678001**

**R1 BY ADV. SRI.S.GOPAKUMAR
R1 BY ADV. SMT.T.M.BINITHA
R BY ADV. GOVERNMENT PLEADER SRI. T.J. MICHAEL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 12692 of 2012 (J)

APPENDIX

PETITIONER(S) EXHIBITS

**EXT.P1 A TRUE COPY OF THE COMPLAINT BY 1ST RESPONDENT DATED
7/6/05**

**EXT.P2 A TRUE COPY OF THE COUNTER STATEMENT OF THE
MANAGEMENT**

**EXT.P3 A TRUE COPY OF THE NUMBER OF DAYS 1ST RESPONDENT HAS
WORKED FROM 1998-2001**

EXT.P4 A TRUE COPY OF THE REJOINDER

EXT.P5 A TRUE COPY OF THE AWARD DATED 25/11/2010

RESPONDENTS' EXHIBITS : NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.12692 of 2012 - J

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Dated this the 12th day of January, 2015

J U D G M E N T

The petitioner, the management is before this Court, challenging the award passed by the Industrial Tribunal, Palakkad, produced at Ext.P5. Primarily, the respondent points out that the original petition itself is delayed insofar as the order of the Industrial Tribunal is dated 25.11.2010 and the management has chosen to approach this Court with a writ petition in 2012. It is also contended by the respondent that the management did not, despite having filed a written statement, lead any evidence to prove the averments raised in the written statement.

2. The learned Counsel for the petitioner however would contend that based on Section 25FFF read with Section 25B of the Industrial Disputes Act, 1947 (for brevity, 'the I.D Act'), the respondent workman cannot be said to have any sustainable claim for compensation, since

the respondents have not worked for 240 days, continuously in a year, as provided under Section 25B(b)(i).

3. The workman had raised a dispute on the question of denial of employment and the issue referred was with respect to the justifiability of such denial, as also the sustainability of the claim for reinstatement. The brief facts to be noticed are that the workmen were said to have been employed as temporary workers in the defibering unit of the management establishment between 18.11.1998 to 02.08.2000 and later, in the Rubber Backed Car Mats and Tile Manufacturing Unit (RBCM) of the management establishment, between 30.08.2000 and 12.09.2001.

4. The management, in its written statement, admitted that the workman had been working as such, from 18.11.1998 to 12.09.2001. The only contention raised was that the same was not a regular appointment, since it was not approved by the Government of Kerala. The engagement was said to be purely temporary. The workman examined himself and marked documents at Exts.W1 to W3.

5. It was specifically noticed by the Industrial Tribunal in Ext.P5 award that despite availing several adjournments, the management failed to adduce any evidence and there was also no representation for the management, when the matter was taken up for final hearing on 19.11.2010.

6. The Industrial Tribunal found that the employment of the workman from 18.11.1998 to 12.09.2001 has been admitted. It was rightly found that his employment being on temporary/daily wages was of no consequence and the workman would be entitled to be treated as one under Section 2(s) of the I.D Act. The admitted case of the management was found to be sufficient to hold that the workman had three years continuous service bringing such employment under Section 25B of the I.D Act. It was in fact, specifically noticed by the Tribunal that the [[management has not even contradicted the testimony of the workman that he had worked 240 days in each year.

7. It is to be found that the contention now raised

by the management that there was no continuous service of 240 days in an year as mandated under Section 25B, is only an afterthought. The learned Counsel would point out the averments in the memorandum of writ petition to contend that the days in which the workman was employed is clearly stated therein. Essentially, though the present proceeding is under Article 226, the same is in challenge of an order passed by an adjudicating authority constituted under the I.D Act and this Court cannot proceed on the basis of the averments made on affidavit. The confined jurisdiction commends interference only when the order passed is palpably erroneous or perverse, being totally unsustainable on the evidence placed on record. The petitioner/management failed to lead any evidence before the Tribunal.

8. The management did not even raise such a contention before the Industrial Tribunal. The management hence would have faced difficulty in leading evidence in respect of a plea, which was not specifically taken before

the Industrial Tribunal. In any event, it is to be noticed that the management chose to remain absent from the Industrial Tribunal and did not lead any evidence before the Industrial Tribunal.

9. Even if such a contention was raised in the written statement, definitely, the management had a duty to substantiate the same with proper documents. The claim for remand also cannot be considered at this stage for reason of there being absolutely no explanation for the absence of management before the Industrial Tribunal and the long delay caused in challenging the award before this Court.

For all the above reasons, the writ petition is found to be devoid of merit and would stand dismissed. Parties to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge.