

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 26255 of 2003 (A)

PETITIONERS :

L.THANKAMMA, KARUVILA THEKKATHIL VEEDU,
THAZHUTHALA, KOTTIYAM P.O., (VIA) KOLLAM

*ADDL.2ND PETITIONER IMPEADED

ADDL.P2. KUMARI SHYLAJA T.K. D/O.LATE THANKAMMA
KARUVILA THEKKATHIL VEEDU,
THAZHUTHALA, KOTTIYAM P.Q, KOLLAM

ADDL.2ND PETITIONER IMPEADED AS PER ORDER DT.21/1/2010 IN I.A.10074/09

BY ADVS.SRI.N.DHARMADAN (SR.)
SMT.R.RANJINI
SMT.D.PRENU

RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY SECRETARY TO LABOUR,
SECRETARIAT, THIRUVANANTHAPURAM

2. THE LABOUR COURT, KOLLAM

3. PROPRIETOR, DHANYA FOODS, MYLAKKAD FACTORY,
P.B.NO.115, KOLLAM-1

R3 BY ADVS. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF ORDER OF TERMINATION DT.29.11.97 ISSUED BY 3RD RESPONDENT

EXT.P2 : COPY OF REPLY DT.15.12.97 BY PETITIONER TO 3RD RESPONDENT

EXT.P3 : COPY OF PETITION DT.8.1.97 BY PETITIONER BEFORE THE 3RD RESPONDENT

EXT.P4 : COPY OF PETITION DT.26.12.97 BY PETITIONER TO DIST.COLLECTOR

EXT.P5 : COPY OF ORDER G.O.(MS)NO.57/92/LBR DT.25.7.92 BY GOVERNMENT

EXT.P6 : COPY OF AWARD IN I.D.NO.86/99 DT.10.3.03 PASSED BY LABOUR COURT,
KOLLAM

EXT.P7 : COPY OF M1(DECLARATION AND NOMINATION FORM) DT.14.9.63 ISSUED BY
EMPLOYEES PROVIDENT FUND OFFICER

EXT.P8 : COPY OF M2 (DECLARATION FORM) DT.5.9.63 ISSUED BY EMPLOYEES
PROVIDENT FUND OFFICER

EXT.P9 : COPY OF WRITTEN STATEMENT DT. ... NOV.2001 FILED BY 3RD RESPONDENT
BEFORE THE LABOUR COURT, KOLLAM

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.26255 of 2003

Dated this the 20th day of March, 2015

J U D G M E N T

This writ petition is filed by a worker challenging Ext.P6 award dated 10.03.2003 in I.D.No.86/1999. The original petitioner is no more. The additional 2nd petitioner, her daughter, was impleaded as her legal representative, after her demise on 13.02.2009.

2. The petitioner was a shelling worker under the 3rd respondent. According to her, she was entitled to continue in service up to the age of 60. However, she was terminated prematurely. The case of the petitioner is that, she had joined the factory as a shelling worker at the age of 22 on 01.04.1963. Her date of birth is 15.01.1117 M.E. (Malayalam Era) corresponding to 31.08.1941. She had no education. She has no school records to prove her date of birth. She was superannuated on 31.12.1997 alleging that, she had completed 58 years of age on the said date.

3. According to Adv.Smt.R.Renu who appears for the petitioners, her client had entered service at the age of 22 on 15.01.1139 M.E. The said date has by mistake or by manipulation been altered as 1939. It is on the said basis that, the petitioner has been prematurely retired. According to the learned counsel, she was entitled to continue in service up to the age of 60. In order to support the above contention, the counsel places reliance on the Kerala Cashew Workers Relief and

Welfare Fund Scheme, 1988 (hereinafter referred to as 'the Scheme' for short). As per paragraph 41 of the said Scheme, a person who has been working in a cashew factory for a period of three years immediately preceding the date on which the Scheme came into force was entitled to a monthly pension at the rate fixed by the Government on their retirement upon completion of 60 years of the age. Therefore, according to the counsel, the petitioner was entitled to continue in service up to the age of 60. It is further pointed out that, paragraph 41 has been amended in 1997 to provide that, a certificate issued by a qualified Government Medical Practitioner not below the rank of an Assistant Surgeon shall be sufficient to prove the age of a person. In view of the above provisions, it is contended that, the petitioner was entitled to continue in service up to the age of 60 years. The petitioner had produced a medical certificate issued by an Assistant Surgeon in support of her claim. However, the above aspects have not been considered by the Industrial Tribunal in Ext.P6 award. Reliance is placed on the decision of the Honourable Supreme Court in ***M/s. Atlas Cycle (Haryana) Ltd. v. Kitab Singh [AIR 2013 SC 1172]*** to contend that, this Court has the power under Article 226 to interfere with the decision on questions of fact entered by the Labour Court in an award. Therefore, the counsel seeks the issue of appropriate directions setting aside Ext.P6 and directing payment of retirement benefits of the petitioner to the additional 2nd petitioner.

4. Adv.Sri.N.Raghuraj appears for the 3rd respondent. According to the learned counsel, as per the terms of the reference made to the Industrial Tribunal, the only issue that arose for consideration was whether termination of service of the petitioner was justified or not. No relief claiming right to continue up to the age of 60 years was claimed by the petitioner before the Industrial Tribunal. There was no such question referred. With respect to the applicability of the Scheme, it is contended that the petitioner was not a member of the Scheme and that, for the said reason, this Scheme was not applicable to her. According to the learned counsel, no contention claiming the benefit of the Scheme was raised before the Industrial Tribunal. Therefore, it is not open to the petitioner to raise the same before this Court for the first time. It is further pointed out by the learned counsel that, the 3rd respondent is only a successor in interest of the earlier management under whom the petitioner had initially entered service. The records relating to her service were being maintained by the management of the factory from 1963 onwards. The petitioner was terminated in accordance with the records relating to her service available in the factory. As per the records, the petitioner had attained superannuation. It is pointed out that, Ext.P7 document is of the year 1963 and maintained by a statutory Corporation. If the petitioner doubted the correctness of the said document, it was up to her to have taken steps for production of the original thereof from the statutory

authority, which was not done. In the absence of any proof regarding the actual age of the petitioner, it is contended that the petitioner is not entitled to any of the reliefs claimed.

5. The learned counsel for the petitioner responds by placing reliance on the claim statement submitted by the workman before the Industrial Tribunal. It is stated that, she had sought for reliefs entitling her to continue in service till she attained the age of 60.

6. Heard. The case of the petitioner is that, though her actual date of birth is 15.01.1117 M.E corresponding to 31.08.1941, she was terminated on 31.12.1997. If her correct date of birth is taken into account, even assuming that her retirement age was 58 years, she was entitled to two more years of service. She has a further case that she was entitled to continue till the age of 60. However, it is admitted in the writ petition itself that, she does not have any document to prove her correct date of birth. In the above circumstances, her date of birth would have to be gathered from the documents that are available. The Industrial Tribunal has placed reliance upon the entry regarding her date of birth in the declaration and nomination form that was submitted under the Employees' Provident Funds Scheme, 1952. A copy of the said declaration is Ext.P7. Ext.P7 shows the date of birth of the petitioner as 28th April 1939. I do not see any manipulation or interpolation in the said entry in Ext.P7. However, the counsel for the petitioner has taken strong exception to the entry regarding the name

of the petitioner below the thumb impression. It is pointed out that, though originally the name of some other person had been written, the same was scored off to enter the petitioner's name. It is true that, the petitioner's name has been entered after scoring off some other name that was already written there. The said document is dated 14.09.1963. Another document that has been relied upon by the Industrial Tribunal is Ext.M2, a declaration form that was submitted to the Employees' State Insurance Corporation by the petitioner. In the said declaration form, the petitioner's year of birth has been shown as 1939. According to the learned counsel for the petitioner, in Ext.P8 also there is overwriting at the place where the year has been entered as 1939. Therefore, according to the learned counsel for the petitioner, it is the year 1.1.39 that has been corrected as 1939. However, a perusal of Ext.P8 does not show that, there has been any tampering with the numerical '19' that forms part of the entry, '1939'. Overwriting is there only in respect of the numerical '3' and '9'. As rightly pointed out by the counsel for the 3rd respondent, if the petitioner doubted the correctness of Exts.P7 and P8, the petitioner could have taken steps to get the originals thereof produced from the statutory authority, which was not done. The resultant position is that, there is no evidence regarding the date of birth of the petitioner, as asserted. Admittedly, the petitioner does not have any records to support her claim.

7. It is pertinent to note that the burden of proof in the present case is squarely on the petitioner. She is the person who asserts that her date of birth is 15.01.1117 M.E. and that, the entries in the records maintained by the management are wrong. In the absence of any evidence to support her case, her claim has to fail. It may be true that there are certain infirmities in the documents produced by the management. However, the existence of such infirmities cannot advance the case of the petitioner. Such infirmities also cannot be substituted for the proof that is expected to be produced by the petitioner. It is worth noticing that, the documents relied upon by the management are not of recent origin. Ext.P7 is of the year 1963. The originals of Exts.P7 and P8 have not been produced or examined by the Labour Court. The only document produced by the petitioner to support her claim was a certificate issued by an Assistant Surgeon. The contents of the Certificate have been extracted in paragraph 9 of Ext.P6 award. It is clear from the wording of the said certificate that, the same was issued on the basis of the statements made by the petitioner. The Labour Court has relied on Exts.M1 to M3, in which the petitioner's date of birth has been shown as 28.04.1939. The Industrial Tribunal cannot be found fault with for having placed reliance on the said documents in the absence of any other material or evidence. I do not find any infirmity in the reasoning of the Industrial Tribunal justifying an interference with the same under Article 226 of the

Constitution.

For the above reasons, this writ petition is dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV