

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 21681 of 2006 (F)

PETITIONER:

**V.SIVAPRASAD, PUTHENPARAMBIL HOUSE,
P.O KARUKACHAL, KOTTAYAM DISTRICT.**

**(ASSISTANT VIGILANCE OFFICER, TERMINATED,
COCHIN SHIPYARD LTD, COCHIN)**

BY ADV. SRI.K.G.ANIL BABU

RESPONDENTS:

**1. THE COCHIN SHIPYARD LIMITED, COCHIN-15,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.**

**2. THE EXECUTIVE DIRECTOR (ACP),
COCHIN SHIPYARD LTD., COCHIN-15.**

**R1& R2 BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
R1& R2 BY ADV. SRI.RONY J.PALLATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF THE MEMORANDUM NO.SEC/28/36/90 DATED 3.7.1992
- P2: TRUE COPY OF THE ORDER NO.PF/3100 DATED 9.7.1992
- P3: TRUE COPY OF THE ORDER IN CMP NO.1458/96 DATED 16.01.1996
- P4: TRUE COPY OF THE ORDER IN CMP NO.10350/96 IN O.P. NO.948/96 DATED 2.4.1996
- P5: TRUE COPY OF THE JUDGMENT IN O.P. 31873/2000 DATED 14.11.2000
- P6: TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 25.11.2000
- P7: TRUE COPY OF THE LETTER NO.PF 3100 DATED 14.12.2000
- P8: TRUE COPY OF THE JUDGMENT IN W.A. 1072/04 DATED 18.6.2004
- P9: TRUE COPY OF THE JUDGMENT IN O.P. NO.2245/01 DATED 5.4.2006
- P10: TRUE COPY OF THE REPRESENTATION DATED 12.6.2006 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- P11: TRUE COPY OF THE LETTER NO.PERL/4(83)90 DATED 11.7.06 ISSUED BY THE 2ND RESPONDENT
- P12: TRUE COPY OF THE LEAVE SANCTION SLIP ISSUED TO THE PETITIONER DATED 23.3.2000

RESPONDENT'S EXHIBITS

- R1(A) TRUE COPY OF THE REQUEST DATED 3.7.1995 MADE BY THE PETITIONER TO THE FIRST RESPONDENT FOR EXTENSION OF 6 MONTHS
- R1(B) TRUE COPY OF THE ORDER DATED 12.1.1996 REJECTING THE REPRESENTATION FILED BY THE PETITIONER
- R1(C) TRUE COPY OF THE ABOVE JUDGMENT OF THIS HON'BLE COURT IN O.P. NO.948/996 DATED 11.7.2000
- R1(D) TRUE COPY OF THE PAY REVISION ORDER NO.PERL/21(10)/2000- DATED 7.2.2000

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 21681 of 2006 (F)

Dated this the 18th day of December, 2015

J U D G M E N T

The petitioner is before this court challenging the denial of pay revision for a certain period in which he was continued in the employment of the respondent Company and also claims leave encashment as per Ext.P12.

2. The petitioner was appointed as a contract worker as per Ext.P2 dated 9.7.1992. The petitioner is said to have continued in the contract employment up to 31.12.1995, when he was sent out of service. The petitioner filed O.P. No.948/1996, in which there was an interim stay granted. The petitioner, in the said original petition, claimed that he is entitled to be

regularised and continued in employment. The petitioner, on the basis of the interim order passed in the above writ petition, continued from 1.1.1996 to 11.7.2000; on which later date the original petition was dismissed by Ext.R1(c). The petitioner's claim for regularisation and continuance in employment were rejected. The petitioner was, immediately thereafter, terminated from service from 12.7.2000.

3. The petitioner, on the strength of Ext.P8, would contend that the petitioner being in the rolls of the Company from 9.7.1992 to 11.7.2000; would be entitled to any pay revision which the Company's employees were entitled to. It is an admitted position that the petitioner's pay was revised, in accordance with the revision applicable to the employees, when he continued on contract employment as permitted by the

Company between 9.7.1992 and 31.12.1995. What the petitioner now claims is similar benefits when he was continued by virtue of the interim order in the writ petition which was eventually dismissed. The petitioner's continuance in the Company from 1.1.1996 was only based on an interim order and the original petition eventually was rejected as per Ext.R1(c). Hence, the petitioner's continuance, though remunerated by the Company in accordance with the last pay drawn, as on the date of termination of his contract employment, no revisions were granted subsequently.

4. This Court finds a clear distinction from the facts in Ext.P8. Therein, a person was appointed in a regular scale of pay and continued on contract employment was terminated. The claim raised was for

the revision of pay to be made applicable to the said contract employee, as was made applicable to the regular employees. This has been granted to the petitioner when he validly continued in employment for the period in which the contract was valid. The continuance after the contract period was only on the basis of the interim order in the writ petition in which he claimed regularisation.

5. A Division Bench of this Court in Ext:P-8, found that when a person was in the rolls of the company, but subsequently terminated from service, for any reason what so ever, was eligible to get their pay scales revised. This would apply only till the date on which the petitioner was terminated from the contract employment i.e. on 31.12.1995. The continuance thereafter was not at the will of the company, but on

the basis of the interim order passed by this Court. When the original petition itself, in which the interim order was passed, stood rejected, there is no question of the petitioner being given any benefits during the period in which he was continued. Reference can be made, to buttress the above finding, to the decision of the Hon'ble Supreme Court in **Abhimanyoo Ram v. State of Uttar Pradesh and another - 2008 (17) SCC 73.**

6. The further contention is with respect to the leave encashment applicable to the petitioner. The learned counsel appearing for the respondent would contend that such leave encashment benefits can be only granted to those persons in regular employment of the Company and only at the time of superannuation. As far as the petitioner is concerned, he is only a

contract employee and there is no question of superannuation. The petitioner would not hence be entitled to that relief also.

The writ petition would stand dismissed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE