IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 17254 of 2010 (F)

ID.NO. 39/2005 OF INDUSTRIAL TRIBUNAL, KOLLAM

PETITIONERS :
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*S.R.P. NAMPI REDDIAR, PROPRIETOR, (DIED)
SELVI, AISWARYA SILK HOUSE, CHANGANACHERRY.

*<u>ADDL.P2 TO P7 IMPLEADED</u>

*ADDL.P2: GOPALAKRISHNAN,
S/O.LATE S.R.NAMBI REDDIYAR, SELVI NIVAS,
VAZHAPPALLY.P.O., CHANGANACHERRY.

*ADDL.P3: INDIRAAMMAL.N., W/O.LATE S.R.NAMBI REDDIYAR,
SELVI NIVAS, VAZHAPPALLY.P.O., CHANGANACHERRY.

*ADDL.R4: SURESH.N., S/O.LATE S.R.NAMBI REDDIYAR,
SELVI NIVAS, VAZHAPPALLY.P.O., CHANGANACHERRY.

*ADDL.R5: LAKSHMI.V., D/O.LATE S.R.NAMBI REDDIYAR,
SELVI NIVAS, VAZHAPPALLY.P.O., CHANGANACHERRY.

*ADDL.R6: USHA, D/O.LATE S.R.NAMBI REDDIYAR,
SELVI NIVAS, VAZHAPPALLY.P.O., CHANGANACHERRY.

*ADDL.R7: SELVI, D/O.LATE S.R.NAMBI REDDIYAR,
SELVI NIVAS, VAZHAPPALLY.P.O., CHANGANACHERRY.

*ADDL.P2 TO P7 ARE IMPLEADED AS PER ORDER DATED 27/10/2014 IN IA.NO.12757/2014.

BY ADV. SRI.P.HARIDAS

RESPONDENT(S):

SMT.AMBILIMOL, PUTHUPARAMBIL (CHALAYIL),
THURUTHY, CHANGANASSERRY, KOTTAYAM.

BY SRI.K.GOPALAKRISHNA KURUP,SENIOR ADVOCATE
ADV. SMT.K.DEEPA (PAYYANUR)
SRI.S.MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-01-2015, ALONG WITH WPC.NO. 15295/2014, THE COURT ON 27-01-2015 DELIVERED THE FOLLOWING:

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WP(C).NO.17254/2010

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE AWARD DATED 8TH DAY OF JULY,2009 IN I.D.NO.39 OF 2005 ON THE FILE OF THE INDUSTRIAL TRIBUNAL, IDUKKI.

P2 COPY OF THE AFFIDAVIT DATED 17TH DECEMBER, 2007 FILED BY RESPONDENT.

P3 COPY OF THE REPORT DATED 15/3/2005

P4 COPY OF THE CERTIFICATE DATED 21/07/2010 ISSUED BY PROPRIETOR AT LIYA FASHIONS, CHANGANACHERRY.

P5 COPY OF THE LICENCE NO.C1.VIII/107/2004-2005 DATED 20/11/2004 FROM THE PROPRIETOR, MR. TOMY CHACKO KALAYIL.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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K.VINOD CHANDRAN, J

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W.P.(C).Nos. 17254/2010 & 15295/ 2014

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Dated 27th January, 2015

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JUDGMENT

W.P.(C).17254/2010 is filed by an employer challenging the Award passed in an industrial dispute raised by the respondent employee. *Inter alia* the challenge is made on the ground that the Award passed is *ex parte*. Admittedly, the employer petitioner is no more. The legal heirs have now come on record. The legal heirs of the employer had also approached this Court with a separate writ petition challenging the recovery proceedings initiated pursuant to the order, passed in a Claim Petition under Section 33C (2), which is numbered as WP(C).15295/2014. W.P.(C). 15295/2014 was filed by the legal heirs of the employer, initially only against the revenue recovery proceedings initiated.

2. For proper adjudication of the cases, a brief look first at the proceedings in the earlier writ petition is essential. When the writ petition was

filed by the employer, there was a stay of the Award. Subsequently, the employee moved an application under Section 17B of the Industrial Disputes Act (for short 'the ID Act'). That was allowed by an order dated 14.10.2010. Since the Award had directed reinstatement of the workman, this Court directed payment of arrears of wages from 02.06.2010 to the workman and to continue payment of wages at the rate of the last drawn wages. Since only Rs.9000/- was paid pursuant to the order passed by this Court, the employee was again before this Court seeking vacation of the interim order. This Court, by order dated 30.07.2012, recorded the submission made by the employee that no amounts were paid and directed the counsel for the employer to report as to whether the order under Section 17B had been complied with. Later on, by order dated 07.08.2012, noticing that the order was not complied with, the stay stood vacated.

3. In the meanwhile, the employee under Section

33C(2), approached the Labour Court with a Claim Petition numbered as 52 of 2009 wherein initially the proprietor, who was made a party, was the only respondent and later, on his demise, the legal heirs were impleaded. The Claim Petition was allowed, as per order dated 23.08.2013 which is produced as Ext.R1(A) in W.P.(C).15295/2014. The said order is sought to be challenged by way of an amendment.

4. The recovery proceedings were initiated pursuant to the order passed in the Claim Petition. The petitioners in W.P.(C).15295/2014, being the legal heirs of the employer, had raised a contention that an amount of Rs.43,500/- had been paid through the Advocate. The learned Senior Counsel who appears for the employee contends that no such payments were made through him. The learned counsel appearing for the petitioner confirms that the Advocate referred to, was not the Advocate of the respondent herein but the deceased employer's Advocate who filed the Claim

Petition before the Labour Court. The same is recorded to clear any misapprehension that would be caused by reason of the specific averments made in the writ petition.

5. In any event, what remains to be considered at present is the sustainability of the Award in the Industrial Dispute as also the order in the Claim Petition. W.P.(C).17254/2010 is the challenge against the Award passed. The employer who was the petitioner is no more and the legal heirs have sought impleadment which has been allowed by this Court. The respondent/employee contended that she was a sales woman in a textile shop run by the Management having been so appointed from 05.06.1992 till 27.06.2005; when her services were terminated illegally. The issue referred for adjudication before the Industrial Tribunal was as follows:-

> “Whether the denial of employment to Smt.Ambilimol, Employee of M/S.Selvi,

Aiswarya silk house, Changanassery by its management is justifiable ? If not, what relief the workman is entitled to ?”

6. The Management resisted the prayer for reinstatement with back wages, contending that the employee was only a part-time employee who had no continuous service and was employed intermittently during festival season, on daily wages. The Management contended that certain allegations were raised against the employee, which, eventually led to abandonment of work by the employee. The Management witness MW3 is found to have spoken of the employee, as a permanent employee of the Textile shop; but, however supported the Management insofar as the abandonment of work was concerned. Nothing obviously was produced to substantiate the claim of abandonment of employment, which hence, need not, at all be looked into by this Court.

7. The employee had, by filing a proper

petition, called for the inspection report of the Assistant Labour Officer, Changanachery, which was marked as Ext.M2 through the Assistant Labour Officer, Changanachery who was examined as CW1. Said inspection report is seen produced at Ext.P3 wherein the squad under the District Labour Officer, Kottayam, had conducted inspection on 15.03.2005. In the list of employees, the employee was specifically noticed and the period of employment of each of the employees were also specifically indicated, which varied from 4 months to 15 years. The inspection report dated 15.03.2005 was also affirmed by the Management. The employee in the dispute was indicated as having 12 years' service with the Management. Her monthly wages was shown as Rs.1500/- per month.

8. In the light of the evidence of the workman, Ext.MW3, Ext.M2 and Ext.C1 inspection report, the workman was found to be a permanent employee whose

termination was held to be illegal. Overwhelming evidence upon which the Labour Court entered such finding, cannot at all be re-appreciated by this Court. The jurisdiction conferred on this Court in examining an Award made by an Industrial Tribunal, is circumscribed and well-defined. No precedent need be noticed; but there can be found no unreasonableness in the conclusion arrived at by the Industrial Tribunal, which is on the basis of the wealth of evidence noticed herein above. The direction for reinstatement in service, with back wages and all other benefits, cannot at all be interfered with, on a re-appreciation of the evidence recorded before the Tribunal.

9. However, the specific aspect of the employer having passed away and the establishment being not in existence, has to be looked at, to decide on whether there could be any interference caused in the order for reinstatement and the terms on which such

interference could be caused. That question could best be considered after examining the other writ petition, in which an order passed under Section 33C (2) of the I.D.Act, is up for consideration.

10. W.P.(C).15295/2014 was initially a challenge confined to the recovery proceedings initiated by the respondent/workman based on an order passed by the Tribunal under Section 33C(2). The computation was the only question and the legal heirs of the Management were stated to have acquired no assets on the demise of the individual Management. Later on, an amendment was sought for, specifically challenging the order passed and the same has been allowed. Hence, as the writ petition stands now, the challenge is against the order passed under Section 33C(2) of the I.D.Act. The challenge is urged on the ground that, when the original Award found the last drawn salary of the petitioner to be Rs.1400/- the Labour Court stepped outside its jurisdiction, conferred

under Section 33C(2), in determining the claim on the basis of the minimum wages due to the petitioner, as notified under the Minimum Wages Act, 1948, (for short 'MW act') to employees covered under the Kerala Shops and Commercial Establishments Act, 1960, (for short 'SCE Act') and further computing the alleged bonus due.

11. Whether any adjudication as such could be made under Section 33C(2) is no longer *res integra* since it is trite that the Labour Court is not conferred with the powers to make any fresh adjudication but has to confine itself to the computation of the claim, in terms of money, which is otherwise sustainable legally or flows from an Award or settlement. The Labour Court could not hence decide on the existence of a legal right, which was questionable; when exercising power under Section 33C(2), which power is akin to that of an execution Court.

12. The Award ordered reinstatement and back wages from 27.06.2005 on which date, the petitioner was found to have been illegally terminated. The claim of the petitioner under Section 33C(2) as is discernible from Ext.P3 order was that, the petitioner having been appointed on 05.06.1992 was paid a monthly salary of Rs.650/- initially, with a promise of an increase of Rs.200/-in every succeeding year. It was specifically contended that the wages offered were much less than the prescribed minimum wages applicable to sales women in shops, coming under the purview of Shops and Commercial Establishments Act. The petitioner contended that despite demand for arrears of wages, the opposite party did not pay the same. The only dispute referred for adjudication between the parties is that concluded with Ext.P1 Award. The said dispute was only as against the illegal termination and not at all concerned with any arrears of wages.

13. The claim which was sought to be computed in terms of money under Section 33C(2) was not the claim arising from the Award of 08.06.2009 (Ext.P1), ordering reinstatement and back wages. It is to be noticed that there was no claim for arrears of wages or fixation of wages, as per the minimum wages notified under the MW Act or SCE Act in the said “reference”. The petitioner's specific claim under Section 33C(2) was her entitlement to arrears of wages at the rate of Rs.2400/- per month for the period from 05.06.1992 to 08.07.2009. It was on such claim that the Labour Court awarded Rs.4,70,383/- which, according to the Labour Court, included arrears of wages of Rs.4,29,000/- between 05.06.1992 to 08.07.2009 and the bonus of Rs.40,783/- claimed at the rate of 8.33%.

14. The learned Senior counsel appearing for the respondent/employee would contend that Et.P1 Award

did not have any finding as to the salary due to the employee. In such circumstances, when reinstatement was ordered, the Labour Court could, under Section 33C(2) compute the salary payable in accordance with the minimum wages due in the establishment. This Court is of the opinion that, definitely in considering the wages which is due to the petitioner/employee on reinstatement, computation should be made in accordance with the minimum wages payable and that could even be related to a period prior to the termination.

15. The application under Section 33C(2) definitely was not entirely on the basis of the Award in I.D.39 of 2005 and claimed the minimum wages from the date of alleged appointment to the date of such application, especially in the context of the termination having been declared illegal. The claim was also on the ground that the employee, for the said period, was entitled to the pay fixed under the

MW Act since the employee was admittedly covered under the SCE Act. The claim for the period prior to termination was independent of Ext.P1 Award.

16. The learned counsel appearing for the legal heirs of the Management would contend that no such claim could have been raised under Section 33C(2) since that would require a further adjudication and a reference under Section 10 is the appropriate remedy to be adopted. The learned senior counsel appearing for the employee *per contra* would contend that, the wages due to an employee covered under the SCE Act is specified under the notifications issued under the MW Act. Thus, there arises a legal right on the employee to seek for such minimum wages and that would only lead to computation of a legal right, in terms of money.

17. Apposite; to decide the issue, would be a reference to a decision of a learned single Judge of

this Court reported in **G4S Security Services (India) Pvt. Ltd. v. Satheeshkumar K and Others (2010 (1) KLT 463)**. Therein the very same issue of an employee covered under the SCE Act claiming wages under the MW Act under Section 33C(2) of the ID Act came up for consideration. This Court after examination of a number of decisions of the Honourable Supreme Court and this Court, found that the claim for minimum wages so raised is maintainable under Section 33C(2). Section 33C(2), though in the nature of execution proceedings, however, was held to be not confined to an execution of a right flowing from an Award or settlement. An existing statutory right, computable in terms of money was also held to be one which could be validly urged under Section 33C(2), provided it is a bona fide dispute and there is no question raised as to the validity of the claim.

18. It was held that there would be a travesty of justice if it was held that, to enforce a

statutory right, a workman has to go through the cumbersome procedure of raising a dispute under Section 10 of the ID Act. This Court relied on the judgment of the Honourable Supreme Court in **Bombay Gas Co. v. Gopal Bhiva (AIR 1964 SC, 752)** and those of this Court in **Hindi Prachar Press v. State of Kerala (1982 KLT 285)**, **Vimal Printers v. Omana (1982 KLT 923)** and **Deepak Photos v. State of Kerala (2000 (3) KLT 511)**. Hence, the issue raised by the learned counsel for the petitioners would no longer be available for consideration; the same is not *res integra*.

19. Be that as it may, it is to be noticed that the Labour Court dealing with the application under Section 33C(2), accepted the statement of the employee that Rs.2400/- was paid as minimum wages and granted the same from 1992 onwards till 8.7.2009. No notification under the MW act was produced nor has the Labour Court referred to any such notification.

Definitely, the rate of minimum wages applicable to an employee under the SCE Act would not be Rs.2400/- right from 1992 onwards upto 2009. Though Section 33C (2) is a proceeding in the nature of Execution Proceedings, computation should be evident from the order passed and the legal right upon which such claim is allowed, should also be clear from the Award. It is to be emphasized that there was no reference to any notification in the award.

20. The employment was proved and admittedly, the petitioner was paid a monthly salary of Rs.650/- initially, on a further condition that after one year, an increase of Rs.200/- per month in the continuing years would be made, which increase was alleged to have been never paid to the employee. The employee cannot contend that no amounts were paid as wages, especially since even at the time of the illegal termination, the employee had been continuing in the establishment for more than 12 years. It is

also to be noticed that even as per the documents proved before the Labour Court, in the earlier proceedings, as called for by the employee; the employee was paid an amount of Rs.1500/- at the time when such inspection was conducted. The employee is also seen to have acknowledged the same in Ext.P3 (W.P.(C).17254/2010), the inspection report of the District Labour Officer. Hence, it cannot be said that the employee was not paid any wages.

21. Necessarily, the petitioner's admission that she was paid Rs.650/- initially has to be accepted. The petitioner at the time of Ext.P3 inspection, should also be held to have been paid wages of Rs.1500/-. The employee, hence, from the admitted case, was initially paid Rs.650/- and with periodic increase, after 12 years was paid wages of Rs.1500/-. The petitioner's initial employment should also be taken as commencing 12 years prior to Ext.P3 (WP(C). 17254/2010). The wages admittedly paid also has to be

computed and deducted from that determined under the MW Act.

22. The claim for bonus would have to be agitated before the appropriate forum under Section 10 and not before the Labour Court under Section 33C (2). The Honourarble Supreme Court in **Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner (2007 (5) SCC 281)** considered the provisions of U.P ID Act 1947 corresponding to Section 33C(1) of the ID Act. The contention that bonus comes within the definition of wages was negatived. Examining the definition of wages under the ID Act and the PW Act, it was held so:

> “16. Different statutes, enacted by Parliament from time to time, although beneficial in character to the workmen, seek to achieve different purposes. Different authorities have been prescribed for enforcing the provisions of the respective statutes. The authority under the Payment of Wages Act, 1936 is one of them.

> 17. In view of the fact that diverse authorities exercise jurisdiction which may be overlapping to some extent, the courts while interpreting the provisions of the statutes must interpret them in such a manner so as to give effect thereto."

23. The reference against the illegal termination ended in favour of the workman, granting reinstatement with back wages. The Management had challenged the same in a writ petition wherein there was a stay granted. Subsequently on the application of the workman under Section 17B, wages were directed to be paid which order was admittedly not complied with. The order of stay was vacated. The Award of the Labour Court has also been upheld by this Court.

24. In such circumstances, W.P.(C).17254/2010 would stand dismissed however with a modification as to the order of reinstatement, to take in the circumstance of the individual Management having

expired and the specific contention that the establishment is not continuing. It is to be specifically noticed that in the Award in C.P.52 of 2009 it is found that there is absolutely no evidence on the part of employee, to prove that the establishment has been continued after the death of the individual Management. In such circumstances, petitioner would be entitled to full back wages, computed on the basis of the notifications issued under the MW Act till the date of death of the individual Management. The employee would also be entitled to retrenchment compensation under Section 25F of the ID Act as on the said date computing the last drawn pay as that computed under the MW Act.

25. With respect to W.P.(C).15295/2014, the Award is set aside for the reason of there being no proper computation of the amounts with reference to the notifications under the MW Act, and deduction of amounts admittedly paid as wages. The matter is

remanded back to the Labour Court for fresh consideration. Pertinent would be the contention of the legal heirs that they have not succeeded to any assets of the individual Management. Definitely it has to be noticed that the recovery proceedings would be only against such assets which the individual Management left behind, for his legal heirs to enjoy.

WP(C).17254/2010 stands dismissed. W.P.(C). 15295/2014 stands allowed and the issue is remanded for consideration as directed above.

Sd/-

K.VINOD CHANDRAN,
Judge

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