

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 17388 of 2010 (W)

PETITIONER:

THE MANAGER,MOONGALAR ESTATE,
VANDIPERIYAR, IDUKKI DISTRICT.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH MENON

RESPONDENTS:

1. SMT.ISHA,KR/42/2223,MOONGALAR ESTATE,
NO.4 DIVISION, MOONGALAR.P.O, VANDIPERIYAR.

2. THE INDUSTRIAL TRIBUNAL,
IDUKKI.

R1 BY ADV. SRI.BIJU .C. ABRAHAM
GOVERNMENT PLEADER SRI. A. RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 : TRUE COPY OF THE AWARD DATED 15.7.2005 IN I.D. NO.47/2004.

P2 : TRUE COPY OF THE PAY SLIP ISSUED TO THE PETITIONER FOR THE MONTH OF JULY 1999.

P3 : TRUE COPY OF THE PAY SLIP ISSUED TO THE PETITIONER FOR THE MONTH OF FEBRUARY 2000.

P4 : TRUE COPY OF THE RELEVANT PAGE OF THE GRATUITY PAYMENT BOOK, WHICH CONTAINS THE THUMP IMPRESSION OF THE FIRST RESPONDENT.

P5 : TRUE COPY OF THE FORM 2 NOMINATION AND DECLARATION DATED 28.8.1974.

P6 : TRUE COPY OF THE FORM 2 NOMINATION AND DECLARATION (REVISED) DATED NIL.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

K.VINOD CHANDRAN, J

W.P.(C) No. 17388 of 2010

Dated this the 20th day of February, 2015

JUDGMENT

The petitioner challenges Ext.P1 award of the Industrial Tribunal, Idukki. The petitioner was the management and the first respondent was the worker in the dispute. The issue referred was the justifiability of the premature termination of service of the worker. The claim of the worker was that her date of birth was 01.07.1952 and she was prematurely superannuated on 31.12.2001, far earlier to her actual date of superannuation which falls on 01.07.2010. Admittedly, the petitioner was set *ex parte* before the Industrial Tribunal. The Tribunal proceeded on the basis of the pleadings of the worker and held that the termination of service from 31.12.2001 is illegal and unsustainable. The worker was directed to be reinstated in service with back wages and all other benefits.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The learned counsel for the petitioner submits that the petitioner had retired voluntarily without demur on 31.12.2001,

and had also received the entire gratuity amounts at that point of time. Only later, when the first respondent sought to settle the provident fund dues, the first respondent was made aware of Ext.P5 declaration filed before the Employees' Provident Fund Organisation which showed her date of birth as 1952. It is only on that basis the claim was made delayed, in 2004. It is submitted that Ext.P6 nomination and declaration form filed by the first respondent herself would indicate that her date of birth was 1943. The delay in filing the above writ petition occurred since the petitioner had been offered reinstatement in service in the year 2005 itself which she refused to take, is the contention. Later on the first respondent has also filed a claim petition under Section 33C(2) of the Industrial Disputes Act, 1947 for back wages, as per Ext.P1 award.

4. The learned counsel for the respondent however argues that the management had ample opportunity before the Industrial Tribunal which they did not choose to avail. Ext.P5 is again relied upon to contend that the same is a declaration which the management had attested.

5. Even in Ext.P5 the date is not specified and what is declared is that the year of birth as 1952. The petitioner's own declaration at Ext.P6 indicates that her date of birth is 1943. In such circumstances, definitely the worker ought to have produced some evidence to indicate that her actual date of birth is 1952 as declared in Ext.P2, especially since the worker herself had made two declarations with different years of birth. Only considering the discrepancy in the declarations made by the worker herself, this Court is of the opinion that interest of justice, would be served only if the Industrial Tribunal adduce evidence and consider the matter afresh. However considering the long delay; despite the averment of the petitioner that petitioner had directed the worker to rejoin duty, this Court is of the opinion that the *ex parte* award can be set aside only on terms.

6. In such circumstance, the petitioner-management is directed to pay Rs.10,000/- (Rupees Ten thousand only) to the first respondent within a period of one month from today or to make deposit of the same before the Industrial Tribunal, Idukki; in which event Ext.P1 would stand set aside and the matter would

stand restored to the Industrial Tribunal, Idukki. The Industrial Tribunal shall issue notice to the worker and consider the matter afresh after affording sufficient opportunity to the worker to adduce evidence to prove her date of birth.

Writ petition is allowed on condition.

Sd/-
K.VINOD CHANDRAN,
JUDGE

//true copy//

P.A. to Judge

smv