

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 24147 of 2005 (Y)

PETITIONER(S):

**K.S.E.W. UNION (INTUC), REG.NO.467/76,
VANDIPERIYAR REPRESENTED BY ITS PRESIDENT.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR**

RESPONDENT(S):

1. LABOUR COURT, ERNAKULAM, KOCHI.

**2. KOTTAMALA ESTATE REPRESENTED BY ITS
MANAGER, BONAMI P.O., ELAPPARA
IDUKKI DISTRICT.**

*** ADDL.R3 IMPEADED**

**3. M/S.M.M.J.PLANTATIONS,
MANARKKAT BUILDINGS, PALA, REPRESENTED BY ITS
MANAGING PARTNER REJI MICHAEL**

ADDL.R3 IMPEADED AS PER ORDER DATED 2/11/2005 IN IA.15786/2005

**R1 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R3 BY ADVS. SMT.S.K.DEV
SRI.M.RAJ MOHAN
SRI.SANTHOSH PABRAHAM
SMT.DEEPSUR D.JAYAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 24147 of 2005 (Y)

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF THE AWARD PASSED BY THE R1 IN ID.87/96 DATED 7/11/2003.

RESPONDENTS' EXHIBITS

R3(A): COPY OF THE COMPLAINT DATED 27/6/11

**R3(B): COPY OF THE ORDER DATED 6/12/11 IN IA.1026/11, OS.254/11 OF THE COURT
OF MUNSIFF, PEERUMED.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J

W.P(C) No. 24147 of 2005

Dated this the 04th day of March, 2015

J U D G M E N T

The denial of employment of a worker by name Santha Kumari, was referred for adjudication. The Labour Court found the denial to be unjustifiable. But, however, restricted the relief to a compensation of Rs.15,000/-. The petitioner, the Union which espoused the cause of the worker, challenges the award claiming reinstatement, with full backwages.

2. The admitted fact is that the worker has absented herself from 19.1.1988 for more than five years. The worker was removed from the rolls on 17.04.1993, allegedly in accordance with the Standing Orders. The worker contended before the Labour Court that her absence was not wilful. The Union produced a series of documents, which

indicated that the worker had been under medical treatment. Ext.W2, issued by the Medical College Hospital at Kottayam also is stated to indicate that the worker was advised light-work. This, in all probability would have been due to the hysterectomy conducted on her. However, there is nothing produced before the Labour Court, to show that she had a permanent disability; which disabled her from carrying on the work in an estate. The learned counsel for the Union merely asserts that, by reason only of Ext.W2 the worker should have been assigned light-work.

3. On that ground the worker admittedly kept away from employment, for more than five years. No disability certificate was produced before the management, nor even a communication seeking leave. The contention that the worker approached

the management for being allotted light-work, also remains an assertion, without any substantiation.

4. The Management contended that the worker was removed from service only on the basis of the Standing Orders, which sanctioned such removal, on unauthorised absence beyond ten days. The Standing Orders were produced as Ext.M1. Specific clause in the Standing Orders, as extracted by the Labour Court was that the worker sought to be severed from service ought to be issued with a show cause notice, which obviously, the management has not done. The contention of the management was that a show cause notice was issued in 1989 and on the worker submitting no explanation, the worker's services were terminated as per the Standing Orders in 1993. The finding of the Labour Court that termination was not in accordance with Standing

Orders, hence has to be upheld.

5. However, with respect to the relief, the Labour Court confined the same to a compensation of Rs.15,000/-. The petitioner claims reinstatement and backwages. The fact that the petitioner had voluntarily kept away from employment for more than five years, on the basis of a certificate issued at Ext.W2, stands against the worker's claim of reinstatement. No claim of backwages also could be considered on the facts of the above case. If the worker was not allotted work, definitely, appropriate proceedings could have been initiated through the Union. No such move was made and on termination, pursuant to unauthorised absence for more than five years; a claim of denial of employment was raised. No reinstatement or backwages could be granted on the afore stated facts.

6. All the same the petitioner had been continued from 1976 to 1988. The petitioner can only be treated as having retired on 19.1.1988 and the entire retirement benefits due to her would be paid and in addition, the compensation of Rs.15,000/- as directed by the Labour Court. Ext.P1 order would stand modified to that extent.

7. The learned counsel for the management would submit that she is occupying the quarters even now and that she has filed an application before the State Human Rights Commission for getting electricity connection to the premises. The management wants to evict the petitioner from the premises. The learned counsel for the petitioner, however, submits that a suit is pending which was initiated by the management, alleging encroachment of the management's property. In the context of

pending proceedings, this Court would not say anything on that aspect. Nor is it possible to direct either way or find on that aspect since this is a proceeding confined to the issue referred under the I D Act. The management would be entitled to take proceedings in accordance with law.

Writ petition is partly allowed. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge