

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 24718 of 2005 (P)

PETITIONER(S):

V.KRISHNANKUTTY, S/O.VELU PILLAI,
THANDONI VEEDU, CHARUMOODU, PUTHUKULANGARA P.O.
NEDUMANGAD.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.N.NARAYANAN NAIR
SRI.NAIR AJAY KRISHNAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.VIMAL KUMAR.A.V.
SRI.A.G.GIRISH KUMAR

RESPONDENT(S):

1. LABOUR COURT,KOLLAM.
2. THE MANAGING DIRECTOR,
KERALA TOURISM DEVELOPMENT CORPORATION, MASCOT HOTEL
TRIVANDRUM.
3. GENERAL SECRETARY,
KERALA TOURISM DEVELOPMENT CORPORATION, LABOUR UNION
MASCOT HOTEL, TRIVANDRUM.
4. STATE OF KERALA,REPRESENTED BY THE
SECRETARY, LABOUR AND REHABILITATION DEPARTMENT
TRIVANDRUM.

R2 BY ADV. SRI.B.GOPAKUMAR
BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC(BY ORDER), KTDC
BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE CERTIFICATE ISSUED TO THE
PETITIONER DATED 7.4.1981.

EXT.P2: TRUE COPY OF THE CERTIFICATE ISSUED TO THE
PETITIONER DT 19.9.1985.

EXT.P3: TRUE COPY OF THE ORDER PASSED BY THE 2ND
RESPONDENT DT 25.2.1992.

EXT.P4: TRUE COPY OF THE ORDER PASSED BY THE 2ND
RESPONDENT DT 6.3.1995.

EXT.P5: TRUE COPY OF THE ORDER PASSED BY THE 4TH
RESPONDENT DT 26.4.1997.

EXT.P6: TRUE COPY OF THE CLAIM STATEMENT FILED BY THE
PETITIONER IN ID NO.42/1997 DATED 27.7.1998.

EXT.P7: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
2ND RESPONDENT IN ID NO.42/1997 DT 26.2.1999.

EXT.P8: TRUE COPY OF THE ORDER PASSED BY THE 1ST
RESPONDENT IN ID NO.42/1997 DT 7.9.2004.

//True Copy//

PS to Judge

Rp

A.M. SHAFFIQUE, J.

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W.P. (C) No. 24718 of 2005

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Dated this, the 29th day of September, 2015

J U D G M E N T

Petitioner challenges Ext.P8, an award of the Labour Court in Industrial Dispute No.42/97. The award came to be passed on a reference made by the Government on the basis of an application submitted by the Union on behalf of Sri.V.Krishnankutty, a workman. The issue referred are as under;

“Whether denial of employment to Sri.V.Krishnankutty, Cleaner, Kerala Tourism Development Corporation is justifiable? 2) If not what relief he is entitled to?”.

2. Petitioner claimed that he was working as a casual worker in the Kerala Tourism Development Corporation on daily wages. He worked for about five years till 26/4/1986, when he was terminated without any reason. It is alleged that he was not given any notice of retrenchment or compensation. The management filed written statement *inter alia* contending that petitioner was not appointed as Cleaner-cum-Mechanic. There was no such post in the management Corporation. As allowed by

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the Government, the management only used to engage daily rated workers on casual basis and he was engaged for 89 days during a calendar year. He has no continuous service of 5 years and he was not entitled to continue in service as well. On the demand of certain casual workers, Government issued order dated 1/9/1990 and a Screening Committee was constituted. About 35 casual employees were absorbed in the Corporation. Petitioner was not selected and therefore, he could not get that opportunity. Petitioner also preferred OP No.281/92 before this Court and his application was directed to be disposed of. However, the Screening Committee have considered all aspects and found him disqualified. It is thereafter that he had raised a dispute which came to be decided by the Labour Court.

3. The Labour Court framed the following issues, which read as under:

"1. Whether the worker V.Krishnankutty was a regular employee of the K.T.D.C. from 5 years as claimed?

2. Whether the denial of employment to Sri.V.Krishnankutty is illegal and unjustified?

3. What relief the worker is entitled to?"

4. Evidence was adduced on behalf of the petitioner as

well as on behalf of the Management and after an elaborate consideration of the matter, the Labour Court came to a finding that the petitioner was not entitled for regularisation as he was only employed on casual basis. It was also found that he did not have continuous service for more than 240 days in an year and therefore he was not entitled for any relief in terms of Section 25F of the Industrial Disputes Act. Accordingly, reference was answered in favour of the management and no relief was granted to the petitioner.

5. Learned counsel appearing for the petitioner relying upon the judgment of the Supreme Court in ***Central Bank of India v. S.Satyam*** [(1996) 5 SCC 419] contended that even if the petitioner is not covered under Section 25F of the Act, Section 25H being couched in a very wide language is capable of application to all “retrenched workman” and not merely those coming under Section 25F of the Act. On that basis, it is contended by the learned counsel that even assuming for the sake of argument that he did not complete 240 days of continuous service in an year, he is entitled for some benefits in terms of Section 25H.

6. It is apparent from the facts as narrated above and as evident from the records that the petitioner's claim for regularisation along with certain others was considered by the Government after forming a Committee and the Committee had absorbed about 35 persons in regular employment. Petitioner filed an Original Petition before this Court seeking regularisation and he was not successful. He was only directed to be considered. His representation was considered and again it was rejected. Under such circumstances, being a casual worker who did not have the continuous service in terms of Section 25F, I am of the view that the Labour Court did not commit any error while rejecting the claim of the petitioner.

7. There is no dispute about the proposition as held by the Supreme Court in the judgment in ***Central Bank of India*** (supra). But the fact remains that each case has to be considered on its own facts. This is a case where the petitioner claimed to have been in continuous employment and claimed benefit under Section 25F. But, he had not worked for a maximum period of 240 days in an year. He has not even produced any material to indicate as to how many days he has actually worked. Further,

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the benefit under Section 25H is available only if the employer proposes to take into his employment any other person. As matters stand now, going by the judgment of the Supreme Court in ***State of Karnataka v. Umadevi*** [(2006) 4 SCC 1], it will not be possible for the Government to take on employment any person without complying with the procedure prescribed under law. Petitioner can claim any benefit only if the management takes any casual employees. No materials are produced to indicate that the management is still taking casual employees into their service. Hence, I do not think that this Court will be justified in directing the petitioner to be considered for casual employment as the said procedure cannot be accepted as a rule of law.

Under such circumstances, I do not find any merit in the writ petition and accordingly, the same is dismissed.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

30/09/2015

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PS to Judge