

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

W.P.(C).No.15976 of 2014 (V)

PETITIONER(S):-

N.SURENDRAN, AGED 55 YEARS, S/O.GOPALAN NAIR,
NADUVILAYIL HOUSE, PANANGAD P.O.BALUSSERY,
KOZHIKODE, PIN 673 612.

BY ADV. SRI.A.K.GOPALAN.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY
INDUSTRIES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 005.
2. KERALA STATE INDUSTRIAL ENTERPRISES LIMITED,
REPRESENTED BY IT'S MANAGING DIRECTOR,
ST.JOSEPH PRESS BUILDING, COTTON HILL,
THIRUVANANTHAPURAM, PIN - 695 014.

R1 BY GOVERNMENT PLEADER SRI.S.JAMAL.
R2 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.15976 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P-1: TRUE COPY OF ORDER NO.P.Q/RECRT/82 DATED 6.5.1982
OF THE PERSONAL AND ADMN.MANAGER OF THE
ERSTWHILE KSO. LTD.
- EXT.P-2: TRUE COPY OF LETTER NO.KSIE/A&HR/490 DATED 22.6.2012.
- EXT.P-3: TRUE COPY OF CASH DETAILS OF SRI.PREMRAJ V.V. (NO.6117).
- EXT.P-4: TRUE COPY OF THE CASH DETAILS OF RS.2.34, 438/-
DT.1.11.2012.
- EXT.P-5: TRUE COPY OF LETTER NO.KSIE/A&HR/491 DT.22.6.2012.
- EXT.P-6: TRUE COPY OF LETTER NO.KSIE/MDO/1173/2011-12
DT.30.11.2011 OF R-2.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.15976 of 2014-V

Dated this the 25th day of September, 2015

JUDGMENT

The petitioner is aggrieved by the fact that the petitioner, though similarly situated as other employees of the erstwhile Kerala Soaps and Oils Limited, was not granted the benefits granted to the earlier employees.

2. The background facts are that, the petitioner entered in the service of the Kerala Soaps and Oils Limited as IV Grade Electrical Operator in 1982, as is evidenced by Exhibit P1. Though Exhibit P1 speaks of temporary appointment for a period of six months, admittedly the petitioner was regularised thereat. The Company was under lockout for two years from 1994 to 1996, for which the employees were paid 60% of the salary. Again the Company was under lockout from 2001 and eventually closed down.

3. The Kerala State Industrial Enterprises Limited, the 2nd respondent, took over the assets of the Company; not by way of merger, but by way of transfer *inter vivos* from the earlier

Company to the present Company. The earlier Company, at the time of transfer, had in fact offered a Voluntary Retirement Scheme [for brevity "VRS"] to its employees, under which Exhibit P3 is the amount paid to one of such employees who had applied under the scheme. The petitioner admittedly did not apply under the VRS.

4. The petitioner took up a contention before this Court under Article 226 of the Constitution, that even after the takeover, the petitioner is entitled to be employed in the new Company. Purportedly by reason of a direction of this Court, the new management, the 2nd respondent, considered the petitioner's case and appointed him as per Exhibit P2 dated 22.06.2012. The petitioner stood superannuated on 30.11.2012, at which point the petitioner was paid the entire dues with respect to the earlier service as per Exhibit P4 and had also been granted the dues for the period he served pursuant to Exhibit P2 appointment. The petitioner now claims that the petitioner is prejudiced insofar as the other employees were granted more amounts as is evident at Exhibit P3.

5. The petitioner can only blame himself for such prejudice caused. The VRS was available and when it was available, the petitioner could have pursued the same, which admittedly he did not. The liability under the VRS was of the erstwhile management and it cannot be shifted to the new management. The VRS was brought out by the earlier management to facilitate the transfer of the undertaking and transfer of its assets without any dues to its labourers. The petitioner chose to agitate the cause of re-employment in the newly started Company. The same was granted by Exhibit P2; but, however, as a new appointment.

6. Specifically Exhibit P2 stated that the petitioner would be accommodated as a fresh appointment in the Company. The petitioner did not challenge the same and accepted such appointment. The petitioner could only be continued till the superannuation date and having been so continued, was retired on 30.11.2012. The petitioner was also granted the benefits due to him as per the earlier service rendered in the erstwhile Company and also the benefits due as

per the service rendered under the new management. The petitioner has filed the writ petition after two years, seeking consideration of the VRS. The VRS is no more available and if the petitioner had applied and was granted the same, the petitioner could not have sought for employment. The petitioner in deciding to elect for re-employment rather than being retired voluntarily, has created a situation by which the benefits accrued had turned out to be substantially lower than that which accrued to the employees who opted for VRS. The petitioner on his own volition elected the option, and cannot raise any ground of prejudice.

For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]