

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 20148 of 2010 (P)

IN CP 37/2007 of LABOUR COURT, ERNAKULAM

PETITIONER(S) :

MANGALAM PUBLICATIONS (INDIA) PVT.LTD.,
S.H.MOUNT P.O., KOTTAYAM- 686 006,
REP. BY ITS MANAGING DIRECTOR.

BY ADVS.SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON
SRI.U.K.DEVIDAS
SRI.PRINSUN PHILIP.

RESPONDENT(S) :

1. M.J.FRANCIS,
MUPPARATHARA,
KUMARAKAM P.O., KOTTAYAM.
2. THE LABOUR COURT,
ERNAKULAM.
3. THE DEPUTY TAHSILDAR, (R.R) ,
KOTTAYAM.

R1 BY ADV. SRI.H.B.SHENOY
R1 BY ADV. SRI.B.ASHOK SHENOY
R1 BY ADV. SMT.LAKSHMI B.SHENOY
R1 BY ADV. SRI.ABU MATHEW
R1 BY ADV. SRI.SOBHAN GEORGE
R1 BY ADV. SRI.K.V.GEORGE
BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1 TRUE COPY OF THE ORDER DATED 12/11/2009 IN C.P.
 NO.37/2007.

EXHIBIT P2 TRUE COPY OF THE NOTICE DATED 25/06/2010 ISSUED BY THE
 THIRD RESPONDENT TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J

W.P(C)No. 20148 of 2010

Dated this the 02nd day of March, 2015

J U D G M E N T

The petitioner-management, is aggrieved by Ext.P1 order, passed under section 33 C (2) of the Industrial Disputes Act, 1947. The brief facts required for the adjudication of the above dispute is that the petitioner was allegedly an Assistant Printer, from 1989-1995, in which latter year he was terminated from service. The termination is the subject of the industrial adjudication and this Court is not concerned with that at present. In the Section 33 C (2) application, filed before the Labour Court, the petitioner had sought for arrears of wages between 1989 and 1995.

2. The claim raised was specifically that the petitioner was a Printer and that he is entitled to the wages paid to a Printer as provided in the Bechawath

award with respect to non-journalists-factory employees of the newspaper establishment. The petitioner primarily relied on a writ petition filed by the management, where he was described as a Printer and also on some other documents.

3. The primary contention raised by the management is that, the claim is raised after 12 years of the termination and has to be rejected as a stale one. The learned counsel for the workman however, would contend that stale claims and prescription of limitation are essentially to protect the other side from being prejudiced insofar as being not able to establish a defence, which could have been established properly, if the claim had been raised at the proper time. In the present case, all documents were produced and adjudication was properly conducted; is the contention.

4. This Court would only first consider the

issue as to whether there is any delay and that whether the same would stand against the application under Section 33 C(2).

5. The Labour Courts are special Courts constituted under the I.D Act and would not be bound by the principles of limitation, as laid down in the Limitation Act of 1963.[**Nityanand M.Joshi and Another v. The Life Insurance Corporation of India and others (AIR 1970 SC 209)**]. However, in considering the relief the Court can definitely look into the aspect of delay and mould the relief as has been held by the Hon'ble Supreme Court in **Ajaib Singh v. Sirhind Co-operative Marketing-cum-processing Service Society Limited and another (1999 (6) SCC 82)** and **Kuldeep Singh v. G.M Instrument Design Development and Facilities Centre and Another. (AIR 2011 SC 455)**. Hence the accepted proposition is that, though there is no delay

as such, prescribed under the ID Act, definitely, the Court could look into the delay caused and decide on the relief, giving due consideration on the question of delay.

6. True, as has been stated by the workman, there was an adjudication effected before the Labour Court on documents produced by either side. However, when considering the stale application, one has also to consider the fact that the two parties who are in a legal relationship, herein employer-employee, would expect some certainty regarding their affairs on sheer passage of time. Herein, the petitioner admittedly was appointed in the year 1989 and had been continuing till 1995, in the management company drawing certain amount of wages. As has been emphasised in various Supreme Court judgments, the conscious omission of the legislature to provide limitation under the I.D Act, is considering the fact that the employer and the employee does not stand on the same footing and the employee always is at a disadvantageous position. The employee

often times, would not be able to initiate a proper adjudication, as provided under the various enactments, for reason only of fear of termination. However, it is to be noticed that the I.D Act quite aptly takes into consideration such instances also. A discussion of the same may not be relevant in the present circumstances.

7. Suffice it to notice, that such an apprehension or fear did not hamper the workman herein; since in 1995 he had already been terminated. An industrial adjudication was pending consideration with respect to the termination, before the appropriate forum. Nothing prevented the workman from raising a claim under Section 33 C(2) before the Labour Court for the wages between 1989 and 1995. The workman sought to raise such a claim after 12 years from his termination, i.e in 2007. The delay with respect to the claim made from 1989 to 1995 ranges between 18 to 12 years. This Court cannot commend a claim being considered by the Labour Court at this distance of time. In such

circumstance, Ext.P1 order would be set aside, for the unexplained long delay.

Writ petition is allowed setting aside Ext.P1 order of the Labour Court.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge