

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

W.P.(C).No.24087 of 2007 (P)

AGAINST THE AWARD IN ID 2/2001 DATED 16.06.2005
OF LABOUR COURT, KANNUR.

PETITIONER(S):-

THE PRESIDENT,
KERALA STATE PRIVATE & CO-OPERATIVE HOSPITAL
EMPLOYEES ASSOCIATION (INTUC),
PAYYANNUR, AREA COMMITTEE CONGRESS
BHAVAN, PAYYANNUR.

BY ADVS.SRI.PAULSON C.VARGHESE
SRI.C.ARUN PRASANTH

RESPONDENT(S):-

1. THE MANAGING DIRECTOR,
B.K.M. MEMORIAL HOSPITAL, PAYYANNUR.
2. THE LABOUR COURT, KANNUR.

R1 BY ADVS. SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
R2 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- | | |
|--------|---|
| EXT.P1 | TRUE COPY OF AWARD DATED 16.6.2005 PASSED BY
2ND RESPONDENT. |
| EXT.P2 | TRUE COPY OF THE CLAIM STATEMENT FILED BY
PETITIONER IN ID.2/01. |
| EXT.P3 | TRUE COPY OF THE WRITTEN STATEMENT FILED BY
FIRST RESPONDENT IN ID.2/01. |
| EXT.P4 | TRUE COPY OF THE DEPOSITION OF WORKMEN IN ID 2/01. |
| EXT.P5 | TRUE COPY OF THE DEPOSITION OF
SRI.C.PADMANABHAN IN ID 2/01. |
| EXT.P6 | TRUE COPY OF THE DEPOSITION OF DR.VASANTHAKUMAR
IN ID 2/01. |
| EXT.P7 | TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY
DR.VASANTHAKUMAR. |
| EXT.P8 | TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY
MR.C.PADMANABHANM, PHYSIOTHERAPIST. |

RESPONDENT'S EXHIBITS:-

NIL.

VKU/-

(TRUE COPY)

K.Vinod Chandran, J.

W.P.(C).No.24087 of 2007-P

Dated this the 29th day of January, 2015

JUDGMENT

The petitioner is aggrieved with the award passed, declining the claim of employment raised by the petitioner on behalf of one Bagyalakshmi. The claim raised by the Union was with respect to the worker having been appointed as Nursing Assistant, under the management and having been subsequently denied employment. The specific case of the Union was that the worker joined service as an Assistant to the Physiotherapist on 28.02.1997. After the Physiotherapy Department in the hospital was closed down, on 22.05.1997, she was permitted to continue in the hospital; but was denied employment from 01.04.1999. Neither the worker nor the Union produced any documents to substantiate the case set up by the Union. There was no appointment order produced; nor any salary slips or any evidence of the alleged employment with the management.

2. The management appeared and contended that the worker was never a regular employee of the hospital. It was contended that one Physiotherapist, WW2, was visiting the hospital, purely on a contract basis, and the worker only accompanied the said Physiotherapist. On the Physiotherapy Department being closed down, the worker was never engaged in the hospital and the entire claim was refuted by the management.

3. Before the Labour Court, the worker was examined as WW1, the Physiotherapist as WW2 and one doctor as WW3. WW2's evidence itself indicated that despite the worker's reference to the Physiotherapist as a Medical Doctor, he was only a person with Diploma in Physiotherapy and Rehabilitation and no medical degree as such. WW1 admitted that she was attached to the said Physiotherapist. Her further statement in the box that she had applied for a job in the B.K.M.Memorial Hospital and was given an appointment letter was not substantiated by production of any document. The Labour Court also found that the worker or the Union did not have such a case in the claim statement. The witness also deposed against the claim statement, insofar as claiming appointment independent of the Physiotherapist, contrary

to the specific admission in the claim statement that she was appointed as recommended by Dr.Padmanabhan, the Physiotherapist. No steps were taken for production of the Muster Roll and Attendance Register despite the worker asserting her regular employment in the hospital, for more than two years. However, the management produced Exhibits M1, M2 and M3 Muster Rolls of the year 1997 to 1999 and Exhibits M4 to M8 Wage Register for the very same period, which did not indicate that the worker was employed in the management-hospital.

4. The Physiotherapist was examined as WW2; but, however, he conceded that he had neither seen any document appointing the worker in the management-hospital nor was he aware of any salary paid to the said worker. A certificate produced at Exhibit W9 was said to be issued by the Physiotherapist, only on the request of the worker with the stated purpose of applying for job in some other hospital. The evidence of WW3, a doctor who issued the said Certificate of Employment, was also found to be an interested testimony. WW3 was an independent practitioner having his own clinic and he did not have any knowledge of the employees who were engaged in the management-establishment.

It was on the absolute lack of evidence with respect to the “employment” claimed by the worker that the Labour Court found the claim raised to be not sustainable. It was found that there was no denial of employment as such, since the worker and the Union failed to prove the alleged employment. This Court, sitting in the confined jurisdiction of examining the award of the Labour Court, wherein the Labour Court has discussed the entire evidence recorded to find that the basis of the claim does not at all exist, does not discern any unreasonableness or a palpable error to interfere with such findings.

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)