

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

W.P.(C).No. 22192 of 2009 (T)

AGAINST THE AWARD IN I.D. NO. 8/2002 of LABOUR COURT, ERNAKULAM DATED 12.11.2008.

PETITIONER(S):

M/S. CHINMAYA VIDYALAYA,
KANNANKULANGARA, THRIPIUNITHURA,
REP. BY ITS SECRETARY,
SANTHA BALAKRISHNAN.

BY ADVS. SRI. GOVIND K. BHARATHAN (SR.)
SRI. C. A. JOY
SRI. S. K. MADHU

RESPONDENT(S):

1. MRS. P. K. GEETHA DEVI,
PALLATTU PADINJARE PUTHENPURA,
CHEMMANTHUKARA, VAIKOM.

2. LABOUR COURT, ERNAKULAM

R1 BY ADV. SRI. PAULSON C. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015, ALONG WITH W.P.(C) NO. 18264/2009, THE COURT ON 22.12.2015 DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: THE TRUE COPY OF THE APPOINTMENT ORDER DATED 01.08.1996.
- EXHIBIT P2: THE TRUE COPY OF THE APPOINTMENT ORDER DATED 30.04.1997.
- EXHIBIT P3: THE TRUE COPY OF THE APPOINTMENT ORDER DATED 31.05.1998.
- EXHIBIT P4: THE TRUE COPY OF THE LETTER 01.06.1999.
- EXHIBIT P5: THE TRUE COPY OF THE APPOINTMENT ORDER DATED 01.07.2000.
- EXHIBIT P6: THE TRUE COPY OF THE CLAIM STATEMENT.
- EXHIBIT P7: THE TRUE COPY OF THE WRITTEN STATEMENT DATED 07.08.2003.
- EXHIBIT P8: THE TRUE COPY OF THE REJOINDER FILED BY THE WORKMAN DATED 10.10.2004.
- EXHIBIT P9: THE PHOTO COPY OF AWARD DATED 12.11.2008 IN I.D.NO.08/02 OF THE LABOUR COURT, ERNAKULAM.
- EXHIBIT P10: THE TRUE COPY OF THE SERVICE RULES, 2004 OF THE PETITIONER SCHOOL.
- EXHIBIT P11: TRUE COPY OF INTERIM ORDER DATED 30.06.2009 IN W.P.(C) NO.18264 OF 2009.

RESPONDENTS' EXHIBITS:

- EXHIBIT R1(A): TRUE COPY OF THE REPRESENTATION DATED 20.03.2009 SUBMITTED BEFORE THE MANAGEMENT.
- EXHIBIT R1(B): TRUE COPY OF THE REPRESENTATION DATED 30.03.2009 SUBMITTED BEFORE THE MANAGEMENT.
- EXHIBIT R1(C): TRUE COPY OF THE REPRESENTATION DATED 28.04.2009 SUBMITTED BEFORE THE MANAGEMENT.
- EXHIBIT R1(D): TRUE COPY OF THE COMPLAINT DATED 31.05.2009 SUBMITTED BEFORE THE REGIONAL JOINT LABOUR COMMISSIONER, ERNAKULAM.
- EXHIBIT R1(E): TRUE COPY OF THE CALL LETTER DATED 16.07.1996.
- EXHIBIT R1(F): TRUE COPY OF THE MISCELLANEOUS PETITION DATED 18.10.2004 FILED BEFORE THE LABOUR COURT.

P.T.O.

EXHIBIT R1(G): TRUE COPY OF THE AFFIDAVIT DATED 10.03.2008 FILED BY THE
MANAGEMENT IN CONNECTION WITH THE MISCELLANEOUS
PETITION.

EXHIBIT R1(H): TRUE COPY OF THE DEPOSITION OF WW1 WORKMAN.

EXHIBIT R1(I): TRUE COPY OF THE DEPOSITION OF MW1 EMPLOYER.

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) Nos.22192 & 18264 of 2009

Dated this the 22nd day of December, 2015

JUDGMENT

The above writ petitions are filed by the petitioner/management against the award of the Labour Court in I.D. No.08 of 2002 and the order in C.P.No.20 of 2001 dated 12.11.2008 respectively. The parties to the above writ petitions are common and the fate of W.P.(C) No.18264 of 2009 will be guided by the judgment in the other writ petition and therefore I propose to dispose of these writ petitions by a common judgment.

2. Brief facts required for the disposal of W.P.(C) No.22192 of 2009 are as follows:

3. The 1st Respondent in the writ petitions was an employee of the petitioner. Work was declined to her and consequent to which an industrial dispute arose which was later on referred by the State Government to the Labour Court for adjudication vide its order bearing No. G.O.(Rt) No.1728/2002/LBR dated 21.06.2002, the dispute between the Management of the petitioner and the 1st Respondent. The

issue referred for adjudication was as follows:

"whether the denial of employment to Smt. C.K. Geetha Devi by the management of Chinmaya Vidyalaya is justifiable? If not, what relief she is entitled to?".

4. The Respondent on receipt of notice from the Labour Court appeared before it and filed a claim statement contending that she was employed as a Typist in the establishment of the petitioner and that her services were continuous and uninterrupted since the date of appointment on 01.08.1996. The management establishment is an educational institution, wherein there are more than 3000 students and more than 120 teachers are employed. Though it is a scheduled employment under the Minimum Wages Act, the Respondent was paid only Rs.2,250/- towards monthly salary at the time of denial of employment. The Respondent is entitled to avail maternity leave from 01.04.2000 to 30.06.2000, be she was denied her eligible salary during the period of maternity leave. Apart from the non-payment of minimum wages and maternity leave, she was denied her earned leave benefits also. In spite of the representations made by the Respondent, petitioner refused to redress her

grievances, and thereupon Respondent had filed C.P.No.20 of 2001 before the Labour Court. It is the contention of the Respondent that on receipt of notice from the Labour Court in the Claim Petition referred *supra*, the management denied employment to the Respondent with effect from 01.06.2001, without stating any reasons. On the next day, management appointed another candidate in her place. It is apprehended by the Respondent that the claim for statutory benefits infuriated the management to deny employment to her. The action of the management, according to the Respondent, is illegal. It was also stated that no enquiry or disciplinary action was initiated against the Respondent and therefore it was prayed that an award be passed directing the petitioner to reinstate the Respondent back in service with full back wages and all other attendant benefits.

5. Petitioner filed written statement contending that the reference is not maintainable and that the Labour Court has no jurisdiction to adjudicate the issue. The claim that the Respondent was in continuous service from the date of appointment on 01.08.1996 is misleading and misconceived. The Respondent was initially employed from 01.08.1996 to

W.P.(C) Nos.22192 & 18264 of 2009 4

31.10.1996 on a consolidated pay of Rs.750/-. Later, her employment was extended till 31.03.1997. A fresh order was issued on 30.04.1997 under which she was appointed for a period of one year on consolidated wages of Rs.1,250/-. She joined on 12.05.1997 and continued up to 31.05.1998 and thereafter another order was issued and she continued from 01.06.1998 to 31.05.1999 on a consolidated pay of Rs.1,500/-. On 01.07.2000 another appointment order was issued appointing the Respondent till 31.05.2001 on consolidated pay of Rs.2,250/-. Further appointment order was not issued since 31.05.2001 and the Respondent left employment on expiry of the term of appointment. Therefore, it was contended that the services of the Respondent were neither continuous nor uninterrupted. She was appointed for different spells with different emoluments. Her services were not permanent as such but the contract of appointment was not renewed since 31.05.2001. That apart, the statement that the management establishment was a scheduled one was denied and it was contended that it is not liable to pay any minimum wages as provided under the Minimum Wages Act. The allegation with regard to non-payment of maternity

benefits and other employment benefits were denied by the petitioner and contended that the Maternity Benefits Act, 1961 is not made applicable to the educational institutions. It was also contended that the appointment of the Respondent lapsed on 31.03.2000 and she was re-engaged with effect from 01.07.2000 only and therefore the Respondent was not in the services of the petitioner during the period between 01.04.2000 to 30.06.2000.

6. That apart, it is contended by the petitioner that the Respondent had not made any claim with regard to the maternity leave or any other kind of benefits after she joined duty on 01.07.2000. It was also contended that the Respondent filed the Claim Petition presumably knowing that her contract of appointment would not be renewed any further by the petitioner and the petitioner also denied the allegation made by the Respondent that her claim for statutory benefits preferred before the Labour Court infuriated the management to deny her employment. It was also contended that the management has received notice from the Labour Court in the C.P. proceedings much after 31.05.2001. That apart, the prime contention advanced by the petitioner was that the

Respondent was engaged in the school building at Layam Road, Thripunithura. A major portion of the school was functioning at Kannamkulangara, Thripunithura. A permanent Typist was employed at Kannamkulangara and the management constructed a new building at the said place and shifted the entire establishment. When the office was shifted from Layam Road to Kannamkulangara, the requirement of an additional Typist was over. Therefore, the contract of employment of the Respondent was not renewed and the entire typing work of the petitioner establishment at Thripunithura was being carried out by the permanent Typist appointed at Kannamkulangara. With such contentions and statements, management justified its stand that there was no denial of work to the Respondent.

7. On the side of the management, the Secretary of the establishment was examined as MW1 and Exts.M1 to M14 documents were marked. From the side of the Respondent, Respondent was examined as WW1 and Exts.W1 to W3 documents were marked.

8. The Labour Court, after appreciating the evidence adduced by the petitioner and the Respondent and the rival

pleadings, has come to a conclusion that Respondent was in continuous employment for more than 240 days and therefore she was entitled to continue in the establishment and entitled to get all the benefits of a permanent employee. Therefore, the Labour Court found that there was denial of employment to the Respondent and the same was unjustifiable. It was also found that the Respondent was not alternatively employed and therefore she is entitled for reinstatement with full back wages and other benefits and continuity in service. It is thus aggrieved by the said award of the Labour Court, the above captioned writ petition is filed by the petitioner.

9. Heard learned counsel for the petitioner, Sri. C.A. Joy and learned counsel for the 1st Respondent, Sri. Paulson C. Varghese.

10. The thrust of the contention advanced by the learned counsel for the petitioner is that the appointment orders produced by and marked before the Labour Court will clearly establish that the appointments were made by the petitioner on temporary basis for short periods and therefore the same were contract appointments liable to be terminated on the expiry of the contract period mentioned thereunder. In

such circumstances, it is contended that there is no denial of employment and therefore there was no scope for raising any industrial dispute and thereby the learned counsel contends that the reference by the State Government to the Labour Court itself is bad. So also, it is contended that the appointment of the Respondent was in its office of the petitioner at Layam Road and since the said office was closed down, on the expiry of the period of contract of her appointment, the Respondent was not entitled for any further appointment. It is also contended that, as per Sec.2(oo)(bb) of the Industrial Disputes Act, since the appointment was a contract one, no question of any retrenchment arises and therefore the petitioner is not liable for any claims raised by the Respondent. Therefore, it is contended that the award passed by the Labour Court cannot be sustained in any manner.

11. That apart, learned counsel for the petitioner has invited my attention to Ext.P10, the Service Rules of the petitioner establishment, which is marked as W3 before the Labour Court and specifically drawn my attention to Clause-(i) of Chapter-II, wherein the terms of employment with regard to

a provisional employee are dealt with and canvassed the proposition that since the Respondent was appointed on temporary basis, she is entitled only to get the benefits prescribed thereunder. It is also contended that when a provisional appointment is made on contract basis, it is only for a specified period and not more than that.

12. On the contrary, learned counsel for the 1st Respondent contended that on a perusal of Exts.P1 to P4, which are documents marked before the Labour Court, it is categoric and clear that Respondent continuously worked in the establishment of the petitioner for more than 240 days during the period of one year, and therefore she is treated as a workman as provided under Sec.25B of the Industrial Disputes Act, and viewed in that circumstances, the Respondent is entitled to get the benefits entitled to a permanent workman in accordance with law. Learned counsel for the Respondent has also taken me through the deposition of MW1, produced along with the counter before this Court as R1(i), wherein the management witness had deposed that the Respondent has left the establishment since she was unfit and if she has been fit enough for any other employment, that could have been

provided to her. It is also admitted by the management witness that up to 2001, the Respondent was the sole Typist in the establishment and further that another Typist viz. Lalitha was receiving salary from May, 2001.

13. However, the Labour Court after verifying the documents and the evidences tendered by the parties, has arrived at a finding that there was continuous employment for more than 240 days during the one year period and therefore the Respondent was entitled for continuous employment in the establishment and in that view of the matter, it can only be held that the employment of the Respondent was terminated by the management. It was also found that after termination of the Respondent, another person was employed. That apart, it was found by the Labour Court that the petitioner failed to adduce any evidence with regard to the contention raised by it that the management does not require any additional Typist consequent to the closing of the establishment at Layam Road, after the construction of the new building at Knnamkulangara and the management has not appointed any fresh hand to the post of Typist. So also, in the light of the established facts, Sec.2(oo)(bb) of the Industrial Disputes Act has no application

at all.

14. After evaluating the contentions put forth by the rival parties and perusal of the records, I am of the opinion that the findings were entered by the Labour Court after providing sufficient opportunity to the petitioner as well as the Respondent to adduce evidence before it. The Labour Court has appreciated and evaluated the evidence put forth by the rival parties and relying on the documents has entered into a finding that the Respondent was in continuous employment of the management for more than 240 days during the continuous period of one year. From the documents produced before this Court with regard to the different spells of appointment made by the petitioner, it is clearly discernible that, at one point of time, the Respondent worked continuously for more than 240 days during one year period. To the finding of the Labour Court with regard to the continuous employment of the Respondent, the contention advanced by the learned counsel for the petitioner is that since the appointment was for a specified period for a consolidated wages, same is a contract employment and therefore the appointment of the Respondent can never be treated as a continuous one, even if the

respondent had worked for more than 240 days. I do not think that the proposition put forth by the learned counsel can be sustained under law. If such a course is adopted by a Court of law in order to arrive at a finding with regard to the question of continuous employment, any management can flout the provisions of the Industrial Disputes Act and then make contract employment and thereby indulge themselves in unfair labour practice. Therefore, while making a pragmatic approach to the situation, such a course of action cannot be entertained at all.

15. Learned counsel for the Respondent has invited my attention to the judgment of the High Court of Bombay in '**Alexander Yesudas Maikel v. Perfect Oil Seals and IRP & Others**' [1996 (1) LLJ 532] and specifically to paragraph 5 of the judgment, which reads as follows:

"5. Turning to the second period of service of the petitioner, it ended on May 1, 1986. It is not in dispute that the petitioner was not removed from service on May 1, 1986, but was allowed to continue till May 31, 1986, on which date, by a specific letter dated May 31, 1986, he was removed from service. The termination of the petitioner's service was effected either by the letter dated November 22, 1985, or by the letter dated May 31, 1986, and neither letter claimed that it was

under any of the two contingencies contemplated by clause (bb) of Section 2(oo) of the Industrial Disputes Act. In any event, one cannot lose sight of the fact that clause (bb) has itself been restrictively interpreted and the judicial consensus appears to be that, if the post continues and the work continues, clause (bb) cannot be said to operate as a charter for unscrupulous employers to jettison their workmen."

16. So also, learned counsel has invited my attention to the judgment of the Apex Court in **'Union of India and others v. Ramchander and another'** [(2005) 9 SCC 365]. Relying on paragraph 4 of the said judgment, learned counsel has contended that even if the appointment of the Respondent was made as a casual labourer and continued in service for different spells, the same can be taken into account for calculating the period of 240 days as provided under the Industrial Disputes Act. I find force in the said contention. Moreover, the Labour Court has arrived in the findings clearly in terms of documents produced by the petitioner as well as the management and I do not find any illegality or infirmity in the findings rendered by the Labour Court.

17. It is trite law that, if the findings rendered by the Tribunal is in accordance with law and in terms of the evidence

adduced by rival parties before it, no interference is called for. The petitioner is not having a case that any of the basic principles of law evolved by the superior Courts of law or any provisions of the Industrial Disputes Act were violated while considering the proceedings before it. Therefore, I do not find any reasonable circumstances warranting interference of this Court either under Article 226 or under Article 227 of the Constitution of India.

18. In that view of the matter, I have no hesitation to conclude that the award passed by the Labour Court that ordering reinstatement with full back wages and attendant benefits is in accordance with law. Hence, W.P.(C) No.22192 of 2009 fails.

19. As a last submission, learned counsel for the petitioner contended that the award of full back wages by the Labour Court cannot be sustained in any manner since the respondent might have been gainfully employed during the period of the proceedings and therefore this Court should interfere with the award of full back wages ordered by the Labour Court. On the other hand, learned counsel for the Respondent contended that the petitioner is a well-established

institution having more than 3,000 students studying in it and the establishment has no manner of financial difficulties and therefore the Labour Court was justified in awarding the back wages in its entirety. It is also submitted that the respondent is not employed anywhere during the course of the proceeding. It is true that the Labour Court has not mentioned any specified circumstances under which the full back wages was awarded by it. But, ordinarily, while exercising the powers under Sec.11A, Court can award full back wages. But, if any exceptional circumstances are pointed out by the management and there is justifiable evidence before the Labour Court, the Labour Court is empowered to deviate from the ordinary rule and reduce the payment of back wages.

20. In this regard, I am reminded of the judgment of the Apex Court in '**P.V.K. Distillery Ltd. v. Mahendra Ram**' [(2009) 5 SCC 705], wherein the Apex Court has conducted a survey of its previous decisions right from 2001 and has entered a finding that while granting the back wages, a pragmatic and practical approach should be followed by the Labour Court/Tribunal. In the said case, the Apex Court has found that the establishment was closed down for a long

period and the same was taken over by the new management and thereby the Apex Court deviated from the ordinary rule of reinstatement with full back wages and reduced the back wages to 50%. Paragraph 25 of the said judgment is more explanatory, than words and thus same is extracted below:

"25. In the instant case, the notice had been issued limiting the question to the payment of 50% of the total back wages. This does not mean that the respondent is not entitled to further relief. The point that his services were terminated in the year 1985 and since then the case is pending for the last two decades in different courts also has no relevance, since he had approached the court within a reasonable time. It is not his fault that the case is still pending before the court. These grounds could not be held against him for denying the relief of back wages otherwise he would suffer double jeopardy of losing back wages and delay in getting the reinstatement for no fault of his. Therefore, it would have been more enlightening, had the High Court reasoned out as to why the appellant should reinstate the respondent with full employment benefits and should pay full back wages to him for nothing in return from him in terms of work, production, etc."

21. Going by the judgment of the Apex Court, it can be seen that there cannot be any hard and fast rule, straight-jacket formula or structural method in the matter of awarding

back wages. It depends upon facts and circumstances of each and every case. Unless and until the management has made out a case before the Court/Tribunal that it has got financial constraints and difficulties or such other circumstances interdicting payment of back wages, it is always justifiable on the part of the Tribunal to award full back wages.

22. From the award of the Labour Court, I do not find that such a proposition was canvassed by the petitioner which justified the Labour Court to follow the normal rule. But, before this Court, the same was raised and the learned counsel pleaded that the back wages awarded by the Labour Court may be removed completely. As held by the Apex Court in the judgment *supra*, I am of the opinion that there are no evidence or documents advanced by the petitioner that the establishment has/had any adverse consequences disabling it from payment of the back wages in its entirety. Viewed in that circumstances, I am of the considered opinion that there are no negative circumstances established by the petitioner to deviate from the ordinary rule of payment of full back wages. Therefore, I do not find any reason to interfere with the said finding of the Labour Court also.

23. So far as W.P.(C) No.18264 of 2009 is concerned, the petitioner is not having a case that the calculation made by the Labour Court taking into account the fact that Respondent was entitled to wages and other benefits as if she is a permanent employee, is not correct. The case put forth by the petitioner is that since she was only a contract employee, she was not entitled to get any other benefits other than the consolidated pay stipulated in the contract appointment. Since I have already found in the other writ petition that the award of the Labour Court is legal and justified, I do not find any reason to interfere with the findings of the Labour Court in this writ petition.

Resultantly, this writ petition also fails and accordingly, both the writ petitions are dismissed.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
19.12.2015