

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

W.P.(C).No.25129 of 2007 (N)

AGAINST THE ORDER IN CLAIM PETITION NO.14/2004 DATED 06.03.2007
OF LABOUR COURT, ERNAKULAM.

PETITIONER(S):-

HAILEYBURIA TEA ESTATES LIMITED,
REGISTERED OFFICE, MARRAR ROAD, WILLINGDON ISLAND,
COCHIN-3, REPRESENTED BY ITS EXECUTIVE CO-ORDINATOR,
MR. K.K. NAIR.

BY ADVS.SRI.JOSEPH KODIANTHARA [SENIOR ADVOCATE]
SRI.TERRY V.JAMES.

RESPONDENT(S):

1. THE LABOUR COURT, ERNAKULAM.

2. SRI. K.A. SEBASTIAN,
KALLUVEETIL HOUSE, CHERIYAKADAVU, KANNAMALY P.O.,
COCHIN-8.

R1 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ.

R2 BY ADVS. SRI.VIVEK VARGHESE P.J.
SRI.VARUGHESE M EASO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 25129 of 2007(N)

APPENDIX

PETITIONER'S EXHIBITS: -

- EXT.P1 TRUE COPY OF CLAIM PETITION 14/2004 DATED 20.01.2004
 FILED BY THE 2ND RESPONDENT.
- EXT.P2 TRUE COPY OF THE OBJECTION DATED 20.10.2004 FILED BY
 THE 2ND RESPONDENT.
- EXT.P3 TRUE COPY OF THE STATEMENT FILED BY THE 2ND RESPONDENT.
- EXT.P4 TRUE COPY OF RECEIPT DATED 10.12.2002 ISSUED BY THE
 2ND RESPONDENT.
- EXT.P5 TRUE COPY OF THE STATEMENT DATED 27.02.1999 FILED
 BY THE PETITIONER.
- EXT.P6 TRUE COPY OF THE ORDER DATED 6.3.2007 IN C.P.NO.14/2004
 PASSED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

NIL.

VKU/

(TRUE COPY)

K.Vinod Chandran, J.

W.P.(C).No.25129 of 2007-N

Dated this the 05th day of February, 2015

JUDGMENT

The petitioner, a management, is aggrieved with Exhibit P6 order passed in an application under Section 33C(2) of the Industrial Disputes Act, 1947 [for brevity "ID Act"]. The respondent-workman was a headload worker in the employment of the management, who had obtained severance from employment and also accepted the entire settlement offered by the management. The workman admittedly was paid a sum of Rs.22,807/- by way of arrears of wages and a further amount of Rs.32,833/- by way of gratuity. The workman also had, at the time of receiving such payment, executed a settlement that the entire arrears due to him was paid.

2. The workman went out of employment in the month of November, 2002, after receiving the said amounts in full and final settlement of service benefits due to him on severance. Subsequently, in the year 2004, the workman raised a claim for holiday wages from the year 1988 to the year 1998.

The Labour Court found that for the year 1998 there is evidence to show that the workman was paid holiday wages of Rs.1964.95. Hence, for the ten years between 1988 to 1997, the management was directed to pay Rs.19,649.50 at the rate of Rs.1964.95 for each year.

3. Essentially it is to be noticed that the holiday wages, if at all entitled to the workman, would depend upon the wages in a particular year. The fact that the workman was paid holiday wages for the year 1998 of Rs.1964.95 would not indicate that the same holiday wages was entitled to the petitioner from 1988 onwards. Definitely the wages would have been far lesser in 1988 and there would have been revision of wages in the subsequent years, based on which alone the holiday wages could be computed.

4. Further, though it is trite that there is no limitation as per the ID Act, the Hon'ble Supreme Court has in ***Karan Singh v. M/s.Executive Engineer Haryana State Marketing Board*** [AIR 2007 SC (Supp) 989], ***Haryana Land Reclamation and Development Corporation Ltd. v. Nirmal Kumar*** [(2008) 2 SCC 366] and ***Rajasthan State Agriculture Marketing Board***

v. Mohan Lal [(2013) 14 SCC 543] found that the Court would be entitled to mould the relief, in an application, which is grossly delayed. But, even such moulding of relief could be done only if the workman establishes his entitlement. Section 33C(2) is a provision by which a workman is entitled to seek computation of an amount which is legally due to him or due under an award or settlement. Hence, primarily the workman would have to establish that he is entitled to holiday wages and that the same was not paid to him. The mere fact that the workman had been paid holiday wages in 1998 cannot relate to an earlier year. The management is disabled insofar as producing any evidence in the years for which the claim was made, due to the passage of time. It is also to be specifically noticed that the workman had obtained severance and on settlement, the entire amounts due to him were paid. The petitioner cannot turn around and claim that he is entitled to holiday wages for a period prior to the settlement, after having obtained severance and the amounts were paid in final settlement of the past service. The agreement of having accepted amounts in final settlement of the service benefits, stand against the entitlement of the workman.

Resultantly, the writ petition is allowed. Exhibit P6 order is set aside. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

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(true copy)