

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 31218 of 2004 (N)

PETITIONER:

**MOTHER SUPERIOR,
ST.MARY'S ENGLISH MEDIUM SCHOOL,
ADOOR P.O., PATHANAMTHITTA DIST.**

BY ADV. SRI. LEO GEORGE

RESPONDENT(S):

- 1. SMT.M.ELIZABETH,
NIRANNAKALACHARUVIL VEEDU,
ERATHU MURI, ERATHU P.O.,
PATHANAMTHITTA DISTRICT.**
- 2. LABOUR COURT, KOLLAM.**

**R1 BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL
R2 BY GOVERNMENT PLEADER SMT.SUNITHA VINOD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-07-2014, THE COURT ON 05-01-2015 DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF THE STATEMENT APPENDED TO THE CHARTER OF DEMAND IN I.D.NO.52/1996 BEFORE THE LABOUR COURT, KOLLAM, DATED 18.5.1995.
- EXHIBIT P2 : TRUE COPY OF THE CLAIM STATEMENT FILED BY THE RESPONDENT IN I.D.NO.52/1996 BEFORE THE LABOUR COURT, KOLLAM, DATED 6.9.2000.
- EXHIBIT P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN I.D.NO.52/1996 BEFORE THE LABOUR COURT, KOLLAM, DURING AUGUST 1996.
- EXHIBIT P4 : TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE CONCILIATION OFFICER, DATED 2.8.1995.
- EXHIBIT P5 : TRUE COPY OF THE PROMISSORY NOTE EXECUTED BY THE FATHER OF THE RESPONDENT IN FAVOUR OF THE PETITIONER DATED 19.10.1994.
- EXHIBIT P6 : TRUE COPY OF THE CERTIFICATE ISSUED BY THE MANAGING DIRECTOR OF THE HOSPITAL EVIDENCING EMPLOYMENT OF THE RESPONDENT DATED 15.3.2003.
- EXHIBIT P7 : TRUE COPY OF THE AWARD PASSED BY THE LABOUR COURT, KOLLAM IN INDUSTRIAL DISPUTE NO.52 OF 1996, DATED 24.2.2004.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.31218 of 2004

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Dated this the 5th day of January, 2015

JUDGMENT

Ext.P7 order passed by the Labour Court, Kollam in I.D No.52 of 1996 is under challenge.

2. The management in the industrial dispute before the labour court is the petitioner.

3. The respondent worker raised an industrial dispute alleging that she was working as an 'Ayah' in the school run by the management and that she was denied employment without any reason. The petitioner resisted the industrial dispute contending that, while working as 'Ayah', the respondent obtained a sum of ₹10,000/- as donation on a false representation that she is getting married and the father of the respondent obtained a sum of ₹15,000/- for the marriage. After having defrauded the manager, the respondent did not come back for duty to avoid payment of the amount obtained from the management; so contended the petitioner.

4. The labour court, after considering the evidence, took the view that the management must not have insisted the worker to repay the money to continue the employment and denied the employment. Therefore, the labour

court ordered reinstatement of the worker with 30% back wages as per Ext.P7 award.

5. Arguments have been heard.

6. The case of the respondent before the labour court was that since the marriage of the respondent did not take place, the petitioner misunderstood her that she had put up the story of her marriage falsely to swindle the money of the petitioner and denied employment to her. However, the labour court did not accept the case. On the other hand, the labour court found that when the respondent reported for duty, the petitioner insisted her to repay the loan availed as a condition for continuing her in the employment and that the respondent could not comply with the said condition and the same resulted in denial of employment to her.

7. It is crucial to note that there is no material on record which would indicate that the petitioner insisted the respondent to repay the amount due to the petitioner to continue her in employment. Ext.M4 document relied on by the labour court do not indicate that the petitioner insisted the respondent to pay the amount due to the management to continue her in employment.

8. The definite case of the petitioner was that the respondent could not face the petitioner after having defrauded her and obtained a sum of ₹25,000/- under the pretext of marriage of the respondent and consequently

left the job on her own volition. This fact was explicitly stated in the written statement. The respondent has admitted the fact that a sum of ₹25,000/- was received by her representing that she is getting married. The respondent has also admitted that her marriage did not take place.

9. The labour court found that out of the said amount, a sum of ₹15,000/- was given to the respondent by way of loan. The respondent has no case that, either she or her father repaid the said amount as the marriage did not take place. Therefore, it was submitted by the learned counsel for the petitioner that the Tribunal in such circumstances ought to have found that the case put forward by the petitioner that the respondent abandoned the work on her own volition was correct.

10. The Tribunal found that the petitioner did not establish the fact that the respondent was requested to rejoin duty and that she did not accede to the request, though the petitioner contended that she had sent several people, including one Koshy with a request to the respondent to rejoin duty and in support of the same, MW2 was examined. However, there was no material before the labour court to show that the petitioner has sent a proper notice to the respondent for rejoining duty. Therefore, the argument of the petitioner that the finding of the labour court, that the termination of service of the petitioner was illegal, is only to be rejected.

11. Had the respondent been unauthorisedly absent, the petitioner was duty bound to send a notice to the respondent asking her to report for duty. The finding of the labour court was that it is a clear case of denial of employment which amounts to retrenchment. The failure on the part of the petitioner to comply with the procedural formalities required under Section 25F of the Industrial Disputes Act is only to be upheld.

12. Now the question is whether the order of the labour court to reinstate the petitioner in service is legally sustainable.

13. The Apex Court in **Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta** [(2009) 16 SCC 562] has observed that, while the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realised that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent policy decisions of the Supreme Court is probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and

outsourcing. Hence, now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the labour court can award compensation.

14. There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case. In this case compensation should have been granted instead of reinstatement.

15. Here, the conduct of the respondent amounts to violation of discipline that is expected of an employer to maintain in the school though it may not fit into the category of gross violation of discipline. It is also crucial to note that the relationship between the petitioner and the respondent became strained and, therefore, it may not be conducive to the maintenance of discipline of the institution to order reinstatement of the respondent. However, as the termination is illegal, this Court is of the view that the respondent has to be adequately compensated. This Court feels that a sum of ₹50,000/- would be a just compensation.

In the result, the writ petition is disposed of upholding the finding of the labour court that the termination of the respondent is illegal. However, the direction to reinstate the respondent with back wages is hereby set aside. In supersession of the said direction, the petitioner is directed to pay a sum of ₹50,000/- as just compensation to the respondent within a period of one month from the date of receipt of a copy of this judgment. If the petitioner fails in paying the aforesaid amount, the same would carry interest at the rate of 10% per annum from the date of judgment till realisation.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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