

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 22674 of 2009 (D)

AGAINST THE AWARD IN ID 10/2002 OF THE LABOUR COURT, ERNAKULAM
DATED 22.9.2008

PETITIONER:

M.S. CHERIAN, KAVALAKKAL HOUSE,
PALAPPRASSERY, CHENGAMANAD.P.O.,
ERNAKULAM DISTRICT.
NOW EMPLOYED AS OPERATOR IN
KERALA AGRO MACHINERY CORPORATION,
ATHANI, ERNAKULAM DISTRICT.

BY ADVS. SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN

RESPONDENTS:

1. THE LABOUR COURT, ERNAKULAM.
2. THE KERALA AGRO MACHINERY CORPORATION LTD.,
REP. BY ITS MANAGING DIRECTOR, REGISTERED OFFICE
ATHANI, PIN-683 585, ERNAKULAM DISTRICT.

R2 BY ADV. SRI.E.K.NANDAKUMAR
R2 BY ADV. SRI.K.JOHN MATHAI
R2 BY ADV. SRI.P.BENNY THOMAS
R2 BY ADV. SRI.ANIL D. NAIR

GOVERNMENT PLEADER SMT. NISHA BOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30.03.2015, THE COURT ON 11-06-2015, DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE CLAIM STATEMENT DATED 4.3.2004
FILED BY THE PETITIONER BEFORE THE FIRST
RESPONDENT.
- EXT.P2 TRUE COPY OF THE WRITTEN STATEMENT DATED NIL
SEPTEMBER, 2004 FILED BY THE SECOND RESPONDENT
BEFORE THE FIRST RESPONDENT.
- EXT.P3 TRUE COPY OF THE AWARD DATED 22.9.2008 PASSED BY
THE FIRST RESPONDENT IN I.D.NO.10/2002.
- EXT.P4 TRUE COPY OF THE ORDER DATED 23.2.1990 OF THE
SECOND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

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Dated this the 11th day of June, 2015

JUDGMENT

In this Writ Petition, the petitioner challenges Ext.P3 award passed by the Labour Court, Ernakulam in I.D.No.10 of 2002, to the extent to which the Labour Court did not grant back wages to him.

2. The petitioner was working as Operator in the Kerala Agro Machinery Corporation Ltd., the second respondent, since 10.5.1978. He submitted an application for Leave without Allowance on 7.7.1992, for a period of five years for taking up employment abroad. The second respondent did not issue any order, either allowing or declining the leave applied for. The petitioner submitted another application dated 23.8.1992 to the second respondent for Leave without Allowance for five years from 24.8.1992. The petitioner went abroad on 24.8.1992. He went to Kuwait on getting a definite offer for employment. After reaching Kuwait, the petitioner sent a representation dated 10.9.1992 to the second respondent and

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forwarded copy of the stamped visa. He further requested for sanctioning the leave applied for. The petitioner was in Kuwait till 2.2.1993. He came to his native place and approached the second respondent for rejoining duty. The petitioner states that he was told by the second respondent that disciplinary proceedings were initiated against him for his unauthorised absence from duty and, after conducting enquiry, he was dismissed from service, as per the order dated 14.12.1992. According to the petitioner, though his address was available to the second respondent, no notice was issued to him and the memo of charges was not served on him.

3. Aggrieved by the order of dismissal, the petitioner filed O.P.No.10426 of 1993 before this Court. It is stated that as per the judgment dated 18.11.1999, the Original Petition was disposed of granting liberty to the petitioner to submit a representation to the second respondent against the order of dismissal. The petitioner submitted a representation dated 16.11.1999 to the second respondent requesting to reinstate him in service with full back wages. The second respondent rejected the representation as per the order dated 4.2.2000. Thereupon, the petitioner filed

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O.P.No.26380 of 2000 challenging that order. It is stated that as per the judgment dated 18.11.2000, the said Original Petition was disposed of granting liberty to the petitioner to raise an industrial dispute concerning the dismissal.

4. The petitioner raised an industrial dispute. Since conciliation failed, the Government issued an order dated 10.9.2002 referring the dispute for adjudication by the Labour Court, which was eventually numbered as I.D.No.10 of 2002 on the file of the Labour Court, Ernakulam.

5. After taking evidence, the Labour Court passed Ext.P3 award by which it was found that the dismissal of the petitioner was illegal. Accordingly, the Labour Court set aside the dismissal of the petitioner from service and the management was directed to reinstate him with continuity of service. However, the claim for back wages was not granted by the Labour Court. The only sentence available in the award with respect to the claim for back wages is the following:

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“I hereby set aside the dismissal of the workman from service and the management is directed to reinstate the workman with continuity in service, but without back wages.”

6. According to the petitioner, he is entitled to back wages as well. No reasons were stated by the Labour Court for denying back wages to him. The petitioner relied on the decision of the Supreme Court in **Hindustan Tin Works Limited v. Its Employees (1978 II LLJ 474)**.

7. The learned counsel appearing for the second respondent submitted that after the Labour Court passed Ext.P3 award, the second respondent issued an order dated 23.2.2009 (Ext.P4) reinstating the petitioner in service with effect from 27.2.2009 or any subsequent date on which the petitioner might report for duty but not later than 6.3.2009. The petitioner joined duty on 5.3.2009. At that time, he did not reserve his right to challenge the award passed by the Labour Court to the extent to which it is challenged in this Writ Petition. The second respondent lost an opportunity to challenge the award for reinstatement, in these circumstances. The second

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respondent thought that a quietus can be given by reinstating the petitioner but after joining duty, the petitioner filed the Writ Petition three months thereafter. On that short ground, the Writ Petition is liable to be dismissed. The learned counsel for the second respondent also submitted that the petitioner was promoted to the Officer cadre after the Writ Petition was filed. The second respondent relied on the judgment of the Supreme Court in **Sanat Kumar Dwivedi v. Dhar Jila Sahkari Bhoomi Vikas Bank Maryadit and others** (2000 II LLJ 277 (SC)) and contended that after accepting the offer for reinstatement the petitioner is not entitled to challenge the award and claim back wages.

8. In **Hindustan Tin Works Limited v. Its Employees** (1978 II LLJ 474), the Supreme Court held thus:

“9. ... Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the grant of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has

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become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer.”

9. Relying on the decision in ***M.P.SEB v. Jarina Bee* ((2003) 6 SCC 141)**, the Supreme Court in ***Nicks (India) Tools v. Ram Surat and another* ((2004) 8 SCC 222)** held that it is not an inevitable conclusion that every time a reinstatement is ordered, full back wages was the only consequence.

10. In ***Sanat Kumar Dwivedi v. Dhar Jila Sahkari Bhoomi Vikas Bank Maryadit and others* (2000 II LLJ 277 (SC))**, the appellant was reinstated in service by the order dated 12.5.1978 with

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a condition that he will not get any back wages. The employee accepted such reinstatement without back wages and accordingly, he was reinstated in service. In such circumstances, the Supreme Court held that by his own conduct, the employee has accepted the correctness of the order of reinstatement without back wages and he cannot raise the dispute regarding back wages subsequently.

11. In the case on hand, the Labour Court did not properly consider the question whether the petitioner is entitled to get back wages. The Labour Court did not consider whether the petitioner was gainfully employed elsewhere during the relevant period. No other circumstance was also pointed out by the Labour Court for denying back wages. In what circumstances the petitioner joined duty and whether there was an understanding to relinquish back wages etc. were also not considered by the Labour Court. It was also not considered whether the petitioner filed the Writ Petition challenging the award after fully accepting a condition that he will not claim any back wages. All these are matters touching upon facts. There is no material before this Court to arrive at any conclusion on these aspects. Therefore, there is no other alternative but to direct

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the Labour Court to consider the question of granting or refusing back wages afresh.

Accordingly, the Writ Petition is allowed and the award passed by the Labour Court, to the extent to which it denied back wages to the petitioner, is set aside. The Labour Court shall consider the question of back wages afresh after affording both parties a reasonable opportunity of being heard and to adduce evidence and to produce all materials before the Labour Court.

(K.T.SANKARAN)
Judge

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