

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 22803 of 2008 (M)

AGAINST THE JUDGMENT IN ID 35/2005 of INDUSTRIAL TRIBUNAL, KOLLAM DATED
02.04.2008

PETITIONERS/PETITIONERS:

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1. RAJAN PILLAI, KUNNATHAYYATH HOUSE,
EDAVATTOM, VELLIMON P.O., KOLLAM.
 2. PADMAKUMAR, MELATHIL PUTHIYA VEEDU,
EDAVATTOM, VELLIMON P.O., KOLLAM.
 3. PADMANABHA PILLAI, VAYALIL PUTHEN VEEDU,
EDAVATTOM, VELLIMON P.O., KOLLAM.

BY ADVS.SRI.A.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS/RESPONDENTS:

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1. THE INDUSTRIAL TRIBUNAL, KOLLAM.
 2. ISMAIL ENTERPRISES, KILIKOLLOOR P.O.,
KOLLAM 691 004.
 3. SASTHA ENTERPRISES, CASHEW FACTORY,
EDAVATTOM, VELLIMON P.O., KOLLAM.

R2 BY ADV. SRI.R.RANJITH
BY GOVERNMENT PLEADER SMT.LILLY LESSLIE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF AWARD DATED 02.04.2007 PASSED BY THE 1ST
RESPONDENT IN I.D.NO.35/05

EXT.P2: TRUE COPY OF DEPOSITION OF WW3 BEFORE THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS :NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.

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W.P.(C).No.22803 of 2008

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Dated this the 16th day of September, 2015

JUDGMENT

Petitioners herein were employees of a cashew factory owned by the 2nd respondent. They were employed from 07.06.2001 in the factory continuously and were being paid daily wages. By minimum wages notification roasting employees were entitled to Rs.2,405/- and borma employees to Rs.2,590/- per month as on June 2001. The petitioners claimed that they were not included in the ESI and EPF schemes. Later they were transferred to another factory by the employer, but were not permitted to join duty there. Petitioner's claim is that there was illegal denial of employment and the termination was unsustainable and violative of Sections 25F and 25G of the Industrial Disputes Act.

2. The employee's unions had raised industrial dispute which was referred to the 1st respondent Tribunal. However, thereafter the unions lost interest and the petitioners themselves contested the case. The 2nd respondent employer had disputed

the continuous service of the petitioners and contended that there was no denial of employment. Evidence was adduced and Ext.P1 award dated 02.04.2008 was rendered by the 1st respondent. In Ext.P1 the 1st respondent relied on the deposition of co-workers to the effect that the petitioners were daily waged employees under the 2nd respondent employer. It was also stated that for the past 7 years there was work in the factory for only less than 100 days a year. Relying on this statement made by the co-workers, the Tribunal found that the workmen had failed to prove that they were employed permanently as roasters and borma men and had been employed or worked for more than 240 days in a year. On these premises the Tribunal dismissed the reference.

Section 25F of the Industrial Disputes Act reads as follows:-

"25F. Conditions precedent to retrenchment of workmen.- No workman

employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

* * * * *

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2*[for every

completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3*[or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

3. Section 25G describes the procedure for retrenchment of workman in an industrial establishment. Section 25B of the Act provides that a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of the sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

Sub section (2) of Section 25B reads as follows:-

“25B. Definition of continuous service.-For the purpose of this Chapter,--

(1) xxx xxx x xxxx xxx

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case."

4. From a combined reading of the provisions of Section 25B, 25G and 25H, it is clear that the 240 days of service in a year is not required where there is cessation of work in a factory for a reason which cannot be attributed to the employee. In the instant case, it is clear that what has been stated by the co-workers of the petitioner is only that in the past seven years there was employment in the factory only for 100 days a year. This availability of work in the factory in question cannot by any stretch of imagination, be one attributable to the petitioners in the writ petition.

5. In such a case, the provisions of Section 25B(1) would apply and the petitioners who were continuously engaged on days when there was work in the factory are also entitled to the protection contained in Sections 25G and 25H of the Act. This aspect has not noticed by the 1st respondent. The finding of the 1st respondent in Ext.P1 award to the effect that the petitioners have not proved their case that they were employed permanently in the post of monthly paid roasters and borma men or worked

for 240 days in an year in the management factory is not warranted. The necessity of working for 240 days a year is only where there is work provided in the factory and not otherwise.

6. In the above circumstances, I find that Ext.P1 award is vitiated by total want of application of mind. Ext.P1 Award is set aside. The matter is remanded to the Tribunal for fresh appreciation of the rights of the petitioners under Sections 25G and 25H of the Industrial Disputes Act. The petitioners shall appear before the Tribunal on 14.10.2015, with a copy of this judgment and the Tribunal shall take appropriate steps to consider the reference and pass final orders thereon within a period of four months thereafter after hearing the parties.

The writ petition is disposed of as above.

Anu Sivaraman, Judge