

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

W.P.(C).No.30227 of 2005 (W)

PETITIONER(S):-

K.A. MICHAEL BABU,
ACCOUNTANT, OFFICE OF THE MECHANICAL SUPERINTENDENT,
COCHIN PORT TRUST, WILLINGDON ISLAND, COCHIN-9.

BY ADVS.SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
SRI.S.SUJIN.

RESPONDENT(S):-

1. SECRETARY,
COCHIN PORT TRUST, WILLINGDON ISLAND, COCHIN-9.
2. COCHIN PORT TRUST,
REPRESENTED BY ITS CHAIRMAN,
WILLINGDON ISLAND, COCHIN-9.

R1 & R 2 BY ADVS. SRI.K.ANAND (SENIOR ADVOCATE)
SMT.LATHA KRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT.P1 | TRUE COPY OF THE CONCESSION RULES APPLICABLE TO PORT TRUST EMPLOYEES. |
| EXT.P2 | TRUE COPY OF THE ORDER DATED 19.7.03, ISSUED BY THE CHIEF ENGINEER & ADMINISTRATOR (CFH), ICS, COCHIN PORT TRUST. |
| EXT.P3 | TRUE COPY OF THE ORDER DATED 5.11.03 ISSUED BY THE CHIEF ENGINEER & ADMINISTRATOR (CFH), ICS, COCHIN PORT TRUST. |
| EXT.P4 | TRUE COPY OF MEMO NO.A/MR/KAMB/2004 DATED 71.05 ISSUED TO THE PETITIONER BY THE CONTROLLER OF STORES, COCHIN PORT TRUST. |
| EXT.P5 | TRUE COPY OF THE WRITTEN PROTEST FILED BY THE PETITIONER DATED 23.12.2003 BEFORE THE CONTROLLER OF STORES. |
| EXT.P6 | TRUE COPY OF THE PETITION FILED BY THE PETITIONER'S UNION DATED 12.1.05 BEFORE THE ASST. LABOUR COMMISSIONER (CENTRAL), ERNAKULAM. |
| EXT.P7 | TRUE COPY OF LETTER DATED 5.1.05 WRITTEN BY THE SECRETARY, COCHIN PORT TRUST TO THE CHIEF ENGINEER & ADMINISTRATOR (CFH) ICS, COCHIN PORT TRUST. |
| EXT.P8 | TRUE COPY OF THE LETTER DATED 07.10.05 ISSUED BY THE ASST. LABOUR COMMISSIONER (CENTRAL), ERNAKULAM, TO THE SECRETARY TO GOVT. OF INDIA. |
| EXT.P9 | TRUE COPY OF LETTER DATED 11.4.03 ISSUED BY THE 1ST RESPONDENT TO THE CHIEF MECHANICAL ENGINEER, COCHIN PORT TRUST. |
| EXT.P10 | TRUE COPY OF MEMO DATED 8.4.99 ISSUED TO K.A.CHANDRASEKHARAN BY THE RESPONDENTS. |
| EXT.P11 | TRUE COPY OF LETTER DATED 14.10.05 ISSUED BY THE 1ST RESPONDENT IN RESPECT OF SRI.R.SREEKUMAR. |

RESPONDENT'S EXHIBITS:-

- EXT.R1(a) TRUE COPY OF THE EXTRACTS OF THE SWAMY'S NEWS,
NOVEMBER 2004 (NOS.147 & 148).
- EXT.R1(b) TRUE COPY OF THE EXTRACTS OF THE SWAMY'S NEWS,
NOVEMBER 2004 (NO.150).
- EXT.R1(c) TRUE COPY OF THE EXTRACTS OF THE SWAMY'S
INTERPRETATIONS ON SERVICE - RULES VOL.II.
- EXT.R1(d) TRUE COPY OF THE DECLARATION DATED NIL,
OF MR.K.ACHANDRASEKHARAN.
- EXT.R1(e) TRUE COPY OF THE INCOME CERTIFICATE DATED 10.02.2006,
NO.216/06 ISSUED BY THE VILLAGE OFFICER, MOONILAVU.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.30227 of 2005-W

Dated this the 12th day of November, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P4 order dated 07.01.2005, issued in consequence of Exhibit P7 order dated 05.01.2005. The dispute is, as to whether the petitioner's mother is entitled to medical reimbursement, by virtue of the petitioner's employment with the 2nd respondent - Cochin Port Trust, when the petitioner's father is an admitted pensioner, drawing an amount of Rs.2,813/- [Rupees two thousand eight hundred and thirteen only] per month as pension.

2. Petitioner's mother was admitted for coronary angiogram and the petitioner had requested for advance, for her treatment, under the Central Services (Medical Attendance) Rules, 1944 [for brevity "CS (MA) Rules"]. The petitioner was also granted Rs.40,000/- [Rupees forty thousand only] and Rs.81,000/- [Rupees eighty one thousand only] by Exhibits P2 and P3. Subsequently, by Exhibits P7 and P5, the claim of the

petitioner under the CS (MA) Rules was found to be not sustainable for reason of the petitioner's father being a pensioner.

3. The petitioner had taken up the matter before the Conciliation Officer under the Industrial Disputes Act, 1947 [for brevity "ID Act"], which conciliation had failed, as is indicated at Exhibit P8. Though the Union was ready for a voluntary arbitration, the Port Trust declined consent and, hence, the matter was closed. The respondent herein, has a contention that the petitioner ought to have sought for a reference under the ID Act and the same having not been done, the petitioner cannot invoke the extra-ordinary remedy under Article 226 of the Constitution. However, it is to be noticed that the writ petition itself was admitted on 27.10.2005 and had been pending in this Court with a stay order restraining the respondent from effecting the recovery. After hearing the learned counsel for the petitioner and the learned counsel for the respondent, this Court is of the opinion that no factual dispute arises, a resolution of which alone would commend declining jurisdiction on the ground of alternate remedy

available before the Labour Court/Industrial Tribunal. Hence, the writ petition was heard.

4. The dispute is as to whether the petitioner's mother would come under the definition of "family". The definition of "family", as is indicated in Exhibit P1, an extract of the CS (MA) Rules, means a Government servant's wife or husband and inter-alia his parents "wholly dependent upon the Government servant". The petitioner's father is admittedly a pensioner, drawing an amount of Rs.2,813/- as monthly pension. Note-1 to the general conditions, which defines the term "family", indicates that any member of the family having income, from any source, including pension, above Rs.500/- per month would not be considered to be a "wholly dependent".

5. Further, the respondent has produced extracts of the CS (MA) Rules, which indicate that the mother cannot be treated as "wholly dependent" when father is not a dependent. In fact, a reading of the extract produced by the respondent would indicate that as on 2004 there was a revision in the maximum amount of pension, which takes a person out of the definition of "dependent member" only when the pension

amount per month is Rs.1,500/- or above. However, Sl.No.147 of the compilation indicates that on a specific query, it was clarified that when one of the parents is a pensioner, earning an amount of above Rs.1,500/-, then the other parent is also not to be considered as a dependent of the employee.

6. The further contention of the petitioner is with respect to the discrimination alleged on the ground of three others having been granted medical benefits, who are also said to be similarly situated like the petitioner. Primarily it is to be noticed that when an illegal grant is made in favour of somebody, that cannot enure to the benefit of the similarly situated persons; nor could this Court direct an illegality to be continued. In any event, the counter affidavit indicates that, two of those persons specifically pointed out by the petitioner, were proceeded against for recovery, finding that they are not entitled to such medical allowance/reimbursement. With respect to the other person, an enquiry though initiated, it was eventually disclosed that his father's pension was below Rs.1,500/-. In such circumstance, the said ground is also not sustainable.

For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed. However, the petitioner shall be given six monthly instalments to remit back the amounts, without interest, starting from 12.12.2015 and continued on every 12th of the subsequent months. If default is committed, the petitioner would be liable to be proceeded for recovery, from the salary. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]