

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 27097 of 2007 (A)

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AGAINST THE AWARD IN ID 30/2005 of LABOUR COURT, KOLLAM DATED 14-03-2006

PETITIONER :

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THE ASSISTANT EXECUTIVE ENGINEER,  
P.H.SUB DIVISION, KERALA WATER AUTHORITY  
KOLLAM (NEAR A.R.CAMP).

BY ADVS.SRI.J.KRISHNA KUMAR, SC, KWA  
SRI.C.UNNIKRISHNAN, SC, KWA  
SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

RESPONDENTS :

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1. THE INDUSTRIAL TRIBUNL, KOLLAM.
2. SRI. YSHAMSUDEEN, KINARUVILA VEEDU,  
VADAKEKKARA CHERY, TRIKKARUVA, KOLLAM.

R2 BY ADV.SRI.B.SURESH KUMAR  
R1 BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27097 of 2007 (A)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER DATED 12/08/2003 IN COMPLAINT NO.117/03 PASSED BY THE KERALA OK AYUKTA

EXT.P2 : COPY OF THE EX-PARTE AWARD DATED 14/03/06 IN I.D.NO.30/05 PASSED BY THE HON'BLE INDUSTRIAL TRIBUNAL, KOLLAM

EXT.P3 : COPY OF THE ORDER DATED 28/4/07 IN C.M.P.NO.2/07(A) AND C.M.P.NO.2/07 (B) IN I.D.NO.30/05

EXT.P4 : COPY OF THE CLIAM PETITION NUMBERED AS C.P.NO.28/07 BEFORE THE HON'BLE LABOUR COURT.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

PA TO JUDGE

AV

**K.SURENDRA MOHAN, J.**

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W.P.(C) No.27097 of 2007  
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Dated this the 6<sup>th</sup> day of January, 2015

**J U D G M E N T**

The petitioner herein is Kerala Water Authority. The petitioner has filed this writ petition challenging Ext.P2 award passed by the 1<sup>st</sup> respondent in Industrial Dispute No.30/2005. The short facts of the case are the following.

2. The 2<sup>nd</sup> respondent claimed that he had been working as a Pump Operator at the Ashtamudi Pump House from 01.01.1989 to 06.02.2003, continuously and uninterruptedly. He was denied employment from 06.02.2003 without assigning any reason. According to him, the denial of employment was arbitrary and illegal. He therefore, claimed reinstatement. An Industrial Dispute was raised. The Government of Kerala referred the Industrial Dispute for adjudication to the Industrial Tribunal, Kollam. The same was numbered as I.D.No.30/2005. As per Ext.P2 award, the 1<sup>st</sup> respondent found that the denial of employment to the 2<sup>nd</sup> respondent was wrongful and ordered his reinstatement in service with continuity in service, back wages and other attendant benefits as though, he had continued in service all along without any break.

3. Ext.P2 award was passed ex-parte. Therefore, the petitioner filed a petition to set aside the ex-parte award. By Ext.P3 order, the Industrial Tribunal dismissed the said petition, declining to interfere

with the award, Ext.P2. The petitioner has filed this writ petition aggrieved by the said proceedings.

4. According to the learned Standing Counsel for the petitioner, the 2<sup>nd</sup> respondent was not an employee of the Water Authority. He was only an employee of a contractor who had taken on contract the work in question. According to the counsel, since the award was passed ex-parte, the petitioner did not get an opportunity to contest the claim of the 2<sup>nd</sup> respondent or to produce documents in support of their case. In view of the above, it is only appropriate that the ex-parte award Ext.P2 is set aside and the matter remanded to the Industrial Tribunal for fresh consideration, after affording an opportunity to the petitioner to contest the claim of the workman. It is also contended that, there was no laches or negligence on the part of the petitioner in pursuing the matter before the Industrial Tribunal. They had entrusted the matter to their counsel, who had not represented the matter or pursued the same with diligence.

5. Adv.Sri.B.Suresh Kumar appears for the 2<sup>nd</sup> respondent. According to the counsel, though Ext.P2 award was passed ex-parte, a perusal thereof would show that, there was sufficient evidence available on record to justify the same. The workman had produced copies of the attendance register for the period from 25.09.1993 to 01.02.1998, which are marked in the proceedings and relied upon.

The attendance registers being documents maintained by the petitioner, constitute sufficient evidence to justify the conclusions of the Industrial Tribunal. It is further pointed out that, a registered notice had been issued to the petitioner by the 1<sup>st</sup> respondent. Though the petitioner had received the same, they had not responded to the same by entering appearance in the case or contesting the matter. It is pointed out that, the petitioner had no case even while preferring the petition to set aside the ex-parte award that the lapse was attributable to laches on the part of their counsel.

6. To the contentions of the counsel for the petitioner that, the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) were not applicable to the Kerala Water Authority for the reason that, the said provisions have been excluded by a specific Government Order, the counsel for the petitioner points out that, no such Government Order has been produced in these proceedings. The petitioner having been appointed long prior to the order of this Court of the year 2002 referred to in Ext.P1, it is contended that the reasoning in Ext.P1 cannot deny to the petitioner the benefits granted by Ext.P2 award. It is therefore, contended that the writ petition is only to be dismissed.

7. Heard. The claim of the 2<sup>nd</sup> respondent is that, he was working as a Pump Operator under the petitioner from 01.01.1989 to

06.02.2003, continuously and that, he was denied employment from 06.02.2003 without assigning any reason. A perusal of Ext.P2 award shows that the 2<sup>nd</sup> respondent had produced the attendance registers for the period from 25.09.1993 to 01.02.1998. The said attendance registers have been marked as Ext.A1 series by the 1<sup>st</sup> respondent. Written instructions issued to him by the petitioner have been produced and marked as Exts.A2 to A5. Therefore, the claim of the workman was supported by evidence, which according to the 1<sup>st</sup> respondent were reliable. A perusal of Ext.P2 further shows that, since the workman had entered appearance through counsel and the management had not so entered appearance, registered notice was issued to the petitioner. Despite receipt of the said notice also, the petitioner had not entered appearance. In the said circumstances, the 1<sup>st</sup> respondent had no other option, but to proceed in the matter ex-parte. Therefore, I do not find any infirmity with Ext.P2, though the same is an ex-parte award.

8. Ext.P2 award is dated 14.03.2006. As noticed by the 1<sup>st</sup> respondent in Ext.P3 order dismissing the petition filed by the petitioner to set aside the ex-parte award, the award had become enforceable on 18.05.2006. But, the petition to set aside the ex-parte award was filed only on 26.03.2007, more than ten months after the award became enforceable. The 1<sup>st</sup> respondent did not find the

explanation for the delay to be convincing or acceptable. Therefore, by Ext.P3 order, the said petition was dismissed. The said order is not the subject matter of challenge in this writ petition.

9. As rightly pointed out by the counsel for the 2<sup>nd</sup> respondent, the 2<sup>nd</sup> respondent had thereafter preferred a claim petition under Section 33 C (2) of the Act, which is C.P.No.28/2007, produced as Ext.P4. Though there was initially an interim order of stay in this writ petition, the same was vacated on 17.12.2001 directing the petitioner to comply with the mandate of Section 17 B of the Act. Thereafter, according to the counsel for the petitioner, the claim of the 2<sup>nd</sup> respondent in Ext.P4 has been allowed by the Industrial Tribunal by an order dated 31.03.2009. The said order has also not been challenged by the petitioner before any court so far. Therefore, the said order has also become final.

10. As already noticed above, though a contention has been advanced before me by the counsel for the petitioner that the provisions of Industrial Disputes Act are not applicable to the petitioner in view of a Government Order issued to the said effect. No such order has been produced before me. The petitioner's claim that he was in service from 01.01.1989 onwards having been accepted by Ext.P2 award, I am not satisfied that, the contention of the counsel for the petitioner that, the 2<sup>nd</sup> respondent's claim ought to have been rejected,

since he had not been recruited through the Employment Exchange should be considered.

For the foregoing reasons, I find no grounds to grant any of the reliefs sought for in this writ petition. This writ petition fails and the same is accordingly dismissed. No costs.

Sd/-  
**K.SURENDRA MOHAN, JUDGE.**

AV