

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

W.P.(C).No.25341 of 2011 (P)

PETITIONER(S):-

V.PREMKUMAR, S/O.VIJAYAN,
PREMJI BHAVAN, ISLAND NAGAR-8,
ULIYAKOVIL, KOLLAM.

BY ADV. SRI.ANCHAL C.VIJAYAN.

RESPONDENT(S):-

1. THE KERALA STATE BEVERAGES (M & M) CORPORATION LTD.,
SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010,
REPRESENTED BY ITS MANAGING DIRECTOR.
2. THE MANAGING DIRECTOR,
KERALA STATE BEVERAGES (M & M) CORPORATION LTD.,
SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010.
3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF LABOUR AND REHABILITATION,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1 & R2 BY STANDING COUNSEL SRI.C.S.AJITH PRAKASH.
R3 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT.P-1 TRUE COPY OF THE ORDER NO.G.O.9RT0 212/2001/TD
DATED 26.3.2001 ISSUED BY THE STATE OF KERALA.
- EXT.P-2 TRUE COPY OF THE ORDER G.O.(MS) NO.24/2006/TD
DATED 1.3.2006 ISSUED BY THE GOVERNMENT OF KERALA.
- EXT.P-3 TRUE COPY OF THE JUDGMENT IN C.C.NO.1488/2003
DATED 27.7.2003 ON THE FILES OF J.F.M.C.II, KOLLAM.
- EXT.P-4 TRUE COPY OF THE ENQUIRY REPORT DATED 6.7.2010
SUBMITTED BY THE TEAM ENTRUSTED TO CONDUCT ENQUIRY
BY THE 2ND RESPONDENT.
- EXT.P-5 TRUE COPY OF THE PETITION SUBMITTED BY THE
PETITIONER TO THE 3RD RESPONDENT DATED 10.1.2011.
- EXT.P-6 TRUE COPY OF THE JUDGMENT OF THIS COURT
DATED 1.2.2011 IN W.P.(C). NO.3182/2011.
- EXT.P-7 TRUE COPY OF THE ORDER G.O.(RT) NO.777/2011/LBR
DATED 06.06.11 ISSUED BY THE 3RD RESPONDENT.
- EXT.P-8 TRUE COPY OF THE GAZETTE NOTIFICATION NO.1832 DATED
11.10.1999 PUBLISHED IN THE KERALA GAZETTE EXTRAORDINARY.
- EXT.P-8(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P8.
- EXT.P-9 TRUE COPY OF THE G.O.(RT) NO.782/2011/TD DATED 02.11.2011
ISSUED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT
OF TAXES (A).
- EXT.P10 TRUE COPY OF THE JUDGMENT OF THIS COURT IN W.P.(C)
NO.11103/2010 DATED 25.05.2010.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/-

(true copy)

K. Vinod Chandran, J.

W.P(C) No.25341 of 2011-P

Dated this the 10th day of February, 2015

JUDGMENT

The petitioner seeks re-engagement in the employment in which he was engaged as a daily worker in 2001, and kept away from 2002 onwards.

2. The background facts are that as per the abkari policy of the State of the year 2001, the State took-over the monopoly of the liquor business within the State and entrusted such privilege to the 1st respondent-Corporation; to carry out the said business. The 231 licenses under the Abkari Act [Act 1 of 1077] for sale of foreign liquor were allotted to the Kerala State Beverages Corporation [1st respondent], Kerala State Civil Supplies corporation and Kerala State Co-operative Consumer Federation in the ratio of 130:70:31.

3. Three categories of workmen were employed by the Corporation; one the workers of private licensees, the other legal heirs of such employees and the third being 679 daily wage workers. The petitioner is said to have been employed as daily

wage employee in shop No.2013 at Kottiyam, between 20.07.202001 to 31.03.2002.

4. On charges of misappropriation, the Manager of the shop was proceeded against. The daily wage workers of the said shop were hence kept away from work. However, it is pertinent that none of the daily wage workers were arraigned as accused along with the Manager for the act of misappropriation. In any event, the case filed against the Manager stood rejected by Exhibit P3 judgment, which acquitted the accused. The petitioner neither was an accused in the aforesaid case nor was he cited as a witness.

5. After Exhibit P3 judgment, the petitioner and two others requested for an enquiry into the matter. By Exhibit P4, the enquiry report dated 6.7.2010, was issued under the Right to Information Act. The petitioner also approached this Court with a writ petition, claiming that the enquiry report having found the discharge of the petitioner, to be unjustifiable, the petitioner should be given re-employment. This Court directed consideration of the representation of the petitioner, which was rejected as per Exhibit P7. Though Exhibit P4 and P7 notices that the petitioner was proceeded against for misappropriation, evidently no such proceeding was taken. The petitioner who was

engaged as a daily wage worker, was merely kept out of the work, since the Manager of the shop was accused of misappropriation.

6. The learned Standing Counsel for the Corporation opposes the prayer mainly on the ground of delay and on the ground of other remedies being available to the petitioner under the Industrial Disputes Act, 1947. The delay in approaching this Court would be a compelling circumstance in declining exercise of discretion under Article 226 of the Constitution. However, in the present case it is to be noticed that, a person from a marginalised section of society, who was engaged as a daily wage worker and discharged on account of the criminal case pending against the Manager, is before this Court. True, the petitioner had not invoked the remedies available to him at the appropriate time. But, however, immediately after the criminal case against the Manager; on account of which the petitioner's services were also discharged; ended in acquittal, the petitioner approached the Corporation for a reconsideration of his termination.

7. One further aspect which assumes significance is that subsequently Exhibit P9 order is issued by the Government. Exhibit P9 took note of the circumstances that many persons who were engaged on daily wage basis having been discharged or having been

disengaged or having deserted for various reasons. The Government has directed the Managing Director of the Corporation to consider such cases where re-employment is sought; of daily wage workers appointed prior to 2003 and who were enrolled as members of the Kerala Abkari Workers Welfare Fund Board prior to March, 2010. The petitioner claims a reconsideration under Exhibit P9 order.

8. The respondent-Corporation, however, alertly points out that Exhibit P9 would be applicable only to persons who were enrolled under the Kerala Abkari Workers Welfare Fund Board. The circumstances under which such enrolment was not made of the petitioner assumes some relevance. Admittedly when the petitioner was engaged as daily wage worker and continued as such, the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 was applicable. Even as per the counter affidavit of the Corporation, the enrolment of workers under the Corporation in the Welfare Fund under the Kerala Abkari Workers' Welfare Fund Act, 1989 was carried on only from the year 2006 to 2009. Hence, the petitioner, who was disengaged as early as on 2002, would not have been normally enrolled under the Kerala Abkari Workers Welfare Fund Board. The requirement for enrolment is satisfied; if a person is

employed as an abkari worker for three months. In such circumstance, the absence of enrolment of the petitioner under the Welfare Fund Act would not stand against the petitioner.

9. If the petitioner is found to have been engaged as a daily wage worker as claimed by him in the writ petition and if his disengagement was also as noticed in the enquiry report, Exhibit P4, then definitely the Corporation could consider the re-engagement of the petitioner, in accordance with Exhibit P9. Such consideration shall be made by the Corporation after giving an opportunity to the petitioner to be heard, within a period of three months from the date of production of a certified copy of this judgment. Exhibit P7, only in such circumstance, is set aside to facilitate a fresh consideration by the respondent-Corporation.

Writ petition is disposed of as above. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

(true copy)