

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 26753 of 2009 (L)

PETITIONER :

**THE GENERAL SECRETARY, COCHIN PORT
TRUST THOZHILALI UNION, REG. NO. 07/71/1989,
OPP. AMMONIUM TANK, 24/1652, KOCHI.**

**BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SMT.K.M.RAMYA**

RESPONDENT(S):

- 1. THE PRESIDENT, UNITED STEVEDORES
ASSOCIATION (P) LTD., INDIRA GANDHI ROAD,
WILLINGTON ISLAND, KOCHI-682 003.**
- 2. THE MANAGER, HASH AND COMPANY,
COLLIS BUILDING, VENKITARAMAN ROAD,
WILLINGTON ISLAND, KOCHI-682 003.**
- 3. THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT, ERNAKULAM.**

**R1 BY SRI.K.ANAND,SENIOR ADVOCATE
ADV. SMT.LATHA KRISHNAN**

R3 BY ASST.SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- | | |
|---------|--|
| EXT.P1 | COPY OF THE SETTLEMENT WITH ANNEXURES DATED 19/6/1993. |
| EXT.P2 | COPY OF THE RETRENCHMENT NOTICE DATED 31/03/98. |
| EXT.P3 | COPY OF THE CLAIM STATEMENT FILED BY THE UNION IN I.D.6/99 DATED 2/11/99. |
| EXT.P4 | COPY OF THE COUNTER STATEMENT OF RESPONDENTS 1 AND 2 IN I.D.6/99 DATED 22/12/99. |
| EXT.P5 | COPY OF THE REJOINDER FILED BY THE UNION DATED 29/7/02 |
| EXT.P6 | COPY OF THE DEPOSITION OF WW1 DATED 7/4/04. |
| EXT.P7 | COPY OF THE SENIORITY LIST AS ON 20/6/93 |
| EXT.P8 | COPY OF THE SENIORITY LIST OF HIGH STACK WORKERS AS ON 18/3/98 |
| EXT.P9 | COPY OF THE COVERING LETTER DATED 19/03/98 |
| EXT.P10 | COPY OF THE DEPOSITION OF MW1 DATED 4/10/2004 |
| EXT.P11 | COPY OF THE DEPOSITION OF MW2 DATED 14/3/07 |
| EXT.P12 | COPY OF THE AWARD IN I.D.303/06 DATED 28/5/08. |

RESPONDENT'S EXHIBITS: **NIL**

/TRUE COPY/

P.S.TO.JUDGE

sts

K.Vinod Chandran, J.

W.P.(C).No.26753 of 2009-L

Dated this the 07th day of January, 2015

JUDGMENT

The petitioner is a Union, espousing the cause of certain employees who were retrenched from the pool created by the 1st respondent. The 1st respondent is an Association of Stevedores, operating within the Cochin Port. As early as in 1993, a dispute was raised with respect to the employment of stacking workers, called “Chikkar boys”, engaged for the container packing work under the various stevedores. Prior to 1993, many such employees were employed under the individual stevedores, which resulted in employment/unemployment on the basis of the work which an individual stevedore has. This resulted in a resentment among the workers, which eventually gave rise to the dispute, which was settled on the intervention of the Regional Labour Commissioner (Central), as is indicated at Exhibit P1.

2. The 1st respondent herein, an Association of Stevedores, one of the steamer agents as nominated by the Cochin Steamer Agents Association and the representative Union

agreed to the terms of settlement and reduced it to writing as indicated in Exhibit P1. The intention of the settlement was the effective utilisation of the workers for container high stacking, so as to ensure that no disparity is caused among the 80 [eighty] workers who were popularly known as “Chikkar boys”. The Consultative Body elected by the nominees of the 1st respondent was to take decisions for running the pool on a day-to-day basis. The conditions of employment of these workers, minimum guaranteed wages, incentives and other incidental aspects of employment were settled as per Exhibit P1. A pool of 80 workers was also appended to the terms of settlement, as Annexure-II. In pursuance of the settlement, a seniority list was drawn up on 20.06.1993, which was approved by the respective Unions and which is produced at Exhibit P7. Subsequently, in the year 1998, specifically on 18.03.1998, a seniority list of such workers was alleged to have been published in the notice board of the 1st respondent, produced herein as Exhibit P8; prior to the retrenchment of the employees, the grievances of certain of whom, are ventilated by the petitioner-Union.

3. The retrenchment effected was of 31 workers, of which 15 organised themselves into a Union and raised a dispute as

to their retrenchment, which, according to them, was an illegal termination. The appropriate Government made a reference, which was answered against the Union, by the Central Government Industrial Tribunal as per Exhibit P12; which is assailed in the above writ petition.

4. The learned counsel for the petitioners would essentially contend that the seniority list published is not in compliance with Rule 77 of the Industrial Disputes (Central) Rules, 1957 [for brevity “the Rules”]. The said Rule specifically mandates a seniority list to be prepared and published by the management. Neither has the preparation been done by the management nor the publication effected, is the contention. Even according to the management, as has been noticed by the Industrial Tribunal, the list is one drawn up by the Unions and this goes against the specific mandate in Rule 77 that the preparation of the seniority list has to be done by the management. The learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in ***Central Bank of India v. S.Satyam*** [AIR 1996 SC 2526] to buttress the contention urged under Rule 77. The learned counsel would also take this Court to Exhibit P9, the covering letter addressed to the

Assistant Labour Commissioner, wherein the word “exhibited” was added subsequently. This, according to the learned counsel, would clearly indicate that no publication has been effected. The learned counsel would also take me through the depositions of the management witnesses, to emphasise that; but for feigning ignorance, none asserts publication having been made.

5. The learned counsel for the respondent, on the other hand, would point to the peculiar facts available in the present case and also specifically rely on Exhibit P7 produced by the petitioners themselves, to contend that Exhibit P8 list published in the year 1998 does not deviate from Exhibit P7 list published in the year 1993 and there is absolutely no evidence led by the petitioner-Union to substantiate the contention of the seniority having been not strictly followed.

6. The mandate under Rule 77 has to be looked at; on an examination of the peculiar facts coming to fore in the aforesaid case. True, the preparation of the seniority list of employees is in the exclusive domain of the management and the employees could only raise objections which would have to be considered; again by the management itself. However, here it is to be noticed that there is

no regular employment as such. The admitted case is that the “Chikkar boys” were employed under the individual stevedores, which resulted in gross disparity of engagement, which eventually led to a conciliation wherein the Association of Stevedores took up the issue of day-to-day administration in the matter of deployment of such “Chikkar boys”. It is to be noticed that the relationship was not strictly one of employer-employee, but the engagement in the work arising under the members of the Association of Stevedores, so as to ensure uniform distribution of work among the “Chikkar boys”; whose employment was essentially casual in nature.

7. The terms of the conciliation arrived at by the parties was reduced into writing under Exhibit P1, to which was appended a list of “Chikkar boys”. It was pursuant to such agreement on conciliation that Exhibit P7 seniority list was drawn up on 20.06.1993. The terms of settlement entered into on behalf of the 80 workers was agitated on their behalf by the representative Unions, who had drawn up the list in accordance with the seniority. The petitioners themselves have produced Exhibit P7 and the same is said to have been obtained from the office of the Labour Commissioner, which was produced before the Industrial Tribunal

as Exhibit M1. The petitioners does not have a contention that Exhibit P8 list drawn up on 18.03.1998 deviates on any count from Exhibit P7 list published in the year 1993, but for solitary instances.

8. The contention now raised is that on creation of a pool as per the terms of Exhibit P1, the “Chikkar boys” included were paid gratuity by their individual employers at that point of time. The records maintained by the Association would clearly indicate their seniority, is the contention. However, it is to be noticed that the employment prior to Exhibit P1 was under the individual stevedores and the Association would not have any records of their employment. It is also to be emphasised, at the risk of repetition, that the terms of settlement were also arrived on the basis of the list provided by the Unions. There is no question of any separate seniority list being prepared and objections considered by the respondent-Association of Stevedores. In the conciliation, the list was placed and approved by all parties. The terms were affirmed by the Labour Commissioner. The petitioners did not raise any contention with respect to the respective seniority of the persons included in the list; nor did they adduce evidence to that end.

9. It is also to be noticed that the Union, which is the

petitioner herein, now representing the cause of 15 retrenched workmen, was formed; after the retrenchment of workmen effected in pursuance of Exhibit P8 list. No objection could be raised on the representative participation of the Union in the dispute, where the illegality of termination was the issue referred; since an illegal termination could be agitated by the individual workers themselves. A collective prosecution under the banner of a Union would also be permissible; but, however, the Union which was constituted after the retrenchment has no role in the preparation of the seniority list and can only be considered as one association formed to effectively agitate the grievance of certain employees who were retrenched. The Industrial Tribunal in fact rightly noticed that the reference was only with respect to illegal termination and the preparation of the seniority list was not an issue referred for consideration.

10. Definitely if the list is found to have been not drawn up properly, then the retrenchment itself would be deemed to be an illegal act. However, from the facts available, this Court is not convinced that there is any infirmity in the preparation of the list. The peculiar facts and circumstances and the terms of settlement as reduced into writing in Exhibit P1 would indicate that the adoption

of the list given by the representative Unions, by the management, cannot, on facts, be found to be illegal.

11. It cannot also be said that the preparation was not done by the management as provided under Rule 77. With respect to the publication, though the learned counsel would assert that no evidence is placed on record, one has to understand that the publication asserted is one of display in the notice board. No specific mode having been prescribed under Rule 77, the said method cannot be faulted. Nothing flows from the addition made in Exhibit P9. Exhibit P8 list itself was drawn up on 18.03.1998 and Exhibit P9 is only a covering letter, addressed to the Assistant Labour Commissioner. The fact that it was not noticed in the said communication that the list was exhibited and that was later incorporated, does not at all stand against the factum of display in the notice board.

12. A reading of the decision in **Satyam** (*supra*) relied on by the petitioners would indicate that, but for the reference to Rule 77, nothing has been stated as to the manner in which the Rule has to be employed. The decision related to the definition of “retrenchment” and whether the retrenched employees as indicated

in Section 25H of the Industrial Disputes Act, 1947 [for brevity “the Act”] are to be equated with the retrenched employees as indicated in Section 25F. The Hon'ble Supreme Court, in the aforesaid decision, found that the definition of “retrenched employees” as indicated in Section 25H has to be that under the definition clause of Section 2(oo) and there is no warrant for confining it to those retrenched employees as indicated in Section 25F. The said dictum has no application in the aforesaid case.

13. However, it is to be noticed that, in the aforesaid decision despite the Hon'ble Supreme Court holding in favour of the workmen, relief was declined and the judgment of the High Court was set aside for reason of the long delay in approaching the Court. Herein also, as was noticed, the seniority list, based on which retrenchment was effected, followed the earlier seniority list, evidenced at Exhibit P7. Exhibits P7 and P8 lists are almost verbatim reproduction, but for inconsequential differences. This Court has already found that there was no evidence adduced as to any deviation having been made in the present seniority list [Exhibit P8] from that drawn up at the time the pool was created [Exhibit P7] as per Exhibit P1 conciliation settlement in 1993. The petitioners

cannot challenge the seniority so assigned at the point of time, after five years, when it worked to their prejudice, by reason only of their position in the said seniority list. The aspect of delay too has to be found against the petitioners herein.

For all the above reasons, this Court is of the opinion that there is no infirmity in the award of the Industrial Tribunal. The Industrial Tribunal has proceeded on the premise that the evidence recorded was insufficient to find illegality in the list prepared as on 18.03.1998, which followed the earlier list prepared on 20.06.1993. The writ petition is, hence, devoid of merit and the same is accordingly dismissed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

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(true copy)