

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

W.P.(C).No.27318 of 2012 (L)

AGAINST THE AWARD IN I.D.NO.11/2004 OF LABOUR COURT, KANNUR
DATED 29.07.2011]

PETITIONER(S):-

M.T.GEETHA, AGED 45 YEARS,
GEETHANJALI, P.O.KARAKKAMALA, MANANTHAVADY,
WYANAD DISTRICT, PIN-670 645.

BY ADV. SRI.DEVAPRASANTH.P.J.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695001.
2. THE PROJECT OFFICER,
AGENCY FOR NON-CONVENTIONAL ENERGY AND
RURAL TECHNOLOGY (ANERT) ,
INTEGRATED RURAL ENERGISATION PROGRAM (IREP),
MANANTHAVADY, WYNAD, PIN-670645.
3. AGENCY FOR NON-CONVENTIONAL ENERGY AND RURAL TECHNOLOGY(ANERT),
REPRESENTED BY ITS DIRECTOR, KESAVADASAPURAM,
THIRUVANANTHAPURAM, PIN-695001.

R2, R3 BY ADV. SRI.ASHOK B.SHENOY, SC, ANERT
R2, R3 BY ADV. SRI.V.G.ARUN, SC, ANERT
R3 BY ADV. SRI.T.R.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.27318 OF 2012-L

APPENDIX

PETITIONER(S) EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE AWARD IN ID 11/2004 DATED 29-7-2011
PASSED BY THE LABOUR COURT, KANNUR.

EXHIBIT P2: TRUE COPY OF THE JUDGMENT IN OP 11653/2001 DATED 29-1-2002
OF HIGH COURT OF KERALA.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN OP 12460/2002 DATED 2-8-2002
OF HIGH COURT OF KERALA.

EXHIBIT P4: TRUE COPY OF THE LETTER ISSUED BY THIRD RESPONDENT
DATED 25-9-2004.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/.

-// true copy //-

K. Vinod Chandran, J.

W.P(C) No.27318 of 2012-L

Dated this the 06th day of March, 2015

JUDGMENT

The petitioner is the worker before the Labour Court, Ernakulam. The issue referred was as to whether the denial of permanent employment to the worker by the management was justifiable or not.

2. The worker was appointed on 01.08.1997 in a project of the management and had been continuing till 01.10.2004. The management admitted that such engagement was there; but, however, alleged that the worker was only a daily wager and there was no continuous employment.

3. The facts disclosed from the award of the Labour Court is that, the worker was employed as a Clerk-Typist in the project office of the management, which office was closed on the project having been completed. The worker, however, claimed for permanent appointment in the management establishment. In fact, the management had been carrying on the practise of appointing daily wagers on contract basis.

4. Certain applicants, to a selection called for by the management, had approached this Court in O.P.No.11653 of 2001, contending that their selection was not proceeded with and appointments granted for reason of the management, a Government establishment, appointing persons as daily wagers without any sponsorship from the Employment Exchange. Admittedly the worker herein was not sponsored by the Employment Exchange. The High Court in the aforesaid writ petition found that the action of the management in making daily wage appointment even without sponsorship from the Employment Exchange, especially in the context of the management being a Government establishment, was irregular. It was pursuant to this judgment that the daily wagers, including the petitioner, were terminated.

5. The daily wagers so terminated approached this Court with O.P.No.12460 of 2002, challenging their termination, which writ petition stood dismissed. The daily wagers were found to have entered service through the back door without any sponsorship by the Employment Exchange or any other authorised agency. The petitioner herein also filed a writ petition, as W.P.(C).No.3115 of

2004, wherein the petitioner sought for withdrawal of the writ petition leaving open the contentions to be urged before the Labour Court.

6. That the petitioner was employed between 01.08.1997 and 01.10.2004 was admitted by the management. While the worker claimed that she had 240 days in all the years in which she continued under the project, the management refuted it. However, nothing was produced to substantiate the claim of the management. Having admitted the engagement of the worker as daily wager, that too continued even for a number of years, it was incumbent upon the management to have established that such daily wage employment did not exceed 240 days in 12 calendar months, was the finding of the Labour Court. The Labour Court, hence, found that the worker is entitled to retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947 [for brevity "ID Act"]. The management does not challenge the award.

7. The petitioner challenges the award on the ground that she had not been granted permanency. From the facts noticed above from the various writ petitions and also from the admitted position that the petitioner was not sponsored by any authorised

agency, definitely no permanent appointment could be given to the petitioner. It is also to be noticed that the petitioner was only appointed to a project, which project stood concluded and office closed down. The Labour Court relied on the decision of the Hon'ble Supreme Court in **Jugbeer Singh v. Haryana State Marketing Board and another [AIR 2009 SC 3004]** to hold that an order of retrenchment passed in violation of Section 25 though set aside, would not result in an automatic award of reinstatement. The decision in **Secretary, State of Karnataka and others v. Uma Devi and Others [AIR 2006 SC 1806]** was relied on to decline the reference with respect to permanent employment sought, since the petitioner was found to be an appointee through back door.

8. The Labour Court also, along with the reference, considered an application under Section 33(1) of the ID Act. The claim raised therein was that the management had terminated her service when the adjudication under the ID Act was pending consideration. The Labour Court rightly found that Section 33(1) is not applicable, since it was the termination that led to the reference, which initially was agitated before the High Court in a writ petition.

The termination was also found to be one effected by the orders of the High Court in O.P.No.11653 of 2001. A writ petition filed by the petitioner along with 8 others, numbered as O.P.No.12460 of 2002,. challenging the termination was also dismissed to the detriment of the petitioner. Hence, it was found that there was no violation of the provisions of Section 33 of the ID Act. This Court does not find any reason to interfere with the award on the aspect of denial of permanency to the petitioner as also the finding on the provisions of Section 33 of the ID Act not being violated.

The writ petition is found to be devoid of merit and the same is dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/-

[true copy]