

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 34374 of 2005 (P)

PETITIONER(S) :

A.MUHAMMED KANNU, AGED 63 YEARS,
S/O.MUHAMMED ABDUL KHADER, KALLIYALIPADINJATTETHIL
HOUSE, MYLAPORE, UMayANELLOOR P.O., KOLLAM.

BY ADVS.SRI.B.S.SWATHY KUMAR
SMT.V.BEENA
SMT.K.V.SUPRABHA

RESPONDENT(S) :

1. THE LABOUR COURT, KOLLAM.
2. THE THIRUVANANTHAPURAM PORT AND HEADLOAD
WORKERS LABOUR CONTRACT CO-OPERATIVE SOCIETY LTD.,
NO.4245, VALLAKKADAVU, THIRUVANANTHAPURAM.

R1 BY SENIOR GOVERNMENT PLEADER SRI.P.FAZIL
R2 BY ADV. SRI.GOPAKUMAR R.THALIYAL, SC
R2 BY ADV. SRI.M.S.VIJAYACHANDRAN BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-06-2014, THE COURT ON 05-01-2015 DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER' (S) EXHIBITS:

- EXT.P1 MEMO OF CHARGES DATED 10.07.1981 ISSUED BY THE ENQUIRY OFFICER.
- EXT.P2 COPY OF AWARD IN A.R.C. 1084/85 DATED 16.11.1994.
- EXT.P3 COPY OF THE REQUEST FOR REINSTATEMENT BEFORE THE 2ND RESPONDENT DATED 10.11.1989.
- EXT.P3 (a) COPY OF THE PETITION BEFORE THE DISTRICT LABOUR OFFICE, QUILON DATED 10.12.82.
- EXT.P3 (b) COPY OF THE PETITION BEFORE THE DISTRICT LABOUR OFFICER, THIRUVANANTHAPURAM.
- EXT.P4 COPY OF THE REPLY BY THE 2ND RESPONDENT DATED 8.02.1996.
- EXT.P4 (a) COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT.
- EXT.P5 COPY OF PRELIMINARY ORDER IN ID NO.110/96 DATED 16.12.2004 OF THE LABOUR COURT, KOLLAM.
- EXT.P6 COPY OF AWARD OF THE LABOUR COURT, KOLLAM IN ID NO.110/96 DATED 30.05.2005.
- EXT.P7 COPY OF NOTICE DATED 24.06.1981 ISSUED BY THE LABOUR OFFICER, THIRUVANANTHAPURAM.
- EXT.P7 (a) COPY OF NOTICE DATED 29.12.1980 ISSUED BY THE LABOUR OFFICER, THIRUVANANTHAPURAM.
- EXT.P7 (b) COPY OF NOTICE DATED 02.03.1996 ISSUED BY THE LABOUR OFFICER, THIRUVANANTHAPURAM.

RESPONDENT' (S) EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

bka/-

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 34374 of 2005

Dated this the 5th day of January, 2015

J U D G M E N T

Ext.P6 order passed by the Labour Court, Kollam, by which the petitioner's claim for reinstatement was disallowed for the reason that his claim is stale, is under challenge in this writ petition.

2. The petitioner was an employee of the 2nd respondent society from 1963 onwards. In December 1977, he was suspended from service on charges of misappropriation of funds etc. Disciplinary proceedings were initiated against him, which culminated in his dismissal from service in 1981. The respondent society filed an arbitration case for recovery of amounts alleged to have been misappropriated by the petitioner. However, the same was dismissed on merits. Though the respondent society filed an appeal against the said decision, it was without success. Thereafter, a criminal

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case was filed by the respondent society against the petitioner, which also was dismissed for lack of evidence. Thereafter, the petitioner moved the labour authorities for reinstatement in service in the light of the above. Ultimately, the matter reached before the Labour Court, Kollam. The petitioner alleges that though the 1st respondent, by Ext.P5 preliminary order in ID No.110/96, declared that the enquiry proceedings were illegal, by Ext.P6 impugned order, it was held that the petitioner is not entitled to any relief for the reason that his claim is stale and belated. The petitioner further points out that it is clear from Exts.P3, P4 and P6 documents that the petitioner has been pursuing the issue right from 1981 onwards and there is neither any negligence nor any delay on the part of the petitioner in proceeding with the matter. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondent society, it was contended as follows;

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2. The 2nd respondent management society is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969. The 2nd respondent society is undertaking loading, unloading and transporting of goods on contract with government, quasi government agencies and private bodies. The 2nd respondent society entered into a contract with the Food Corporation of India with respect to loading, unloading and transporting of food grains arriving at Kollam. The petitioner in the writ petition was appointed as a work supervisor cum representative of the 2nd respondent society at Kollam during 1974 to 1977. He was entrusted with the responsibility of appointing loading and unloading workers, supervising their work and making payments to the workers on behalf of the management society. The petitioner as a representative of the management was entrusted with the responsibility of making payments on behalf of the management at Kollam in connection with the contract with the Food Corporation of India. The duties and responsibilities of the petitioner as the Supervisor are to maintain proper accounts, make payments to labourers, and operate bank accounts on behalf of the management society.

3. The petitioner while working as Supervisor of the 2nd respondent society misappropriated a huge amount from the society by defrauding the society by making false entries in the books of the society showing payment to workers and provident funds. The petitioner was placed under suspension with effect from 14.12.1977 pending enquiry into the charges levelled against him. A domestic enquiry was conducted against the petitioner and an Advocate was appointed as the enquiry officer. The first charge was regarding an allegation of misappropriation of Rs.5,108.68 by way of not accounting this amount received as advance. The second charge was that he received Rs.21,300/- on four days (15.10.1975, 27.02.1976, 15.04.1976 and 29.07.1976), but the receipt of this amount was recorded only on 26.08.1976. The third charge was that on 26.08.1976, he has made false entries in the

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account book showing payments of Rs.25,729.97 towards provident fund to labourers on the basis of false vouchers and the fourth charge was that he had betrayed the trust reposed on him by the management. In the domestic enquiry, the management and the workmen were represented by Advocates. A detailed domestic enquiry was conducted and on the basis of the report of the enquiry officer, the workman was dismissed from service with effect from the date of suspension, that is, on 14.12.1977.

4. After 15 years of passing the order of dismissal of the petitioner from service, he raised an industrial dispute in 1996 challenging the dismissal. The matter was referred to the 1st respondent for adjudication. The management society raised a specific contention before the 1st respondent that the issue referred for adjudication is a stale one and it is hopelessly barred by limitation. Even though the Industrial Disputes Act does not prescribe any period of limitation for raising an industrial dispute, making a reference on a stale issue is illegal and unjustifiable. In such a situation, the 2nd respondent management contended before the 1st respondent that adjudication on such a reference will cause serious injustice, difficulties and impediments particularly in the matter of adducing evidence. The 2nd respondent also raised another contention in the written statement that the petitioner was not a workman and he was holding a post in the managerial capacity and he was doing supervisory work of appointing labourers, making payments to them, accounting the expenditure etc. As such, he was in the manager category and has no right to proceed against the dismissal through proceedings under the Industrial Disputes Act.

5. The 1st respondent raised a preliminary issue in the matter regarding the validity of the domestic enquiry conducted against the petitioner. The 1st respondent passed a preliminary order holding that the domestic enquiry conducted against

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the petitioner is illegal. The 1st respondent came to such a conclusion in the preliminary issue for the reason that the documents produced by the management society for proving the validity of the domestic enquiry was a photocopy of the original enquiry proceedings. This was due to the reason that the original enquiry proceedings and the connected records were lost and a photocopy alone was available in the society. The 1st respondent did not accept the photocopy of the enquiry proceedings and declared that the enquiry was irregular. In such a situation, an opportunity was afforded to the management society to prove the charges contained in the charge sheet.

6. The Secretary of the management society was examined as MW1 to prove the case against the workmen and the petitioner workmen was examined as WW1 to disprove the allegations against the workmen. No fresh documents were produced or marked on the side of the management and Exhibits W1 to W3 were marked on the side of the workman. In the evidence stage, the management has confined to prove only 2 points, such as the workman was holding a post in the managerial cadre and the industrial dispute raised by the workman is a stale one. The petitioner workman was posted as work supervisor at Kollam Depot with effect from 04.01.1974, where he has to appoint head load workers, supervise their work and pay salary to them. At the time of cross examination, the petitioner admitted that his duty was to appoint workers as and when required and disburse their salary. The petitioner was under suspension with effect from 14.12.1977 and after conducting domestic enquiry, he was dismissed from service on the basis of the enquiry report with effect from 14.12.1977, the date of suspension.

7. The dismissal order was dated 07.09.1981 and the industrial dispute was raised as per letter dated 23.11.1995, which was produced as Exhibit W3. Thus, there is a delay of more than 14 years

from the order of dismissal from service. The petition before the conciliation officer raising an industrial dispute was dated 23.11.1995. It was alleged in the said letter that for the last 18 years, he remained unemployed and requested for reinstatement in service with continuity in service from 14.12.1977 with backwages and all other attendant benefits. The petitioner did not explain the reason for the delay in raising the industrial dispute in the petition dated 23.11.1995. A specific question was put to the petitioner during the cross examination whether he can produce any document evidencing the submission of any complaint before the District Labour Officer prior to 1995. He answered that he can produce such a document. But no document was produced by him to prove that he has taken up the matter with the Labour Officer before 1995. If there was any document to prove this aspect, he could have produced the same before the 2nd respondent. Thus it is clear that the industrial dispute raised by the petitioner is a stale claim and therefore it cannot be entertained by the 1st respondent. Hence the 1st respondent has rightly held that the claim put forward by the petitioner is a stale claim and therefore he cannot seek for reinstatement and that the management is not liable to reinstate him in service. Exhibit P6 award passed by the 1st respondent is perfectly legal and sustainable in law.

4. Arguments have been heard.

5. The petitioner alleges that he was suspended from service on false and frivolous allegations, which were found baseless and incorrect by the Labour Court itself as is evident from the preliminary order. The grievance of the petitioner is that instead of considering

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the matter in its correct perspective and finding as to what relief the petitioner is entitled to, the court below proceeded to establish that the claim of the petitioner is stale and hence, he is not entitled to any relief. According to the petitioner, even a casual observation of the records placed before the 1st respondent itself would reveal that the claim put forward by the petitioner is well-founded and correct. The learned counsel for the petitioner would point out that even after finding that there is illegality and irregularity in the procedure followed by the respondent society in dismissing the petitioner from service, the court below refused to grant any relief to the petitioner.

6. The reason put forward by the court below in rejecting the claim for reinstatement of the petitioner is that there was so much delay in the petitioner approaching the forum claiming reinstatement. According to the petitioner, it is evident from Exts.P3 and P4 that the petitioner had been diligently prosecuting the

matter throughout and there was no laches or negligence on his part in approaching the authorities claiming reinstatement. It can be seen that the respondent society has outrightly rejected his claim as early as in 1995. However, the Labour Officer proceeded with the matter, conducted hearing, held conciliation talks and entered into the finding that there is no chance for an amicable settlement of the issue. Therefore, the matter was referred to the Industrial Tribunal for adjudication. True copies of the notices issued by the Labour Officer, Thiruvananthapuram, intimating him the dates of hearing in this case are produced as Ext.P7 series.

7. The learned counsel for the respondent society, per contra, inviting my attention to the decisions of the apex court in **Nedungadi Bank Ltd.** v. **K.P.Madhavankutty & Others** [2000 (2) SCC 455] as well as in **Ratan Chandra Sammanta** v. **Union of India** [1993 (Supp) (4) SCC 67], argued that the trend of judicial opinion is that when the claim is stale, no relief

could be granted to an employee. In **Nedugadi Bank**'s (cited supra) case, a delay of seven years was held to be fatal thereby dis-entitling the workman from getting any relief. In **Ratan Chandra Sammanta**'s (cited supra) case, it was held that the casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself and lapse of time results in losing the remedy and the right as well.

8. It is true that inordinate delay in making a claim without a justifiable reason is fatal to reclaim under the Industrial Disputes Act. However, here, Ext.P7 series issued from the Office of the District Labour Officer, Thiruvananthapuram, would make it clear that the claim put forward by the petitioner is not stale or belated and the court below went wrong in rejecting his claim on that ground. Exts.P3 series and P4 series would also reveal that the petitioner has been diligently prosecuting the matter and there was no laches or negligence on his part in approaching the authorities claiming reinstatement.

The Labour Court has found that the charges against the petitioner have not been proved. The petitioner attained the age of superannuation in the year 2000 while the proceedings before the 1st respondent were pending. He approached the Labour Officer as early as in 1986 requesting to take steps to reinstate him into service. However, the proceedings were delayed and Ext.P1 award was passed only in the year 2005, i.e., much after the petitioner attaining the age of retirement. It is evident from the records that for about 20 years, the petitioner has been running from pillar to post to get justice. However, the matter was considerably delayed culminating in the denial of the claim of the petitioner on account of the delay on the part of the authorities, who were dealing with the case of the petitioner. Considering these aspects as well as the fact that it is not possible to order reinstatement of the petitioner, this Court is of the definite view that the 1st respondent ought to have awarded an amount as compensation for the loss suffered

by the petitioner.

9. The learned counsel for the petitioner would point out that the provident fund due to the petitioner for the period, during which he worked, is not disbursed to him so far. Being a long pending matter, this Court is of the view that it is not necessary to remit the matter back to the trial court for adjudication of the quantum of compensation to be awarded to the petitioner. On a consideration of the entire materials now placed on record, this Court is of the view that it is only just and proper to award a compensation to the petitioner by this Court itself. After considering all the relevant facts, this Court feels that a sum of ₹50,000/- would be a just compensation to the petitioner.

In the result, the writ petition is disposed of nullifying the observation in Ext.P6 award that the petitioner is not entitled to any relief at all. The respondent society is directed to give a sum of ₹50,000/- as compensation within a period of three months from the

date of receipt of a copy of this judgment. If the respondent society fails in disbursing the said amount, the said amount shall fetch interest @ 10% per annum from the date of this judgment, payable to the petitioner.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

bka/-