

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

W.P.(C).No.27375 of 2011 (V)

[AGAINST THE ORDER IN CLAIM PETITION NO.14/2008 DATED 22.07.2011
OF LABOUR COURT, KANNUR]

PETITIONER(S):-

S.THIRUMALAISWAMY, S/O.LATE SRI. SAMA NAIDU, AGED 80 YEARS,
EX-EMPLOYEE, CHEMBRA ESTATE,
NOW RESIDING AT 40-C, THIRUVALLUVAR STREET, THAYAGAM,
G.M.MILLS POST, COIMBATORE - 641 012.

BY ADV. SRI.PHILIP MATHEW.

RESPONDENT(S):-

1. THE MANAGER, CHEMBRA ESTATE,
CHEMBRA ESTATE, CHEMBRA POST, MEPPADI - 673 577,
WYANAD DISTRICT.
2. P.V.ALI MUBARAK, S/O.ALAVIKUTTY,
PVs BUILDING, NILAMBUR 679 329, MALAPPURAM DISTRICT.
3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, LABOUR (A) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.

R1 & R 2 BY ADVS. SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.M.C.SANITHA
SRI.V.S.SHIRAZ BAVA

R3 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: COPY OF THE AWARD PASSED BY THE LABOUR COURT,
KOZHIKODE ON 29.2.1988 IN I.D.NO.22/84.
- EXT.P2 TRUE COPY OF THE ORDER PASSED BY THE LABOUR COURT,
KANNUR IN C.P.NO.78/91 ON 26.2.1993.
- EXT.P3 TRUE COPY OF THE JUDGMENT PASSED BY THIS COURT IN
O.P.NO.1892/1995(A) ON 13.06.2005.
- EXT.P4 TRUE COPY OF THE REPLY SENT BY THE RESPONDENTS
THROUGH THEIR LAWYER ON 26.7.2008, TO THE
PETITIONER'S COUNSEL.
- EXT.P5 TRUE COPY OF THE CLAIM PETITION, NUMBERED AS
C.P.NO.14/2008 FILED BY THE PETITIONER BEFORE THE
LABOUR COURT, KANNUR ON 5.9.2008.
- EXT.P6 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
RESPONDENTS JOINTLY IN C.P.NO.14/2008 BEFORE THE
LABOUR COURT, KANNUR.
- EXT.P7 TRUE COPY OF THE ORDER PASSED BY THE LABOUR COURT,
KANNUR IN C.P.NO.14/2008 ON 22.07.2011.

RESPONDENT(S)' EXHIBITS

NIL.

Vku/-

(true copy)

K.Vinod Chandran, J.

W.P.(C).No.27375 of 2011-V

Dated this the 28th day of January, 2015

JUDGMENT

The petitioner is aggrieved with the denial of interest, as declined in Exhibit P7; which he claims on an amount awarded under Section 33C(2) of the Industrial Disputes Act, 1947 [for brevity "ID Act"].

2. The petitioner was a Group Electrician-cum-Mechanic under the Chembra Estate and he was terminated on 27.01.1984. An industrial dispute was raised with respect to the justifiability of the termination, which stood adjudicated and the petitioner was directed to be reinstated with full backwages. The award of the Labour Court, Kozhikode in that respect is dated 29.02.1988. The petitioner was reinstated; but, however, not paid the backwages as directed in the award.

3. The petitioner was, hence, before the Labour Court, Kannur with a claim petition under Section 33C(2) of the ID Act, claiming the backwages. The same was allowed as per Exhibit P2 dated 26.02.1993. The management, however, did not take any steps to pay the amounts as directed in Exhibit P2. Nor did the petitioner initiate any

recovery proceedings. The petitioner, however, aggrieved by the denial of interest, filed a writ petition before this Court, numbered as O.P.No.1892 of 1995. The writ petition was disposed of on 13.06.2005 by Exhibit P3 judgment, wherein there was a direction to pay the amounts quantified as backwages under Section 33C(2) and it was also observed that the petitioner has to first receive such payment and claim for interest in accordance with law.

4. After disposal of the writ petition by Exhibit P3, the petitioner initiated recovery steps and the present management, who had taken over the establishment on 13.10.2000, deposited the amounts on 12.11.2007 before the Tahsildar who had initiated the revenue recovery proceedings. The petitioner having received the said amount, raised a claim for interest before the Labour Court, Kannur, with a further petition, numbered as Claim Petition 14/2008, which was rejected as per Exhibit P7, the impugned order herein.

5. The Labour Court on a consideration of the claim of interest, went on the wrong premise that the petitioner had not filed an appeal from the order under Section 33C(2) [Exhibit P2] and had approached this Court with an Original Petition under Article 227 of the Constitution. The observation in Exhibit P3; leaving the claim of interest

open, was interpreted in such a manner, to hold that the petitioner would have reserved such a right only “in accordance with law”. The Labour Court, hence, found that Exhibit P2 having specifically declined interest, the petitioner could not raise the issue in a subsequent claim petition. On that ground, the claim of interest was declined.

6. This Court is of the opinion that Exhibit P7 is not correctly decided. The ID Act does not provide an appeal from an order under Section 33C(2) and an aggrieved party can only file an Original Petition under Article 226 or 227 of the Constitution of India challenging such order. Exhibit P2, admittedly, impliedly declined grant of interest. The workman had challenged the said order insofar as the claim of interest having been declined. This Court, by Exhibit P3 judgment, specifically kept that issue open to be agitated by the workman after the principal amounts as directed in Exhibit P2 were paid. In such circumstance, the principle of '*res judicata*' cannot be applied against the petitioner, for declining grant of interest. Exhibit P7, hence, would stand set aside.

7. Normally this court would have remanded the issue for fresh consideration, since the grant of interest involves a discretionary exercise, which the Labour Court obviously has not carried out. Only considering the long pending claim and the fact that the writ petition

itself is pending from 2011, this Court would take up the responsibility of considering the exercise of discretion.

8. To decide on the award of interest, at the outset, it is to be noticed that Exhibit P2 order was passed as far back as on 26.02.1993. The petitioner admittedly was reinstated as directed in the award. The reason for the delay in payment of backwages, has been briefly noticed by this Court in Exhibit P3 judgment. After the award of the Labour Court in the industrial dispute, ordering reinstatement with backwages, before the amounts were recovered, the assets of the management-establishment were taken over by the Court Receiver appointed by the Bombay High Court. Hence, recovery of the backwages as awarded by the Labour Court in the industrial dispute had to be after obtaining permission from the Bombay High Court.

9. The admitted facts are that the management-establishment, which was a Company owned by an entity outside India; by reason of an amendment to the Foreign Exchange Regulation Act, transferred its assets to an Indian Company and later on, to an individual, who had committed default in the loan availed from the Bank of Tokyo. The Bank of Tokyo filed a suit before the Bombay High Court, in which the Receiver was appointed, by the said High Court

and the management was carried on by various agencies appointed by the Receiver of the Bombay High Court. When O.P.No.1892 of 1995 was brought up for hearing, this Court noticed that it was conceded in the counter affidavit dated 10.05.2005, filed by the Court Receiver, that the amount was to be paid to the workman by a firm called “M/s.Travancore Malabar Estates”, who was appointed as agents for releasing payments to the claimants. It is also specifically noticed in Exhibit P3 that the amount was offered to the petitioner; but the petitioner refused to accept it as he was not offered any interest. It was hence that, this Court observed that the petitioner has to first receive such payment and then make a claim for interest. Though the question with respect to grant of interest was left open, the reservation in Exhibit P3 cannot be taken as a finding on the entitlement of interest.

9. In any event, Exhibit P3 would clearly indicate that despite the petitioner having been offered the amount; the backwages as directed in the award of the Labour Court, the petitioner had refused to receive such amounts, on the basis of the claim raised for interest. The petitioner-workman could have definitely accepted the amounts and then raised a further claim for interest. In such circumstance, this Court does not find that any discretion could be exercised in favour of the

petitioner till the Original Petition was disposed of by Exhibit P3 on 13.06.2005. The petitioner could not raise a contention that he would accept the amounts only with interest and that the interest ought to be paid till such time the petitioner accepts the amount offered.

10. The intervening facts would indicate that the payment of backwages, as awarded, was delayed due to the taking over of the establishment by the Court-appointed Receiver, and the management being carried on by various agencies. The petitioner too did not take effective steps to expedite recovery and even refused the amounts when it was offered to him. The management definitely had an obligation to pay the backwages as directed in the award; but the petitioner cannot be heard to refuse payment only on the ground of the pending litigation, on the question of interest. The admitted facts regarding the take over and intermittent change in management as also the recalcitrant attitude of the workman are factors which would persuade this Court against the exercise of discretion in favour of the workman.

11. However, the subsequent facts indicate that the petitioner was not immediately paid the amounts even after the judgment on 13.06.2005. The petitioner again had to resort to revenue

recovery proceedings to realise such amounts and ultimately the amounts were deposited on 12.11.2007. Hence, the petitioner's claim for interest has to be confined from 13.06.2005 to 12.11.2007, for which period this Court finds that the petitioner is entitled to interest at 6%. The 2nd respondent shall compute the said amount and the same has to be paid within three months from today.

The writ petition is disposed of as above. No costs.

Sd/-
K.Vinod Chandran
Judge

vkul/-

(true copy)