

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

W.P.(C).No.33116 of 2010 (L)

AGAINST THE AWARD IN I.D.NO.3 OF 2008 DATED 19.08.2010
OF THE INDUSTRIAL TRIBUNAL, PALAKKAD.

PETITIONER(S):-

THE GENERAL SECRETARY,
KERALA UNION PLANTATION WORKERS UNION, REG.NO.606/76,
MALAKKIPPARA ESTATE, SHOLAYAR NAGAR P.O.,
POLLACHI (VIA), TAMIL NADU.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT(S):-

THE SENIOR MANAGER,
TATA COFFEE LTD., MALAKKIPPARA ESTATE, POLLACHI,
TAMIL NADU - 642 125.

BY ADVS.SRI.E.K.NANDAKUMAR [SENIOR ADVOCATE]
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-02-2015, ALONG WITH W.P.(C).NO.2390/2011-W, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.33116 OF 2010-L

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE STATEMENT DATED 16.6.2008.
- EXT.P2 TRUE COPY OF THE REJOINDER PETITION DATED 9.6.2008.
- EXT.P3 TRUE COPY OF THE REJOINDER STATEMENT FILED BY THE
RESPONDENT DATED 31.10.2008.
- EXT.P4 TRUE COPY OF THE DOCUMENTS FILED BY THE PETITIONER.
- EXT.P5 TRUE COPY OF THE ADDITIONAL STATEMENT DATED 29.6.2010
FILED BY THE PETITIONER.
- EXT.P6 TRUE COPY OF THE AWARD I.D.NO.3/2008 DATED 19.8.2010.
- EXT.P7 TRUE COPY OF THE SETTLEMENT OF P.L.C.

RESPONDENT'S EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

W.P.(C) Nos.33116 of 2010-L & 2390 of 2011-W

Dated this the 25th day of February, 2015

JUDGMENT

Both the management and the Union are before this court, against an award passed by the Industrial Tribunal, Palakkad [for brevity “the Tribunal”]. The Union having challenged the award at the first instance, reference is made to the documents in W.P.(C). No.33116 of 2010, filed by the Union. The award is produced at Exhibit P6. Admittedly both the workmen, whose cause the Union espouses, were office bearers of a Union of plantation workers and the question referred for adjudication before the Tribunal was the denial of employment to the said employees. The Tribunal, after examination of the issue and after permitting evidence to be adduced by both sides, held the domestic enquiry to be proper and carried on in accordance with the principles of natural justice. The domestic enquiry itself found only one of the charges proved against the workmen. The said charge related to the workmen having interfered with the work carried on by the other workers and preventing the other workers from carrying on such work.

2. The dispute in the estate arose when the management introduced a method of shearing, in substitution of the hand-plucking, earlier done by the workers. A reading of the award of the Tribunal and the evidence adduced before it, would indicate that there was no objection from the other workers and a specific objection was raised by the Union leaders, who prevented the workers from carrying on the work of shearing. It was found that the workmen had no cause to prohibit the work of other employees, who were willing to carry on the shearing work as introduced by the management. The misconduct was held to have been proved in the enquiry conducted. However, with respect to the consideration of the punishment, the Tribunal interfered under section 11A of the Industrial Disputes Act, 1947 [for brevity "ID Act"] and converted the dismissal into one of reinstatement without backwages; but with continuity of service. The reinstatement was directed on the further condition that the workmen would undertake before the management, within thirty days, that they would carry out shearing as per the instructions of the management and would not prevent other workers from carrying on the shearing work.

3. The Union being aggrieved with the direction to make an undertaking, before the management, was before this Court with W.P.(C).No.33116 of 2010 and obtained a stay specifically of submitting such an undertaking before the management. The management also approached this Court with the other writ petition, W.P.(C).No.2390 of 2011, in which the implementation of the award itself was stayed. The Union, in their writ petition, challenges the denial of backwages as also the condition insofar as directing an undertaking to be filed, before the management.

4. It is an admitted fact that the workmen have not been reinstated till now and they have refused to give any undertaking as per the award.

5. The contention raised with respect to backwages is on the ground that, on ordering reinstatement causing interference, with the order of dismissal passed by the management, necessarily the Tribunal ought to have granted the entire backwages. It is difficult for this Court to accept the said proposition. Useful reference can be made to the decision of the

Hon'ble Supreme Court in ***M.P.Administration v. Tribhuban***

[(2007) 9 SCC 748], at paragraphs 6 and 12:-

"6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in *Secy., State of Karnataka v. Umadevi* [(2006) 4 SCC 1] and other relevant factors pointed out by the Court in a catena of decisions

shall not be taken into consideration.

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12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein”.

Hence, the award of backwages is not a necessary consequence of an order of reinstatement.

6. Herein, it is to be noticed that the workmen prevented the other workers from carrying on the shearing activity which was newly introduced by the management. The very fact that the delinquent workmen had prevented the other workers would indicate that majority of the workers do not have any objection in the shearing work. The delinquent workmen in fact claimed that the

workmen were paid wages only for hand-plucking and they would not be obliged to carry on shearing work on such minimal payment. The learned counsel for the management submits that, their wages are also dependent on the quantity of the leaves brought in to the warehouse of the management and in fact shearing facilitates a larger quantity to be collected than in hand-plucking. So much is evident from the award also. In any event, there is nothing on record to show that the workmen had raised any dispute on that account before the management and had raised any dispute before the appropriate Government.

7. The evidence in the domestic enquiry specifically found that the delinquent workmen prevented the other workers from carrying on their work. The same is a grievous misconduct and pursuant to the enquiry and finding of guilt as also the order of dismissal; the workmen were no longer in service of the management. The denial of backwages is in fact an imposition of punishment by the Tribunal, which is a discretion exercised by the Tribunal at the first instance. It is trite that this Court would not interfere under Article 226 of the Constitution with such exercise of discretion unless compelling circumstances of perversity or gross

arbitrariness exists. No cause for interference to the award passed by the Tribunal is shown by the Union in their writ petition. The undertaking again is a condition stipulated by the Tribunal and when there is no dispute raised on that count, under Section 10 of the ID Act, the condition of filing an undertaking to carry on shearing work by the two workmen as also the undertaking not to prevent the other workers from shearing, is only reasonable. Therefore, W.P.(C).No.33116 of 2010 is found to be devoid of merit.

8. W.P.(C).No.2390 of 2011 is the challenge by the management, against the order of reinstatement made by the award of the Tribunal. Only one of the charges levelled against the delinquent employees were held to be proved. This Court has already found that there is no cause for any interference to the discretion exercised by the Tribunal under Section 11A of the ID Act. However, in the context of the workmen having not presented themselves before the management till now, the delinquent workmen shall be granted one month's time, to approach the management, in which event, reinstatement shall be granted as indicated in the award; but no continuity of service from the date of

award till reinstatement is accepted as per the directions of this Court. If the workers accept such reinstatement, the continuity of service granted in the award would be granted. The loss of continuity of service would be only from the date of award, since the workmen despite having been granted reinstatement, voluntarily chose not to accept it. If the workmen do not turn up for reinstatement, then the management shall issue notice to the workmen and the Union, by registered post, and in the event of the delinquent workmen not reporting for duty within one month of receipt of such notice, definitely the delinquent workmen's employment shall be severed after paying the eligible dues of gratuity and provident fund, computing continuous service from the date of appointment till the date of award. Such severance shall be as on the date of award.

W.P.(C).No.33116 of 2010 is dismissed. W.P.(C).
No.2390 of 2011 is disposed of with the above directions.

Sd/-
K. Vinod Chandran,
Judge

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[true copy]