

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 37649 of 2008 (F)

PETITIONER :

K.P. NATARAJA MUTHALIYAR,
AGED 72 YEARS, S/O. PALANIAPPA MUTHALIYAR
MANCHIRAKKALAM, POST ANAMARI, KOLLENGODE
PALAKKAD DISTRICT.

BY ADVS.SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SRI.THOMAS P.MAKIL

RESPONDENTS :

1. INDUSTRIAL TRIBUNAL, PALAKKAD
 2. V.KRISHNAN, S/O.VELMURUGHAN, KAMPRATH CHALLA,
KOLLENGODE, PALAKKAD DISTRICT
 3. CHENTHAMARA, S/O.VELAYUDHAN, KIZHAKKEKKADU MAMBALLAM,
KOLLENGODE, PALAKKAD DISTRICT
 4. KRISHNAN, S/O.KANDAN, PALLAM, MUTHALAMADA, PALAKKAD DISTRICT
- R2-4 BY ADVS. SRI.K.S.ARUN KUMAR
SMT.MAYA ANTHARJANAM
R1 BY SR.GOVERNMENT PLEADER SRI.E.M.ABDULKHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF NOTICE DATED 15.10.2004 ISSUED BY PETITIONER TO 2ND, 3RD AND 4TH RESPONDENT AS ALSO ANOTHER WORKMAN, GURUVAYOORAPPAN

EXT.P2 : COPY OF CHARTER OF DEMAND DATED 20.8.2005 SUBMITTED BY 2ND RESPONDENT TO DISTRICT LABOUR OFFICER, PALAKKAD

EXT.P3 : COPY OF G.O.(RT)NO.1429/07/LBR DATED 21.5.2007 ISSUED BY GOVERNMENT OF KERALA

EXT.P4 : COPY OF STATEMENT OF CLAIM DATED 25.9.2007 FILED BY 2ND RESPONDENT BEFORE 1ST RESPONDENT IN I.D.NO.39/2007

EXT.P5 : COPY OF MEDICAL CERTIFICATE DATED 19.9.2008 ISSUED BY DR.P.MURUKESAN, PRASANTH CLINIC, KOLLENGODE

EXT.P6 : COPY OF COMMON AWARD DATED 4.4.2008 PASSED BY 1ST RESPONDENT IN I.D.NOS.39 OF 2007, 40 OF 2007 AND 46 OF 2007

EXT.P7 : COPY OF APPLICATION DATED 10.7.2006 FILED BY 2ND RESPONDENT BEFORE DISTRICT LABOUR OFFICER, PALAKKAD AS G.C.NO.51 OF 2006

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.37649 of 2008

Dated this the 19th day of January, 2015

J U D G M E N T

The petitioner, who was the proprietor of a Cinema Theatre, had terminated the services of respondents 2 to 4 along with another person, upon closure of his establishment. Ext.P1 is the notice by which the petitioner had informed his workmen of the closure of his cinema theatre, since it was not found to be profitable. As per Ext.P2, respondents 2 to 4 raised a dispute. The dispute was referred to the Industrial Tribunal by the Government as per Ext.P3 dated 21.05.2007.

2. The references were numbered as I.D.Nos.39/2007, 40/2007 and 46/2007 respectively. Upon receipt of notice, the petitioner as well as the workmen entered appearance. The workmen filed their claim statement, Ext.P4. However, the petitioner did not file any written statement. He was granted time for the said purpose on 30.10.2007, 04.12.2007 and 08.01.2008. Thereafter, the matter was posted on 04.03.2008. On 04.03.2008, the petitioner's counsel reported no instructions. Therefore, the Industrial Tribunal proceeded with the trial. A proof affidavit was filed on behalf of the workmen, documents were marked and an ex-parte award was passed, which is Ext.P6. As per Ext.P6 award, the Industrial Tribunal ordered reinstatement of the workmen with backwages for the days

that the theatre had functioned after 01.10.2004. The petitioner is aggrieved by the ex-parte award.

3. According to Adv.Sri.Ashok B Shenoy who appears for the petitioner, though the reference was confined to determining the question as to whether denial of employment to the workmen was proper or not, the Tribunal had travelled beyond the scope of the order of reference to even enter a finding that the theatre had not been closed down as contended by the petitioner. It was on the basis of the finding that the theatre was still functioning that reinstatement has been ordered. According to the counsel, the reason for the petitioner's non appearance and omission to file written statement was that, he was sick and was only recovering after having undergone a surgery. Ext.P5 Medical Certificate is pressed into service to support the above contention. The counsel therefore, seeks an opportunity to contest the claim of the workmen by adducing evidence in the proceedings. It is therefore contended that, the matter may be remitted back for fresh disposal after granting the petitioner an opportunity to contest the proceedings.

4. Adv.Sri.K.S.Arun Kumar appears for respondents 2 to 4. According to the counsel, the theatre is still functioning and working well. Therefore, there is no justification for denial of employment to respondents 2 to 4, who were permanent employees thereof.

5. Having heard the learned counsel appearing for the respective

parties, what emerges is that, there is a serious dispute regarding the question as to whether, the theatre is in fact functioning or not. The above fact could be established only by adducing evidence in this regard. Respondents 2 to 4 would also get a chance to refute the contention put forward by the petitioner that the theatre has been close down. Since the award has been passed ex-parte, it is only appropriate that the petitioner is granted an opportunity to contest the claim of the workmen. However, considering the fact that the dispute has been pending for a long time, it is only appropriate that the proceedings are concluded in a time bound manner. The learned counsel for the petitioner as well as respondents 2 to 4 submit that, they would co-operate by filing written statement at the first posting date itself and by producing all necessary evidence without further delay thereafter, so as to ensure that the proceedings are concluded before 31.07.2015. For the above purpose, it is necessary to set aside Ext.P6 award.

For the foregoing reasons, it is ordered as follows :

- (1). This writ petition is allowed. Ext.P6, ex-parte award is set aside.
- (2). The Industrial Tribunal, Palakkad is directed to take up I.D.Nos.39/07, 40/07 and 46/07 afresh, to grant an opportunity to the petitioner herein to file a written statement, to take evidence in the matter by allowing both parties to let in their evidences and to finally dispose of the said cases, after hearing both parties.

(3). The Industrial Tribunal, Palakkad shall finally dispose of the cases, as expeditiously as possible and at any rate before 31.07.2015.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV