

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

THURSDAY, THE 16TH DAY OF JUNE 2022 / 26TH JYAISHTA, 1944

W.P. (C) NO.21288 OF 2016

PETITIONER:

SOUTHERN RAILWAY EMPLOYEES SANGH,
PALAKKAD DIVISION, OLAVAKKODE P.O., PALAKKAD-678 002
REPRESENTED BY ITS DIVISIONAL SECRETARY,
M. JYOTHI NARAIN.

BY ADVS.
SRI.P.RAMAKRISHNAN
SRI.C.ANIL KUMAR
SMT.ASHA K.SHENOY
SMT.PREETHI RAMAKRISHNAN
SRI.PRATAP ABRAHAM VARGHESE

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF LABORU & EMPLOYMENT,
SHRAM SAKATHI BHAVAN, RAFFI MARGH,
NEW DELHI-110 001.
- 2 SOUTHERN RAILWAY
REPRESENTED BY ITS GENERAL MANAGER,
SOUTHERN RAILWAY, CHENNAI-600 002.
- R1 SRI. S. MANU, ASSISTANT SOLICITOR GENERAL OF INDIA
SMT.KEERTHI SOLOMON, ASSISTANT SOLICITOR GENERAL OF INDIA
- R2 SRI. S. BIJU, CENTRAL GOVERNMENT COUNSEL
SMT. ASHA CHERIYAN, STANDING COUNSEL, SOUTHERN RAILWAY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a union representing the workmen. An industrial dispute bearing number I.D. No.3 of 1993 had arisen between the Executive Engineer (Construction), Southern Railway and Divisional Secretary, Railway Labour Union and in that dispute, following question was referred to the labour court.

“whether the action of the Executive Engineer (Construction), Southern Railway, Podannur in termination the services of smt. Chandrika and 47 others (list enclosed) on 2.7.1984 and 17.8.1984 is legal and justified? If not, to what relief the work women are entitled?”

2. On perusal of the same, the dispute was with regard to the termination of the services of Smt. Chandrika and 47 others on 02.07.1984 and 17.08.1984. The Labour Court vide award dated 17.06.1996 directed the management to reinstate 33 workers along with full back wages and for the purpose of calculation of the back wages, the total earning during the last 12 months immediately before the termination was taken as wages for one year till the contesting workers were validly terminated either in terms of the Industrial Dispute Act or in accordance with the Railway Establishment Manual and they were deemed to continue in service. The aforementioned award of the Labour

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Court was modified when the matter was taken to Supreme Court in Civil Appeal No.6769 of 2003 and the award of the full back wages was set aside it was confined to only 50% of the back wages and the award regarding reinstatement was affirmed. On account of reinstatement, the dispute again arose amongst the employees who were retrenched on 02.07.1984 and 17.08.1984. After having reinstated, 16 were eligible for temporary status and 8 were for temporary workers. The dispute with regard to the assignment of the seniority was sought to be referred to the Labour Court. The Assistant Labour Commissioner vide communication dated 30.07.2015 referred the matter to the Secretary to Government for reference of the dispute to the Labour Court. The Government vide order dated 21.09.2015 as Ext.P4 referred the following dispute to the Labour Court.

“Whether the demand of the Union to Grant “Temporary workmen” status and “review of the seniority position of the workman” is justifiable? If so, what relief the Union/Workmen are entitled to?”

2. The counsel for the petitioner submits that the aforementioned reference is only vague and it would open the pandora of various other workmen who were not parties to the lis in the previous round of litigation as the question of similarity

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should be confined to only 34 persons and not more or less. Though the Labour Court is continuing with the controversy and the matter is pending for cross-examination of witnesses of workmen, but there may not be an ambiguity at the final stage.

3. The aforementioned contention of the counsel in my view is perfectly legal and justified as the reference may not be construed to be a dispute in respect of all the Railway employees at Southern Railway and the 2nd respondent, Southern Railway represented by the General Manager.

Therefore, the writ petition is allowed by modifying the reference that it should be construed to be only in respect of the employees who were parties to the lis in the earlier round of litigation, i.e., Ext.P1 award.

Sd/-
AMIT RAWAL
JUDGE

bpr

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APPENDIX

PETITIONER'S EXHIBITS

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| EXHIBIT P1 | TRUE COPY OF AWARD DATED 17.06.1996 PASSED BY THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM AS I.D.NO.3/1993(C) . |
| EXHIBIT P2 | TRUE COPY ORDER DATED 19.04.2005 OF THE HONOURABLE SUPREME COURT IN CIVIL APPEAL NO. 6769 OF 2003. |
| EXHIBIT P3 | TRUE COPY OF THE FAILURE REPORT DATED 30.07.2015 SENT BY THE ASSISTANT LABOUR COMMISSIONER (CENTRAL) TO THE 1ST RESPONDENT. |
| EXHIBIT P4 | TRUE COPY OF THE REFERENCE ORDER NO. L-41011/2015-IR (B-1) DATED 21.09.2015 ISSUED BY THE 1ST RESPONDENT. |
| EXHIBIT P5 | TRUE COPY OF THE REPRESENTATION DATED 14.03.2016 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. |
| EXHIBIT P6 | TRUE COPY OF THE REMINDER DATED 02.04.2016 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. |