

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 24TH DAY OF NOVEMBER 2016/3RD AGRAHAYANA, 1938

WP(C).No. 14720 of 2013 (L)

CP. NO.24/2011 OF LABOUR COURT, ERNAKULAM.

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PETITIONER(S):

**M.V. RAJU,
MANGALAPPILLY HOUSE, PONATHUPARAMBU,
IRIMPANAM. P.O., PRESENTLY WORKING AS
SALESMAN-CUM-ATTENDER, RAILWAY EMPLOYEES
CONSUMER CO-OPERATIVE SOCIETY LTD. NO.E4,
ERNAKULAM JUNCTION, COCHIN-16.**

BY ADV. SRI.P.PJACOB.

RESPONDENT(S):

- 1. M/S. RAILWAY EMPLOYEES CONSUMER
CO-OPERATIVE SOCIETY LTD NO.E4,
REPRESENTED BY ITS PRESIDENT,
ERNAKULAM JUNCTION, COCHIN-16.**
- 2. LABOUR COURT, ERNAKULAM.**

**R1 BY ADVS. SRI.M.M.MONAYE,
SRI.M.PAUL VARGHESE,
SRI.DESI MATTHAI.
R2 BY SR. GOVT. PLEADER SRI.B. VINOD.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-11-2016, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:-

- P1- TRUE COPY OF AWARD IN I.D.NO.58/2000 DT. 07.04.2003 OF THE COURT OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA.
- P2- TRUE COPY OF THE JUDGMENT IN WP[C]NO.18026/2003-U DT. 05.01.2007 OF THIS HONOURABLE COURT, CONFIRMING EXT.P1 AWARD OF RE-INSTATEMENT.
- P3- TRUE COPY OF THE COMMON JUDGMENT IN W.A.NOS.526/2008 & 795/2008 DT. 20.06.2011 OF THIS HONOURABLE COURT, CONFIRMING EXT.P2 JUDGMENT.
- P4- TRUE COPY OF THE CLAIM PETITION NO.24/2011 DATED 28.11.2011 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR COMPUTATION OF MONETARY VALUE OF AWARD.
- P5- TRUE COPY OF THE CALCULATION STATEMENT DATED NIL PREPARED BY THE 1ST RESPONDENT SUBMITTED BEFORE MEDIATION OFFICER, HIGH COURT OF KERALA.
- P5(A)- TRUE COPY OF THE CALCULATION STATEMENT DATED NIL PREPARED FOR AND ON BEHALF OF PETITIONER BY HIS EXAMINED IN EXT.P4 CLAIM PETITION.
- P6- TRUE COPY OF THE CALCULATION STATEMENT DATED NIL PREPARED BY AN AUDITOR ON THE REQUISITION OF 2ND RESPONDENT.
- P7- TRUE COPY OF OBJECTIONS DT. 12.11.2012 FILED BY THE PETITIONER TO EXT.P6.
- P8- TRUE COPY OF THE 2ND CALCULATION STATEMENT RECEIVED BY 2ND RESPONDENT FROM THE MAKER OF EXT.P6.
- P9- TRUE COPY OF THE OBJECTIONS OF EXT.P8 FILED BEFORE THE 2ND RESPONDENT DATED 16.01.2013.
- P10- TRUE COPY OF THE ORDER IN C.P.NO.24/2011 DATED 27.02.2013 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:-

EXT.R1A COPY OF THE OBJECTION DATED 11/02/2012.

WP(C).No. 14720 of 2013 (L)

EXT.R1B COPY OF THE OBJECTION DATED 21/01/2013 FILED BY THE SOCIETY.

**EXT.R1C COPY OF THE STAY ORDER DATED 16/02/2010 BY THE DIVISION
BENCH OF THIS HONOURABLE COURT IN W.A. NO.795/2008.**

//TRUE COPY//

P.S. TO JUDGE

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A. MUHAMED MUSTAQUE, J.

W.P.(C) No. 14720 of 2013

Dated this the 24th day of November, 2016

J U D G M E N T

1. An employee of the 1st respondent cooperative society has approached this Court aggrieved by Ext.P10 order passed under Section 33C(2) of the I.D. Act.

2. Brief facts of the case are as follows;

The petitioner was dismissed from service on 30.06.1994. The dismissal was challenged by way of raising an industrial dispute as ID No.58/2000 before the Industrial Tribunal, Alappuzha. By Ext.P1 award, the petitioner was ordered to be reinstated with full backwages. This was challenged before this Court in WP(C) No.18026/2003 by the society, which was disposed of by the learned Single Judge, as per Ext.P2 judgment, modifying the award to the extent it directing the society to reinstate the workman with 50% backwages. Both the petitioner and the society,

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aggrieved by Ext.P2 judgment, filed separate writ appeals. However, this Court did not interfere with the judgment of the learned Single Judge. Thus, Ext.P2 judgment, directing the society to reinstate the workman with 50% backwages, has become final. The petitioner approached the Labour Court, Ernakulam under Section 33C(2) of the Industrial Disputes Act, 1947, claiming backwages. It is an admitted fact that the petitioner has been reinstated in service. The calculation of the amount due as backwages was the only question. The society paid backwages as per their calculation. The calculation of the workman was not fully accepted by the Labour Court and the Labour Court ordered payment of ₹1,20,420/- to the workman vide Ext.P10 order. Admittedly, the said amount has been paid. According to the workman, the actual amount due to him has not been calculated by the Labour Court. It is in this context that the petitioner has approached this Court, challenging Ext.P10 order.

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3. Heard the learned counsel for the petitioner and the learned counsel for the society.

4. It is now settled law that the Labour Court has no jurisdiction to entertain a dispute between an employee and cooperative society. In that scenario, this Court is of the view that the Labour Court has no jurisdiction in the matter and the matter has to be reconsidered by the Arbitration Court under Section 69 of the Cooperative Societies Act.

5. It is to be noted that as far as the challenge regarding reinstatement, the matter has become final. The only issue is regarding the quantification of the amount as ordered by this Court in Ext.P2 judgment. Therefore, this Court is of the view that the Labour Court order, Ext.P10, has to be set aside for reason of lack of jurisdiction and the parties have to be relegated to Arbitration Court.

6. Therefore, the writ petition is disposed of, as follows;

- Ext.P10 is set aside.

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- If the petitioner moves the Arbitration Court within a period of one month from the date of receipt of a copy of this judgment, the Arbitration Court shall consider the matter and take a final decision, after hearing the petitioner as well as the society, within a further period of one month.
- It is made clear that the workman will be entitled only for 50% of the backwages as ordered by this Court in Ext.P3 judgment.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

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