

The Manager Vs. the General Secretary

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Court : Kerala

Decided On : Feb-21-2014

Judge : Honourable Mr. Justice Babu Mathew P.Joseph

Appellant : The Manager

Respondent : The General Secretary

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH FRIDAY, THE 21ST DAY OF FEBRUARY 2014 2ND PHALGUNA, 1935 WP(C).No. 36769 of 2010 (U) ----- AGAINST THE AWARD IN ID62007 of INDUSTRIAL TRIBUNAL, IDUKKI DATED 22-04-2010 ----- PETITIONER: ----- THE MANAGER, MOONGALAR ESTATE, HARRISONS MALAYALAM LIMITED, VANDIPERIYAR IDUKKI DISTRICT - 685 533. BY ADVS. SRI.E.K.NANDAKUMAR SRI.K.JOHN MATHAI SRI.P.BENNY THOMAS SRI.P.GOPINATH RESPONDENTS: ----- 1. THE GENERAL SECRETARY, PEERMEDU THOTTAM THOZHILALI UNION (CITU), P.R.CENTRE VANDIPERIYAR P.O. 685 533.

2. THE INDUSTRIAL TRIBUNAL, IDUKKI, PEERMADE - 685 531. R1 BY ADV. SMT.A.K.PREETHA R1 BY ADV. SRI.M.R.RAJESH BY GOVERNMENT PLEADER SRI.T.R.RAJESH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-02-2014, THE COURT ON THE SAME DAY DELIVERED

THE FOLLOWING: WP(C).No. 36769 of 2010 (U) APPENDIX PETITIONER'S
EXTS EXT.P1:- TRUE COPY OF THE AWARD DT. 22/04/10 IN ID NO.6/07
PASSED BY THE2D RESPONDENT. EXT.P2:- TRUE COPY OF THE JOINT
STANDING

ORDER

S APPLICABLE TO ESTATE WORKMEN IN KERALA. EXT.P3:- TRUE COPY OF
THE MEMORANDUM OF SETTLEMENT DT. 29/09/08. EXT.P4:- TRUE COPY
OF THE CLAIM STATEMENT DT. NIL FILED BY THE1T RESPONDENT IN
ID607 BEFORE THE2D RESPONDENT. EXT.P5:- TRUE COPY OF THE
WRITTEN STATEMENT DT. 20/08/07 FILED BY THE PETITIONER IN ID
NO.6/07 BABU MATHEW P. JOSEPH, J.

----- W. P. (C) No.36769 of 2010
----- Dated this the 21st day of February, 2014

JUDGMENT

This Writ Petition has been filed challenging Ext.P1 award passed by the second respondent Industrial Tribunal by which the petitioner was directed to reinstate the workman represented by the first respondent Union in service with continuity of service and 50% back wages.

2. Heard the learned counsel appearing for the petitioner, learned counsel appearing for the first respondent and the learned Government Pleader appearing for the second respondent.

3. The workman was employed as a watcher in 1996 under the petitioner estate. While so, he was denied employment on 01-04-2001. His Union raised an industrial dispute on this issue which came to be referred to the second respondent. The second respondent, after considering the matter, found as follows : W. P. (C) No.36769 of 2010 -2- "The workman has stated in his evidence that he was employed continuously as a watcher from 1996 till he was denied employment on 01-04-2001. The management has not seriously disputed the evidence of the workman that he had only worked as a watcher under the management from 1996 onwards. According to the management, all the workers

in the estate are general workers and the management has the prerogative to sent the workers including the watchers for all types of works. However, the management has not stated any reason for not providing the work of watcher to the workman. The workman was eligible to get wage differential on a regular basis. As the workman was working as a watcher for many years under the management and he was getting wage differential on a regular basis apart from the wages, the management is excepted to say reason for denying watcher's job to the workman. However, the management has not stated any valid reason for denying watcher's job to the workman. In the circumstance, I hold that the management had denied watchers job to the workman and thereby denied him employment. The denial of employment of the workman is illegal and unsustainable and he is eligible to be reinstated in service." Therefore, the second respondent directed the petitioner to reinstate the workman in service with continuity of service and 50% back wages.

4. Learned counsel for the workman submits that on the basis of the direction issued by the Industrial Tribunal in W. P. (C) No.36769 of 2010 -3- Ext.P1, the workman was reinstated by the petitioner on 06-09-2010. Thereafter, he continued as such and retired from service on attaining the age of superannuation. But, the petitioner has not paid 50% of the back wages directed in Ext.P1 award to the petitioner so far.

5. Learned counsel for the petitioner submits that the workman was only a general worker liable to be posted for different works including the work as a watchman. Therefore, the finding and the directions issued in Ext.P1 are not sustainable.

6. In the light of the reasoning given by the learned Industrial Tribunal in the award, which is quoted above, the contention of the learned counsel for the petitioner cannot be accepted for interfering with the award passed by the Tribunal. The Tribunal has issued its directions for reinstatement of the workman as watcher with continuity of service and 50% back wages, which cannot be found to be unsustainable. This Court does not find any illegality or infirmity or jurisdictional error with Ext.P1 award passed by W. P. (C) No.36769 of 2010 -4- the Industrial Tribunal. This is not a fit case for this Court to invoke its visitorial

jurisdiction under Article 227 of the Constitution of India for interfering with the award. Therefore, this Writ Petition fails and hence, it is dismissed. Sd/- BABU MATHEW P. JOSEPH JUDGE kns/- //TRUE COPY// P.A. TO JUDGE

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