

Shaji Eapen Vs. Union of India

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Court : Kerala

Decided On : Jan-30-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : Shaji Eapen

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI FRIDAY, THE 30TH DAY OF JANUARY 2015 10TH MAGHA, 1936 WP(C).No. 16912 of 2012 (L) ----- PETITIONER : ----- SHAJI EAPEN, S/O.EAPEN, ANAKKARUPARAMBIL, MANNANCHERRY P.O., ALAPPUZHA DISTRICT. BY ADVS.SRI.P.K.MADHUSOODANAN SRI.P.M.BINOY KRISHNA RESPONDENT(S): ----- 1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF INDUSTRY, DEPARTMENT OF SMALL SCALE INDUSTRIES AND AGRO AND RURAL INDUSTRIES , GOVERNMENT OF INDIA, NEW DELHI-110 001 2. THE SECRETARY, COIR BOARD (GOVERNMENT OF INDIA UNDERTAKING), HEAD OFFICE, M.G.ROAD, KOCHI-16.

3. THE SENIOR SCIENTIFIC OFFICER, HINDUSTAN COIR, KALAVOOR P.O., ALAPPUZHA-688 026 R1 & R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY

HEARD ON2101-2015 , THE COURT ON3001-2015 DELIVERED THE FOLLOWING: sts WP(C).NO.16912/2012 APPENDIX PETITIONER(S) EXHIBITS EXHIBIT-P1. TRUE COPY OF THE CERTIFICATE ISSUED BY THE2D RESPONDENT DATED3112.1993. EXHIBIT-P2. TRUE COPY OF THE

JUDGMENT

IN O.P.NO.4139/98 DATED2310.1998 PASSED BY THIS HON'BLE HIGH COURT. EXHIBIT-P3. TRUE COPY OF THE LETTER NO.HC/2000/ADM/1/3 DATED305.2000 ISSUED BY RESPONDENT. EXHIBIT-P4. TRUE COPY OF THE REPRESENTATION DATED2010.2005 SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT. EXHIBIT-P5. TRUE COPY OF THE REPLY DATED212.2005 ISSUED BY THE2D RESPONDENT. EXHIBIT-P6. TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF HAMAL UNDER THE COIR-BOARD DATED17/2008. EXHIBIT-P6(a). TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF MISCELLANEOUS WORKER UNDER THE COIR-BOARD DATED17/2008. EXHIBIT-P6(b).TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF HAMAL UNDER THE COIR-BOARD DATED17/2008. EXHIBIT-P6(c).TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF HAMAL UNDER THE COIR-BOARD DATED17/2008. EXHIBIT-P6(d).TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF HAMAL UNDER THE COIR-BOARD DATED17/2008. EXHIBIT-P6(e).TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF MISCELLANEOUS WORKER UNDER THE COIR-BOARD
DATED 17.2.2008. EXHIBIT-P6(f). TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF MISCELLANEOUS WORKER UNDER THE COIR-BOARD
DATED 17/2008. EXHIBIT-P6(g). TRUE COPY OF THE APPOINTMENT

ORDER

TO THE POST OF MISCELLANEOUS WORKER UNDER THE COIR-BOARD
DATED 17/2008. EXHIBIT-P7. TRUE COPY OF THE LETTER DATED 273/2009
ISSUED BY THE DEVELOPMENT OFFICER, HINDUSTAN COIR, KALAVOOR.
EXHIBIT-P8. TRUE COPY OF THE LETTER DATED 410/2011 OF THE 3D
RESPONDENT. sts 2/- -2- WP(C).NO.16912/2012 EXHIBIT-P9. TRUE COPY OF
THE REPRESENTATION DATED 2911/2011 SUBMITTED BEFORE THE 2D
RESPONDENT. EXHIBIT-P10. TRUE COPY OF THE

JUDGMENT

DATED 273/2012 IN W.P.(C) NO.5326/2007. EXHIBIT-P11. TRUE COPY OF THE
LETTER DATED 196/2012 ISSUED BY THE 2D RESPONDENT COIR BOARD.
EXHIBIT-P12- NIL EXHIBIT-P13. TRUE COPY OF THE REQUEST
DATED 216/2013 UNDER THE RTI ACT BY ONE PRADEED M. EXHIBIT-P14.
TRUE COPY OF THE REPLY LETTER DATED 218/2013 OF THE CENTRAL
PUBLIC INFORMATION OFFICER, COIR BOARD, KOCHI. RESPONDENTS'
EXHIBITS : NIL /TRUE COPY/ P.S.TO.JUDGE sts A.V.RAMAKRISHNA PILLAI, J

----- WPC No.16912 of 2012

----- Dated this the 30th day of January, 2015

JUDGMENT

Ext.P11, by which the petitioner's request to appoint him as Badali worker in
preference to others was rejected, is under challenge in this writ petition.

2. The petitioner alleges that by Ext.P2 judgment, this Court had directed the
second respondent to implement the promise given by the Coir Board that the
petitioner would be considered wherever required in preference to any of his
juniors. The petitioner points out that by Ext.P5 also, the second respondent

repeated the promise, but have not implemented the same. According to the petitioner, at present there are vacancies of Badalies under the respondent Board. He points out that at the time of Ext.P2, there were 9 Badalies, out of whom 8 Badalies were appointed by Ext.P6 series in higher posts and one left the job by resignation. According to the petitioner, the second respondent is duty bound to implement the promise given to the petitioner which is WPC No.16912/2012 2 recorded in Ext.P2 judgment of this Court. However, the respondents are outsourcing the work of Badalies on the basis of their choice and getting the work done by trainees without any transparency and without following any procedure as per law. The petitioner further points out that there is no difference in the duties and responsibilities between Badali, trainee and those to whom the work of badalies are outsourced. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondents, they would contend that the petitioner was engaged as per the requirements of the factory when the production on the looms was substantially high during the years 1994-1995 and 1995-1996. At that time, the factory was running short of hands to cope up with the increased volume of work. Thus, the petitioner and others were engaged as Badalies. According to them, the direction of this Court in Ext.P2 judgment was to follow the promise given in paragraph-3 of that case and to implement such promise in preference to any of the juniors in Badaliship to WPC No.16912/2012 3 the petitioner. The stand taken by the respondents in the counter affidavit is that there was no Badali engaged at the factory till date after 1995. They would further point out that the performance of the factory is much below the expected level while comparing the same during 1995. Therefore, the Board has reservation to engage fresh Badalies. They would further point out that the engagement of in-house trainees was done from among the candidates sponsored by the National Coir Training & Design Centre (NCT & DC), Kalavoor who have successfully completed Artisan/Advance Training course following due procedure in a transparent manner. According to the respondents, Badali is a substitute casual labourer for attending the duties of absent regular hands. At present, there is no necessity for the factory to engage fresh Badalies. It is further contended that for meeting the exigencies in the factory, technical works like bobbin winding, cops winding etc. are being

outsourced in line with the policy of Government of India. Only a skeletal regular staff has been retained in the factory and others WPC No.16912/2012 4 have already been shifted to nearby offices. Therefore, they pray for a dismissal of the writ petition.

4. Arguments have been heard.

5. The petitioner relies on Ext.P2 judgment to enforce the claim against the respondents.

6. The respondents have no case that the petitioner is not qualified, not well experienced or not eligible to be considered in the factory of the respondents.

7. According to the petitioner, he has successfully completed the Artisan/Advance Training Course. The petitioner points out that 8 Badalies who were appointed as Hamal and Miscellaneous workers by Ext.P6 series were performing the duties of Badali since 1995 and therefore, the service of Badalies are inevitable for bobbin winding, cops winding, inter lacing, for placement of weft and warp coir yarns and thus they perform the primary functions of making coir mats through power loom under the supervision and control of weaving masters/weavers, without which the coir factory cannot function at all. This is not specifically denied in the WPC No.16912/2012 5 counter affidavit. The respondents would point out that the factory is running at a loss. Had it been running at a loss as alleged in Ext.P11, how they could appoint 8 Badalies by Ext.P6 series? This question remains unanswered. It is an admitted case that works like bobbin winding, cops winding etc. are being outsourced in line with the policy of Government of India. The petitioner points out that this has not been done in a transparent manner calling quotations/issuing notifications and without any procedural formalities. The petitioner's case is that he is well trained, qualified and experienced in the field and he is an expert in the production of coir mats and coir mattings and therefore, there is no legitimate reason for not appointing him, even though the aforesaid duties are being performed in the factory of the Coir Board. I see valid force in the aforesaid stand taken by the petitioner. As it is evident from Ext.P2 that the respondents have given an undertaking before this Court, the second respondent is bound to implement its undertakings in letter and spirit and cannot deviate from

it by untenable WPC No.16912/2012 6 excuses to deny the benefit of appointment to the petitioner as Badali while outsourcing the work to persons of their choice. After appointment of 8 Badalies to higher posts as in Ext.P6 series, nobody was appointed to their place as Badalies and those vacancies are in existence even now and the work is also available. There is no rival claim to the petitioner as well. The second respondent is estopped from withdrawing the promises repeatedly given to the petitioner and the undertaking before this Court. After the promise given to the petitioner, the second respondent has made several appointments in the Coir Board. The engagement of others to do the work of regular works prove the very necessity of Badali and the attitude of the second respondent in not considering the petitioner is without any basis. Therefore, this Court is of the definite view that the petitioner is entitled to succeed. In the result, this writ petition is allowed quashing Ext.P11. It is hereby declared that the petitioner is eligible to be considered and appointed as Badali on finding him fit on the basis of the promise given by the WPC No.16912/2012 7 second respondent by Exts.P2, P5 and P8. The respondents are directed to consider the petitioner as well, while outsourcing the work of Badali as per law and grant him the same in preference to freshners and inexperienced persons. sd/- A.V.RAMAKRISHNA PILLAI JUDGE
css/ true copy P.S.TO JUDGE

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