

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JUNE 2016/9TH ASHADHA, 1938

WP(C) .No. 17025 of 2005 (B)

PETITIONER:

HOTEL SUDARSAN,
PARAMESHWARA NAGAR, KOLLAM, REP. BY ITS, PARTNER,
B.SATHY.

BY ADVS.SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SMT.PRIYA MAHESH

RESPONDENTS:

1. THE GENERAL SECRETARY,
QUILON HOTEL AND TEA SHOP WORKERS UNION,, (INTUC),
JETTY ROAD, KOLLAM-1.
2. LABOUR COURT, KOLLAM.

R1 BY ADV. SRI.H.B.SHENOY
R1 BY ADV. SRI.B.ASHOK SHENOY
R1 BY ADV. SMT.LAKSHMI B.SHENOY
R1 BY ADV. SRI.SOBHAN GEORGE
R2 BY SR. GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-06-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 17025 of 2005 (B)

APPENDIX

PETITIONER'S EXHIBITS

P1: TRUE COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 19.1.2005 IN ID NO.79/98

P2: TRUE COPY OF the LETTER DATED 10.10.96 ISSUED BY MATHEW AND SONS TO THE PETITIONER REGARDING ENGAGEMENT OF SRI.JOSHUA THOMAS AND SAJITH FOR TRAINING PURPOSE

P3: TRUE COPY OF THE BILL SUBMITTED BY THE AFORESAID AGENCY DATED 10.10.96

P4: TRUE COPY OF THE CERTIFICATE DATED 16.12.97

P5: TRUE COPY OF THE CASH VOUCHER EVIDENCING REFUND OF SECURITY DEPOSIT OF RS.5000/- DATED 12.12.97

P6: TRUE COPY OF THE CASH RECEIPT DATED 19.12.97

P7: COPY OF THE APPLICATION SUBMITTED BY SRI.SAJITH FOR THE ISSUANCE OF THE EXPERIENCE CERTIFICATE DATED 19.12.97

P8: TRUE COPY OF THE CLAIM STATEMENT FILED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT DATED 19.12.97

P9: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 28.6.99

//TRUE COPY//

P.A.TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 17025 of 2005 (B)

Dated: 30th June, 2016

J U D G M E N T

The petitioner is before this Court challenging Ext.P1 order of the Labour Court, setting aside the termination of two workmen, represented by the 1st respondent Union. The order of the Labour Court directed reinstatement with 50% back wages; within a period of one month. There was a stay obtained by the Management and this Court had also, on an application filed by the Union, directed payment of Section 17B wages. It is submitted by the learned Counsel for the petitioner that for a period, the workmen had received the wages from the Management and later, despite notice from the Management, they had not turned up to receive such wages.

2. The Management contends that the order itself is illegal and arbitrary, while the Union seeks to sustain it. At the outset it is to be noticed that the dispute itself was of the year 1998 and the writ petition of the year 2005. Almost 20 years have passed from the date of termination of the workmen and it is trite that in every case reinstatement need not be ordered as a matter of right. In the present case, the workmen were trainees who were trained in the Management as 'Barmen' for one year and then allegedly absorbed in employment. The Management contends that they were never absorbed and were continuing as trainees and after training, sent out. The Union, however, contends, after absorption, the workmen were terminated.

3. The workmen contended that they were terminated for the reason that they sought payment of wages under the Minimum Wages Act, 1948. The Management's contention was that they had been continued merely as trainees and after the training period they were send out from service. The Labour Court had elaborately considered the evidence recorded and had found that the workmen were regular employees and were entitled to reinstatement with 50% back wages. The finding was that the termination was in violation of Section 25F of the Industrial Disputes Act for reason of no retrenchment compensation having been granted. The retrenchment compensation, even computed on the basis of the minimum wages, would have been meager considering the fact that they were in employment for only slightly more than a year. At this stage there would be absolutely no purpose served

in directing reinstatement of the workmen also. Having regard to the nature of the work and the tenure of service of the workmen, which is admittedly for slightly above one year, this Court is of the opinion that compensation would suffice insofar as the relief to be granted in the above case.

4. Going through the records it is seen that an amount of Rs.600/- was paid to the workmen as trainees. Only considering the fact that the reinstatement was ordered and 50% back wages was granted and the same was pending here for the last 11 years, it would be appropriate if both the workmen are paid Rs.70,000/- each as compensation, upon which the issue itself can be settled. The amount arrived at is only since the writ petition was pending before this Court with an order for payment of Section 17B wages. Otherwise, the retrenchment compensation would

suffice.

5. The records also reveal that the petitioner was an establishment registered under the Kerala Shops and Commercial Establishment Act, 1960. The workmen could also have approached the authority under the said Act, but, in which event the relief would have been confined to reinstatement or compensation in lieu of such reinstatement, as is laid down in Section 18 of that Act, at the option of the employer.

6. The Management shall issue notice to the workmen themselves or the workmen shall appear before the Management and receive the amount with acknowledgment. The amounts paid as Section 17B wages shall be deducted from the wages since this Court has ordered almost the entire wages said to have been paid to the petitioner at the time of termination as compensation. The amounts shall be paid within a

period of three months and if none of the petitioners turn up even after notice, Demand Draft shall be taken in their names and the same sent to them by registered post, failing which the Management would be liable for interest at the rate of 6% from the date of disposal of the writ petition. Ext.P1 would stand modified to that extent.

The writ petition would stand partly allowed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE