

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

FRIDAY, THE 29TH DAY OF NOVEMBER 2019 / 8TH AGRAHAYANA, 1941

WP(C).No.30662 OF 2014(G)

AGAINST THE ORDER/JUDGMENT IN ID 25/2007 OF INDUSTRIAL TRIBUNAL,  
IDUKKI

PETITIONER/S:

K.T. MATHEW  
S/O THOMAS, KALPANA HOUSE, PALAMPRA POST,  
KANJIRAPPALLY, KOTTAYAM DISTRICT

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENT/S:

1 RAJAN ANTONY  
S/O K.K ANTONY, PUTHENPURACKAL HOUSE, PALAMPARA POST,  
KANJIRAPPALLY, KOTTAYAM DISTRICT

2 THE INDUSTRIAL TRIBUNAL  
IDUKKI

R1 BY ADV. DR.V.N.SANKARJEE

R1 BY ADV. SMT.M.SUSEELA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
29.11.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

**Dated this the 29th day of November 2019**

Heard Adv.Vinod Vallikappan for petitioner and Adv.M. Suseela for 1<sup>st</sup> respondent.

2. The circumstances relevant for disposing of the writ petition are stated thus:

3. The petitioner, owner of a rubber cultivation estate, engaged the first respondent to do slaughter tapping of trees. During the time of tapping, first respondent sustained injury and voluntarily discontinued employment. First respondent's claim is that he was denied work subsequent to the injury and has not been reinstated. The dispute was referred to Industrial Tribunal for adjudication.

4. The management in I.D No.25/2007 is the writ petitioner. Petitioner challenges the award dated 01.08.2013. The Industrial Tribunal, through the award impugned in the writ

petition, granted the following reliefs to workman/1st respondent.

“Therefore an award is passed holding that,

- a) denial of employment to the workman by the management is unjustifiable and arbitrary.
- b) the workman is entitled to be reinstated into the service of the management with continuity of service.
- c) the workman is entitled to receive 50% of the back wages from the management.
- d) the management shall reinstate the workman within 1 month from the date of pronouncement/publication of this award and pay the back wages accordingly.

Hence the writ petition.

5. Adv.Vinod Vallikappan for petitioner focused on the findings recorded by Tribunal on Issue No.5, which reads as follows:-

“It is already found that the rubber trees are still under the possession and cultivation of the employer. When a denial of employment is found to be unjustifiable, reinstatement is the normal rule. Considering the facts and circumstance of the case in hand, justice would be rendered if the workman is granted reinstatement with continuity of service. There is pleading and proof by the workman that he was not having any gainful employment during the period in which he was out of employment. Hence, in my view, granting of 50% of back wages to the workman would be justifiable.”

6. The case of petitioner/management is that the 1<sup>st</sup> respondent approached the petitioner/management somewhere in

2004, seeking employment as a rubber tapper. By the time, the request of 1<sup>st</sup> respondent was considered by the petitioner/management the rubber trees were fairly aged and were not subjected to regular rubber tapping. By that time, the petitioner/management has taken steps for slaughter tapping of rubber trees. The concept of slaughter tapping is explained by stating that when the yield of rubber trees either is diminished or reaches uneconomic yield, the trees are subjected to slaughter tapping for three years, then the trees fall down. According to management, the time of engagement of 1<sup>st</sup> respondent is calculated from 2004 onwards, by the time 1<sup>st</sup> respondent asked for reinstatement, there is no work for engaging the 1<sup>st</sup> respondent. In the absence of work, for which the 1<sup>st</sup> respondent was engaged, ordering reinstatement through impugned award is illegal and unsustainable. Secondly, ordering 50% of back wages, does not fit in with the discretion conferred on the Industrial Tribunal, by Section 11 (A) of the Industrial Disputes Act, 1947. Hence, pray for setting aside the impugned award.

7. Adv. M.Suseela appearing for 1<sup>st</sup> respondent, submits that the plea taken in the written statement cannot be treated as evidence in the matter. The petitioner/ management, with a view to prevent re-employment of respondent, has taken the alternative plea, that the management does not have work. The burden is exclusively on the petitioner/management, to plead all the details necessary in this behalf, and prove the stand that by the time the prayer is being considered by the Industrial Tribunal, the relief of reinstatement could not be considered or granted. According to her, MW1 did not advert to this aspect in the oral evidence at all. It is further argued that the state-of-affairs in the plantation can be proved in more than one way i.e., the photographs, together with negatives to show that the rubber trees are no more in existence before the Industrial Tribunal. In the absence of any evidence, much less legal evidence, the presumption drawn by the Industrial Tribunal is beyond the jurisdiction of this Court, to interfere with the findings recorded on issue No.5. She prays for dismissing the writ petition.

8. I have perused the award impugned in the writ petition, written statement and with the assistance of the learned counsel appearing for parties, appreciated the gist of oral evidence of MW1. It is noted that the case of petitioner/management is that the management is not in a position to re-employ 1<sup>st</sup> respondent. The stated reason being that the job for which the 1<sup>st</sup> respondent was engaged was no more available with the petitioner/management. Explained further, the stand of petitioner is that the trees are cut, the land is not used for plantation of trees again. Therefore, reinstatement is unsustainable. Even if the 1<sup>st</sup> respondent is successful on Issue Nos.1 to 4, still no relief could have been granted to 1<sup>st</sup> respondent. The contention is noted and is unsustainable for the following reasons:

A mere plea taken in the written statement is only an objection noted by the party against the reliefs prayed for by the 1<sup>st</sup> respondent-workman. Admittedly, the burden is on the petitioner/management to place before the Court evidence in

support of the pleas taken. In the absence of evidence, on the plea of petitioner/management, that the 2 acre rubber plantation does not have trees remains as a mere plea and does not conclude that no relief could be granted to petitioner.

9. I am satisfied that the Labour Court moulded relief by keeping in mind the discretion available with the Industrial Tribunal under Sec.11A. The petitioner/management, in the absence of evidence on the plea it has set up, cannot successfully challenge even the findings recorded on Issue No.5. Except the ground referred to no other argument is advanced for petitioner. After perusing the record, I am satisfied that no ground warranting interference is made.

For the above reasons, writ petition fails, dismissed.

**Sd/-**

**S.V.BHATTI**

**JUDGE**

*JS*

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	EXHIBIT P1 TRUE COPY OF THE ORDER OF THE INDUSTRIAL TRIBUNAL, IDUKKI IN ID NO 25 OF 2007 DATED 01-08-2013
EXHIBIT P2	EXHIBIT P2 TRUE COPY OF THE CLAIM STATEMENT OF THE IST RESPONDENT
EXHIBIT P3	EXHIBIT P3 TRUE COPY OF THE WRITTEN STATEMENT OF THE PETITIONER
EXHIBIT P4	EXHIBIT P4 TRUE COPY OF THE REJOINDER FILED BY THE IST RESPONDENT
EXHIBIT P5	THE TRUE COPY OF THE DEMAND DRAFT DATED 27.11.2014 DEPOSITED BEFORE THE PRESIDING OFFICER, LABOUR COURT, ERNAKULAM