

(1988) 07 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 1703 of 1987

Chairman South Malabar Gramin Bank	APPELLANT
Vs	
E. Vijayarajan and Others	RESPONDENT

Date of Decision : 21-07-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1989) 1 KLJ 63

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : P. V. Madhavan Nambiar, for the Appellant; V.I. Joseph Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen. J.

1. The petitioner is the Chairman of a bank. The bank terminated the services of the first respondent-employee otherwise than, as held by Ext. PI award, in terms of the relevant regulations. So finding, the Industrial Tribunal, Tamil Nadu in I. D. No. 49 of 1983, held:

"In the result, there will be an award declaring that the order of termination is null and void and the employee will be entitled to reinstatement."

The employee raised a claim consequent upon the award u/s 23-C (2) of the Industrial Disputes Act, 1947. He claimed that he was entitled to the backwages during the period commencing from the date of termination till the date of reinstatement. The Labour Court in allowing the claim (C. P. No. 88 of 1985) held that, in so far as the termination was declared to be null and void, the employee was entitled to backwages.

2. Challenging Ext. P4 order, the petitioner's counsel contends that Labour Court exceeded its jurisdiction in so far as it allowed backwages when the award,

pursuant to which the claim was made, did not award backwages Counsel contends is that the court, contrary to the principle stated by the Supreme Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , went beyond the scope of an application u/s 33-C(2). I do not agree.

3. As stated by the Supreme Court in Mohan Lal Vs. Management of Bharat Electronics Ltd., where a termination has been declared to be null and void by reason of its illegality, the employee is deemed in law to remain in service at all material times. There has been no termination in law. The breach of his service caused by the illegal act of the management stands wiped out in law thereby entitling the employee to all benefits which he would have received but for the illegal act. This is the effect of a declaration as to the illegality of an order of termination. In the present case, by Ext. P1 award, the termination was declared null and void. What was null and void never existed in law. In the circumstances, the only order which the Labour Court could have made on an application u/s 33-C (2) consequent upon the award was the order which it did make. The challenge against that order is unsustainable. The Original petition is dismissed. No costs.