

(2012) 07 KL CK 0302

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 20829 of 2009

Deshabhimani Daily

APPELLANT

Vs

Appukkuttan Vallikunnu and Another

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2A

Citation : (2013) 1 KLJ 588

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

**Advocate : K. Balachandran, Bijoy Chandran and Rajesh Nair, for the Appellant;
A. Jayasankar, Manu Govind, B. Meera and T.R. Rajesh (GP), for the Respondent**

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The management in two industrial disputes namely ID Nos. 17/07 and 35/08 before the Labour Court, Ernakulam is the petitioner in these two writ petitions. They are challenging Ext. P7 common award passed by the Labour Court, Ernakulam in those IDs. Although two separate industrial disputes were referred for adjudication essentially the issue involved in both is the same, which is more succinctly stated in the issue referred for adjudication in ID. No. 17/07 which reads as follows:

whether the management of Deshabhimani has legally terminated the service of Sri. Appukkuttan Vallikunnu by paying gratuity as the only terminal benefits? If not, what relief available to him for the period of the alleged denial of employment till his date of retirement?

The workman was an employee of the management which is a well known daily newspaper in the State of Kerala by name "Desabhimani". The newspaper is owned by one of the most prominent political parties in the country, particularly in Kerala by name Communist Party of India (Marxist). The workman was a member of that political party and the Associate Editor of the daily. During July

to September he was on leave for undergoing ayurvedic treatment. He rejoined duty after leave on 08.09.98, According to the workman, on that day, after the newspaper for the next day was printed, the news of the death of one of the prominent leaders of the said political party was reported. Therefore, the petitioner took steps to reprint the city edition of the daily on that day including the said news also. But when he returned to his seat, the workman found that his name board has been removed from his cabin. According to the workman, the General Manager of the newspaper called him to his room and directed him not to report for duty thereafter, until the political party takes a decision regarding his reinstatement in the party, since he has been expelled from the party. The workman would contend that the General manager promised that the workman would be paid his salary every month. Petitioner was paid salary for the month of September and October also. But thereafter payment of salary was stopped. Although the workman "demanded payment of salary and to continue to discharge his duties, he was not either reinstated nor was he paid any salary. Attempt at mediation by a member of the State Committee of the political party did not also result in any acceptable settlement. In the meanwhile, another person was appointed as Associate Editor of the daily in the place of workman without referring to the workman's name in the appointment order. Although the workman again took up the matter with Central leadership of the political party, ultimately nothing resulted in his favour. His expulsion from the party as well as the daily was prominently reported in all newspapers. Those reports portraits, the political party as harassing the workman without any reason, only because of the differences of opinion between the workman and the state leadership of the political party. In an attempt to indicate their stand, the daily came out with a press release explaining the reasons for expelling the workman from his post in the newspaper establishment. The workman raised an industrial dispute, which was originally referred for adjudication under the Industrial Dispute Act with a vague issue. Writ petitions were filed. It is not necessary to go into all those details for the purpose of these writ petitions, since ultimately these two industrial disputes were referred for adjudication to the Labour Court, Ernakulam. It may also be mentioned here that originally ID No. 17/07 was ID No. 1/11 before the Labour Court, Kollam, an award was passed in that ID by Labour Court, Kollam which was set aside by this court and remanded for fresh consideration, thereafter both the industrial disputes were referred to the Labour Court, Ernakulam together and the Labour Court Ernakulam re-numbered ID No. 1/11 of Labour Court Kollam as ID No. 17/07.

2. Before the Labour Court, the petitioner took the stand that the workman was never denied employment by the petitioner. According to them he was unauthorisedly absent from 8.9.98 onwards and he did not rejoin duty after medical leave. Therefore disciplinary proceedings were initiated against the workman for unauthorized absence. An enquiry was conducted, the workman was found guilty of the misconduct. He was given a show cause notice for imposition of punishment. But before the same could be finalised, the workman

attained the age of superannuation on 20.12.2005. Therefore, taking a lenient view it was decided not to impose any punishment on the workman, instead the period of absence from 8.9.98 to 20.12.2005 was treated as leave without allowances and he was paid gratuity for the period of his actual service. Therefore they took the stand that the industrial disputes themselves were not entertainable insofar as Section 2A of the Industrial Dispute Act is not applicable. The disputes were raised by the workman himself and were not raised by a union to constitute an industrial dispute as defined in the said Act. Therefore, the reference itself is not maintainable was the contention raised.

3. The Labour Court adjudicated the disputes, examined witnesses and based on the evidence adduced by both sides, chose to believe the evidence of the workman and to disbelieve the evidence of the management reaching the conclusion that the workman was actually denied employment unjustifiably. Consequently, since the workman had already paid salary for September and October, the Labour Court directed the management to pay to the workman, salary and allowances for the period from 1.11.98 to 20.12.2005. Ext. P7 in WP. (C). No. 20846 of 2009 is the common award in the two I.Ds challenged in both writ petitions. The management is challenging that common award on two specific grounds. The first is that the reference itself is not entertainable since the workman was not entitled to invoke section 2A of the Industrial Disputes Act, insofar as there is no dismissal, termination from service, denial of employment and other contingencies, on existence of which alone Section 2A can be invoked by the workman. According to them, this is a simple case of superannuation which will not come within the purview of the Section 2A of the Act, and since the dispute was not raised by a Union of workman exposing the cause of the workman, no valid industrial dispute could have been referred for adjudication under the Act. The second is that the workman was actually unauthorisedly absent from 8.9.98 onwards and the findings of the Labour Court contrary to the same is demonstrably perverse. It is submitted that, the Labour Court has relied on evidence which was totally inadmissible and entered a perverse finding on the basis of the evidence available, which was in fact proved the contention of the management. The counsel for the petitioner would take me to the discussion of evidence in the award and would argue that the Labour Court has misdirected herself, while coming to the conclusion that the workman was in fact denied employment by the petitioner. It is submitted that the only conclusion possible on the basis of the evidence available before the Labour Court was that, during the period in question, the workman was unauthorisedly absent till his date of superannuation and the management was extraordinary lenient in favour of the workman in allowing him to retire from service on attaining the age of superannuation, although he was found guilty of the misconduct of unauthorized absence in an enquiry validly conducted for that purpose.

4. The contentions of the petitioner are vehemently opposed by the counsel for the workman. It is pointed out that the evidence produced before the Labour Court points to only one conclusion, which is that the workman was denied

employment by the management because of the differences between the workman and the political party, from which he was expelled, which political party was the owner of the management daily. The counsel for the workman heavily relies on Ext. W14 press release issued by the petitioner daily themselves, in respect of the denial of employment to the workman, which is a complete answer to every contention raised by the petitioner. He takes me through Ext R1(b), which is a copy of the Ext. W14 press release issued by the press daily marked in the IDs. He points out that in Ext. R1(a), there is no mention of any unauthorized absence by the workman and it unambiguously states that the workman was actually removed from service because he was expelled from the political party which owned the management daily.

5. I have considered the rival contentions in detail.

6. At the outset, I must remind myself of the limitations of the jurisdiction under Article 226 of the Constitution of India, while considering the validity of awards passed by Labour Courts and Industrial Tribunals under the Industrial Dispute Act. It is settled law that this court cannot interfere with findings of facts in such awards, unless this court is satisfied that the findings of facts entered therein are demonstrably perverse.

7. I am of opinion that the two issues raised by the petitioner are inextricably interrelated and the finding on the second issue will dispose of the first issue as well. If the workman was not unauthorisedly absent and was denied employment unjustifiably, then workman is entitled to invoke Section 2A of the Industrial Disputes Act. On the other hand, if the evidence leads to the conclusion that the workman actually retired from service on superannuation then naturally the question of invoking Section 2A of Industrial Disputes Act does not rise. Therefore, the answer to the first issue essentially depends on the question as to whether the findings of the fact entered by the Labour Court in the impugned award are demonstrably perverse.

8. I am of opinion that Ext. R1(a) which is a copy of Ext. W14 marked in the IDs is a complete answer to the contentions of the petitioner. The same reads thus:

The petitioner does not disown Ext. R1(a), which the petitioner was forced to issue, because of news items appeared in other dailies regarding the expulsion of the workman from the political party and the Daily. That being so, everything what they have Stated therein, must be found to be true to facts. Ext. R1(a) categorically states that, the workman was not allowed to work in the daily because he was expelled from the party on account of his anti-party activities. After having admitted so in Ext. R1 (a), the petitioner cannot now take a different stand that they did not deny employment to the workman and that the workman was unauthorisedly absent himself from the work. Even apart from that, I am satisfied that the Labour Court has analysed the evidence available before her, in the right perspective and has come to the right conclusion that the workman was denied employment without any justification, by the petitioner

management. In view of the fact that the counsel for the petitioner vehemently argued that the findings of the facts in the award is demonstrably perverse, disregarding the virtue of brevity, I venture to extract the analysis of evidence by the Labour Court in Ext. P7 award although it is fairly lengthy, which reads thus:

It is the common case that the workman was a member of the State Committee of the CPI (M) from 1990 to 98 and while he was undergoing treatment at the Kottakkal Arya Vaidyasala, the State Committee in August 98 has decided to expel him from the party. It is alleged by him that he rejoined duty on the expiry of his leave on 8th September, 1998 and performed his regular duties as Associate Editor, then General manager called him to his cabin and asked him to refrain from attending duty still the State Committee takes a decision regarding the duty allotted to him. According to the management, he never joined duty on the expiry of the leave though he ought to have joined on 7.9.98. Admittedly he did not produce any medical certificate though he alleges that he joined duty on 8.9.98. Ext. M2 is the letter dated 18.7.98 given by the workman to the General Manager stating that he would be undergoing treatment in Kottakkal Arya Vaidyasala from 20.7.98 and he will be leaving the place on 19th evening and he has to undergo treatment for two weeks and if he has to undergo further treatment, that will be intimated. Ext. M2(a) is another letter dated 23.7.98 issued by the workman to the General Manager stating that his main treatment would be starting on the next day and it will extend for four weeks and he has to be there till 22nd August, 98 and under this letter he requested him to take necessary steps for granting medical leave for the period from 20th July to August 23rd. Ext. M2(b) is the letter dated 22.8.98 issued by the workman informing that the treatment was over by 28th August and he was advised to have rest for 15 days and that he is unable to attend the office till September, 7. Under Ext. M2(a), he has requested for medical leave including 7th September, 98. The management has no case that any order was issued by the management sanctioning leave to the workman. But it is not disputed that leave requested was granted by the management. Hence evidently it is on an understanding between the parties that the workman had availed leave and though he requested for medical leave, the management did not insist him to produce medical certificate and the management did not pass any order granting leave. Since leave requested by him was including 7th September, 98, the contention of the management that the workman would have joined duty on 7.9.98 cannot sustain. So also, as the workman was allowed to avail leave without producing medical certificate and it was not intended that the workman to produce medical certificate of fitness to rejoin duty Management did not make a demand for production of medical certificate also. The workman as WW 1 has also stated during his cross examination that all directions by the management daily were given to him orally for the last 30 years. He has given specific instances of such oral instructions such as giving responsibility of the edition at Kannur and Kottayam, his transfer from Delhi bureau to Kochi edition in 1985 etc. These facts stated by him are not challenged and that it is clear that though the

workman was allowed to avail leave on medical ground, management never intended him to rejoin duty on application and production certificate of medical fitness. It is the consistent case of the workman that on the expiry of the medical leave, he joined duty on 8.9.98 and worked and on that date the General Manager called him to his cabin and asked him to refrain from attending the duty till the State Committee takes a decision regarding the duty to be allotted to him. But the management contends that he never joined duty on the expiry of his medical leave. WW 1, the workman has stated that on 8.9.98, he joined duty and he attended his regular duties and on that day, the General Manager called him to his cabin and stated that since he was, expelled from the party, the party has to take a decision about the duties to be allotted to him in the daily and he requested him to refrain from duty for one week and to this he has stated that the failure of the party in taking a decision must not affect his service or salary and General Manager assured that it will not affect his service and salary and believing the words of General Manager, he refrained from attending his duties from the next day onwards. He has also stated that during the, night on that day, the State Secretary of the party, Chadayan Govindan died and he was informed about tins from the office of the management and at that time, the printing of the Daily was completed and they inquired to him about the further action to be taken and he instructed them not to distribute city edition of the Daily and the news regarding the death of the State Secretary was included in the city edition on his instruction. He has also stated that all necessary arrangements for keeping the dead body of the State Secretary in the office of the Deshabhimani to pay homage by the public was made on his instruction and he came to the office in the noon and then he saw his name board and his seat in the office were removed. Ext. W1 and W2 are the reports in the dailies regarding the removal of the name board and seat of the workman by the management. Ext. W3 is another report in Madhyamam weekly. He has stated that though these reports were seen in other dailies, nothing about this was reported in Deshabhimani Daily and these reports were not disputed by the management or the party, These versions of WW 1 were also not challenged during his cross examination Ext. W1 to W3 reports, the details of the leave availed by the workman and his treatment and subsequent his joining duty, the requests made by the management to refrain from attending his duties of the daily, the removal of his name board, furniture and his seat from his room on the day of receiving the body of the party State Secretary, Chadayan Govindan, etc. are narrated in detail. It is true that Ext. W1 to W3 are only portions of the newspaper containing reports. But the marking of these documents were not objected by the management and MW 1 has also admitted these reports. MW 1 has also admitted that the management daily has not disputed these reports and that the argument advanced by the learned counsel appearing for the management that no reliability can be given to these reports will not sustain. These facts also supports the case of the workman that when he refrained from attending duty on 9.9.98 under the guise of making arrangements placing the dead body of the State Secretary, his seat in office and his name board were removed. Even if it

was necessary to remove his seat and furniture in his office for making such arrangements, there was no reason for removing the name board of the workman. MW 1 has also not disputed this allegation of the workman about the removal of his seat and his name board from his office on 9.9.98.

MW 1, the General Manager has stated that on 8.9.98, he was at Trivandrum. During his cross examination, it was suggested that he went to Trivandrum after getting information about the death of Sri. Chadayan Govindan in the early morning on September, 9th to which he has stated that he left for Trivandrum on 8th itself. But the time at which he left for Trivandrum is not stated by him though it is the consistent case of the workman that MW 1 called the workman to his cabin on 8.9.98 while he was attending his regular duties. Hence this version of MW 1 that he was at Trivandrum on 8.9.98 is not believable. It is stated by WW 1 that two State Secretariat members of the party informed him over telephone, that State Committee has decided to transfer him to Deshabhimani weekly and he was told that this matter will be directly informed to him by the General Manager on 26th September and on 26th September, he was informed that Sri. Kodyeri Balakrishnan, Committee member of the State Secretariat and General Manager came to the office of the management and that he went there and then they told him that the party's decision is to ask him to resign from Deshabhimani and then he told them about the impropriety of such a decision when his appeal against his expulsion is pending and then they stated that his claims will be discussed in the State Committee and he will be informed the decision of the State Committee later and they requested him to wait till the party congress is over. WW 1 had stated that at that time also, he informed the General Manager and Sri. Kodyeri Balakrishnan about his anxiety of his service and salary and then they pacified him and stated that his salary will be paid at his house. Admittedly the salary for the month of September and October were paid at the residence of the workman. Ext. W4 and W6 are the pay slips regarding payment of salary during the months of September and October, 98. Ext. W5 is the copy of fax message given by the workman to the Chairman of the Control Commission. In Ext. W5 also all details of the events on 8.9.98 on his joining duty and his meeting with Sri. Kodyeri Balakrishnan and General Manager also are narrated.

It is quite admitted that the appeal preferred by the workman against his expulsion from the party was allowed under Ext. W8 finding the expulsion unjustified and ordering revocation of the expulsion and reinstatement of membership. But in spite of this decision by the Central Control Commission, the State Committee has not restored his membership in the party. Subsequent to October 1998, the workman was not paid any salary, but the management has not issued any notice to the workman for his failure to attend the duty on the expiry of his medical leave. Ext. W7 is the copy of the letter issued by the workman to the General Manager demanding the payment of salary to which no reply was given. Ext. W9 is a copy of the letter dated 10.12.99 issued by the workman to the General Manager and the members of the party polit bureau and Ext. W10 is

the translated copy of Ext. W9 letter sent to the members of Polit Bureau and General Secretary of the party. By Ext. W12, General Secretary acknowledged the receipt of Ext. W10 letter. But no reply was issued to this letter by none of these persons. WW1 has stated that since there was a hint of legal action in Ext. W9, the State Committee member K.M. Sudhakaran was sent as a mediator by the management and he met the workman on 28.12.99 and informed that a decision will be taken on the Control Commission Report immediately and all disputes regarding his service will be solved and he requested him, to refrain from any legal action. He has stated that the State Committee member K.M. Sudhakaran met the General Manager on the same day during night and he later informed him that the General Manager is willing to pay his salary, but the consent of Pinarayi Vijayan is also be obtained and after two days, he was informed by Sudhakaran that Pinarayi Vijayan has also consented for the same but the salary was not paid and later he was told that they were discussing for another proposal. These versions of WW 1 are not challenged. Ext. W13 series are the reports in various dailies on the views expressed by various prominent personalities by which they urged the CPI (M) to withdraw the expulsion of the workman from the party. It is stated by WW 1 that he was waiting under the belief that his membership will be restored and his salary will be paid and when it was found to be in vain he has given Ext. W25 complaint on 1.6.2000 to the Secretary to Government, Department of Labour, complaining about the non payment of his wages and it is at that time the General Manager has issued a press release Ext. W14. According to WW 1, after Ext. W14 also he met the General Manager and then the General Manager insisted him to resign from his post and stated that he will be given sufficient compensation on his resignation but he was not willing for this. WW1 has stated that on two occasions in May, the General Manager met him and it is there after when notice for conciliation was issued on his complaint by the Labour Commissioner, Ext. W16, that Ext. W17 charge memo was issued to him alleging unauthorized absence. According to him Ext. W17 was issued malafide by giving date prior to Ext. W16 notice of conciliation. Ext. W18 is the reply given by the workman to Ext. W17 charge memo.

MW 1 is the General Manager who had issued Ext. W14 press release. In Ext. W14 it is stated that Deshabhimani is the newspaper of the party and it has no independence as claimed by other dailies and the daily and employees have obligation to high light the policies of party on all occasions and the workman and all its employees have such a responsibility and the workman was entrusted with the responsibility to edit and write editorials to oblige this responsibility. In Ext. W14, it is alleged that the workman herein has acted against the policies of the party and such a man cannot continue in the daily and that is known to all comrades of the party and is clearly known to the workman. It is stated in Ext. W14 that after the action of the parry against him, on two occasions he was called to the office of the Deshabhimani and informed about the difficulties to allow him to continue in service in the daily. It is further stated that the work in

the Deshabhimani is connected with the policy decisions of the party and that he was informed that the management is willing to pay all benefits as an employee of the daily so as to prevent his termination and this was informed to him on two occasions. From Ext. W14 it is clear that on two occasions the General manager discussed with the workman about the difficulties of the management to allow him to continue his service in the Daily. Ext. W14 itself is sufficient to hold that the workman was willing to attend his duties, but the management was restraining him from attending his duties.

The contentions of the management is that expulsion from the political party or his reinstatement in the political party has nothing to do with his employment under the management and the management is in no way connected with his association with a political party. But this contention is contrary to the policies of the management given in Ext. W14. MW 1 is the General Manager. Though in Ext. W14, MW 1 had admitted that he had discussions with the workman about the difficulties for continuing his service in the management during his chief examination MW 1 had stated that the disciplinary action by the party and the employment in the management are not co-related. He has stated that till this date, the workman did not attend duty. During his cross examination, he has stated that on 8.9.98, he was at Trivandrum and the workman did not attend the office on 8.9.98. He has stated that during September, 98, he asked the workman to produce medical certificate or give leave application as he was not attending office. He has also stated that on two occasions in September, 1998, he went to the residence of the workman and asked him to attend duty. These versions of MW 1 is contrary to the press release of MW 1, Ext. W14. But he admits that statements in Ext. W14 are correct. Hence no value can be given to the versions of MW 1 who is blowing hot and cold at the same breath.

It is to be noted that though the workman remained absent continuously from September, 1998 onwards and he had demanded his wages by issuing Ext. W7 notice on 12.1.99, no reply was issued to this notice by MW 1. As I said earlier, no show cause notice was issued to the workman for his continuous absence before giving Ext. W17 charge memo. The management by Ext. W27 on 5.6.99, has promoted one Sakthidharan as Associate Editor in the place of workman. Though Sakthidharan was posted as Associate Editor under Ext. W27, nothing about the workman is stated in the promotion order. The posting Sakthidharan as Associate Editor in the place of the workman also establish that the management intended his expulsion. The workman had issued Ext. W9 to the management and the English translated versions of Ext. W9, Ext. W10, were served on the members of polit bureau including General Secretary, Harkishan Singh Surjit who had by Ext. W12 acknowledge the receipt. In Ext. W9, he had explained in detail the sufferings he is undergoing due to the non payment of salary. Under this letter, he had requested the management to discontinue all illegal and inhuman acts against him and he had also requested to restore his position as Associate Editor in the management establishment. But no reply was issued to this letter by none of the persons. It is there after the workman had given Ext. W25

complaint to the Secretary to Government and on flashing the news about this, MW 1 had given Ext. W14 press release and on the next day, this was reported in Deshabhimani and Ext. W15 is the report. It is there after on issuance of notice for conciliation, Ext. W16, the management had issued Ext. W17 charge memo to the workman for his unauthorized absence from duty. It is stated by MW 1 that though Ext. W17 charge memo is dated 9.9.2000, it was issued after receipt of the conciliation notice by the management and willfully the management has given a date previous to Ext. W16 in the charge memo, Ext. W17. He has further stated that Ext. W17 charge memo was issued to him by registered post in Ext. W17(a) cover. W17(a) cover bears date 15.9.2000 and as stated by him and it shows that it was posted from Ernakulam Post Office to Kaloor. Admittedly, the residence of the workman is close to the management establishment at Kaloor and the provocation to send such a registered letter from the post office away from the management establishment and residence of the workman is doubtful. Ext. W17(a) would prove that Ext. W17 charge memo was issued subsequent to the receipt of conciliation notice, Ext. W16 issued to the management by the Labour Commissioner. Ext. W18 is the explanation given by the workman to Ext. W17 charge memo under which he has expressed his willingness to report for duty. It is stated by MW 1, the General Manager that during the conciliation, the workman insisted for restoration of his membership to the State Committee of the party, coordination committee and sub-committee and the editorial charge of the Daily, and the workman has stated that, he has given a complaint to the Central Committee and till the decision is taken by the Central Committee, he will not be rejoining duty. But in the reply issued by the workman to the charge memo, Ext. W18, the workman has expressed his willingness to rejoin duty and no condition is specified by him for rejoining duty. But in spite of the fact that the workman expressed his willingness to join duty, the management proceeded with the charge memo by appointing an enquiry officer finding his explanation unsatisfactory. According to MW 1, disciplinary action in the party and the employment in the Daily are not co related. But as per Ext. W14, press release issued by MW 1, the employment in the Daily is co-related with the policy decision in the party and what is stated in Ext. W14 is that what the workman ought to have known that being not a member of the party, on his expulsion from the party for his anti party activities he cannot continue his employment in the Daily. Under Ext. W14, it is also stated that the workman was informed that he is entitled to get all reasonable benefits from the management and that fact was informed him twice. In the registered letter issued by the workman, Ext. W9, he has maintained that his employment in the Daily and his membership in the political party are not co-related. By Ext. W9 and Ext. W18, he requested the management to restore his position as the Associate Editor and pay arrears of salary. It is to be noted that to these letters, issued by the workman, the management has not issued any reply and in Ext. W9, he had explained in detail about the events from 8.9.98 onwards Evidences discussed above would prove that the workman had attended the office on 8.9.98, but the management had prevented him from attending duties from 9.9.98 onwards and the contention of

the management that the workman had unauthorisedly absented from attending his duties from 7.9.98 is not sustainable. Therefore it is found that without any reasonable cause, management denied employment to the workman.

Points 3 & 4: Under the earlier points, I found that the management had denied employment to the workman and the contention of the management that he had unauthorisedly absented from duty is not correct. I have found that the management had restrained the workman from attending his duties though he was willing and he absented from the office from 9.9.98 onwards on the request of MW 1 on assurance of MW 1 of prompt payment of salary. The workman was also paid wages for September and October, though he did not attend the office after 9.9.98. Since it was found that the workman was denied employment by the management, the action of the management treating the period of his absence from 9.9.98 till his date of retirement on 20.12.2005 as leave without allowance is not justifiable and that he is entitled to get his pay and other allowance during the period from 9.9.98 to 20.12.2005 Points found accordingly. In the result, common award is passed in both I.D. 35/2008 and I.D. 17/2007 holding that Sri. Appukuttan Vallikunnu was denied employment by the management from 9.9.1998 till his date of retirement on 20.12.2005 and his denial of employment is unjustifiable. It is also held that the management is not justifiable in treating the period from 9.9.98 till the date of his retirement on 20.12.2005 as leave without allowance and he is entitled to pay and allowances during this period from 1.11.1998 to 20.12.2005. The award will take " effect after one month from the date of pronouncement in the open court.

(underling supplied)

I do not have to strain much to conclude that there is nothing demonstrably perverse in the analysis of the evidence and conclusion reached by the Labour Court. I do not even find that the findings are even wrong. I may even say that from the evidence available, the only conclusion possible was the one reached by the Labour Court. Therefore, I do not find any perversity whatsoever, in the findings entered by the Labour Court in Ext. P7 award. Consequently, I find nothing wrong with Ext. P7 award. That being so, these writ petitions are without any merit and accordingly they are dismissed.