

(2008) 07 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 34775 of 2000

Manager, Alampally Estate

APPELLANT

Vs

S.M. Rani and Others

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Citation : (2008) 3 KLJ 58

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Joseph Kodianthara and Thomas Velappally, for the Appellant; P. Ramakrishnan and Smitha Sukumaran, GP, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Heard Counsel for the petitioner and Counsel appearing for the first respondent. The first respondent who was employed from 1987 to 1994 by the petitioner as a permanent worker was denied employment after she got married for the reason that her husband was not willing to serve in petitioner's estate. The Industrial Tribunal after taking evidence came to the conclusion that first respondent was a permanent worker as against the claim of the management that she was only a temporary employee. Counsel for the petitioner contended that the question referred in the industrial dispute by the Government itself was whether petitioner was justified in terminating the first respondent who was a temporary worker. Counsel for the first respondent contended that the reference of the first respondent as temporary worker by the Government in their order will not bind the Industrial Tribunal and the first respondent was free to adduce evidence to prove that she was a permanent employee. I find force in this contention because the issue referred namely, legality of the termination, can be decided only with reference to the status of the employee concerned. Therefore, the Industrial Tribunal was free to consider whether first respondent was a permanent employee or not. After taking evidence, the Tribunal found that the first respondent was employed for about 7 years by the petitioner and she has worked for 240 days and more in every year

of her service. I do not find any justification to interfere with the finding on this fact based on evidence adduced and appreciated by the Industrial Tribunal. Moreover, going by the nature of job assigned to the first respondent which is tea leaf plucking, the employment is available round the year and work is not there probably when there is scarcity of crop on account of drought or during peak summer. Therefore, I do not find any ground to interfere with the finding of the Tribunal that the first respondent was a permanent worker.

The next question to be considered is the legality or propriety of termination of her employment. The reason according to the first respondent was that on her marriage, her husband refused to join the service of the petitioner because he was already in the service of another estate. Even though petitioner has denied this allegation, it is clear from the letter written by the petitioner to the Kerala Women's Commission which is extracted in the award that the reason is first respondent's husband's refusal to join the petitioner's service. Consequently this point decided against the petitioner by the Tribunal also has to be upheld and I do so.

2. The last contention is only with regard to relief granted. The first respondent is already reinstated by the petitioner in terms of the award. So far as the challenge against the award for payment of backwages is concerned, Counsel for the petitioner relied on decision of the Supreme Court in *Municipal Council, Sujampur Vs. Surinder Kumar*, and contended that onus of proof that the worker was not gainfully employed is on the worker. The contention of the petitioner is that the first respondent has not proved that she was not employed elsewhere. Counsel for the first respondent contended that first respondent gave oral evidence before the Tribunal denying having taken up any employment and therefore, according to him, she has discharged her burden in terms of judgment of the Supreme Court. Of course besides the denial, no other evidence is adduced either by the petitioner or by the first respondent as to whether she was employed or not. Even though denial in the witness box is also oral evidence, I do not think it is conclusive evidence of non-employment after she was denied employment by the petitioner. In the first place, there was demand for workers in the area is clear from the fact that the petitioner offered employment to the first respondent's husband. Secondly, the first respondent was trained for the work and she was staying in the neighbouring estate where her husband was employed. When there is no dearth for employment for ladies in tea plucking work, it is quite likely that the first respondent would have been employed atleast as casual employee in any of the estates in the area. It is also common knowledge that the entire area where petitioner has plantation is planted with tea and there is scope for employment for any one willing to work in the estate. Besides all these, a comfortable living is possible for the working class in the area only if the husband and wife work in the estate which is the usual practice in the area.

3. In these circumstances, I feel the reasonable inference is that first respondent

was employed atleast for sometime during her long period of disemployment. In the circumstances, I confirm the award, but by reducing the backwages to 50% as against full backwages awarded by the Industrial Tribunal. The O.P. is disposed of with the above observation.