

(2016) 03 KL CK 0070

In the High Court Of Kerala

Case No : W.P. (C) Nos. 19414 of 2006 (J) and 34323 of 2007.

Surendran V.K.

APPELLANT

Vs

The Elavoor Service Co-Operative Bank Ltd. and another

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33-C(2)

Citation : (2016) 2 CLR 224 : (2016) 149 FLR 1052 : (2016) 3 LLJ 659

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : Asok M. Cherian, Santhosh G. Prabhu, Advocates, for the Appellant;
P.N. Mohanan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J. - The petitioner in W.P.(C) No. 34323 of 2007, a Co-operative Bank, engaged the first respondent on a daily wage basis from 02.08.1994. On 30.06.1999, the petitioner Bank terminated his services forcing him to raise an industrial dispute in I.D. No. 101 of 2000.

2. The petitioner Bank filed W.P.(C) No. 34323 of 2007 questioning Ext.P6 order of the Labour Court. On the other hand, the first respondent filed W.P.(C) No. 19414 of 2006 seeking enforcement of Ext.P3 award.

3. For ease of reference and convenience, I take into consideration the facts and exhibits in W.P.(C) No. 34323 of 2007 for the narrative purpose.

4. As the record reveals, the second respondent, the Labour Court, rendered Ext.P3 award in the first respondent's favour. Among other things, the Labour Court has observed thus:

"9. Therefore it is held that the workman is entitled for notice pay and compensation in accordance with law. Since nothing of that sort was complied with, he would deem to be in service till his service is validly terminated.

10. Since all the regular appointments in the management society have to be done on the basis of recruitment rules of its own, the claim of the workman for absorption by considering the length of his service rendered cannot be accepted. The plea of the workman in that respect is rejected."

5. Subsequently, the first respondent submitted Ext.P4 representation before the petitioner Bank expressing his willingness to join duty. But, it was to no avail. Under those circumstances, the first respondent filed Ext.P5 Claim Petition and invited Ext.P6 order under Section 33C(2) of the Industrial Disputes Act, 1947. The Labour Court in Ext.P6 has declared to the following effect:

"In the result, Claim Petition is allowed allowing the petitioner to recover wages at the rate of Rs. 1040/- monthly from 01.07.1999 till 04.11.2003 and from 15.02.2005 till 06.07.2005, the date of filing the petition. The opposite party is directed to pay the amount before the expiry of one month from this date. In default, the petitioner is entitled to recover interest at the rate of 6% from the date of petition till the date of recovery."

6. The petitioner bank has assailed Ext.P6 order passed by the Labour court; conversely the respondent workman has sought the implementation of Ext.P6 order.

7. In the first place, the petitioner Bank has not chosen to challenge Ext.P3 award which has attained finality. As has been rightly contended by the learned counsel for the first respondent Ext.P6, at best, is only consequential in nature.

8. Indeed, Shri. Sabari, the learned counsel for the petitioner Bank, has strenuously contended that in terms of Section 33C(2) of the Act, the first respondent ought to have filed what is said to be the Claim Petition within three months. He has also contended that though the petitioner Bank has not challenged the award per se, it has nevertheless challenged its enforcement on the grounds of limitation.

9. The learned for the petitioner Bank has also strenuously contended that in response to Ext.P3 award, the workman did not report duty. According to him since the respondent has abandoned his right, he could not later turned back and take any advantage of the same award.

10. In response, the learned counsel for the first respondent, placing reliance on a decision of a learned Division Bench of this Court in *Kumaraswamy v. S.T.E. Workers' Union*, 1957 KLT 994, has contended that for enforcing an award passed by the Labour Court, there is no limitation fixed.

11. Trying to meet the contention of the learned counsel for the petitioner that the first respondent filed belatedly Ext.P4 application expressing his willingness to join, the learned counsel for the first respondent would contend that if there were to be any delay, it would not be fatal to workman's claim for future wages from the date of award. In this regard, he has placed reliance on a judgment of another learned Division Bench of this Court in *Annamma Thomas v. T. Joseph*,

1984 KLT 545. Further, placing reliance on *Indian Aluminium Co. Ltd. v. Aluminium Factory Workers' Union*, Always, 1958 KLT 629, the learned counsel for the first respondent would contend that there could not be any automatic termination of operation of award in the face of a workman's assumed unwillingness to report to duty. According to him, there is a duty cast on the employer to issue a notice fixing an ultimatum and the refusal of the workman to join duty would amount to termination of the award.

12. Heard the learned counsel for the petitioner Bank and the learned counsel for the first respondent workman, apart from perusing the record.

13. Indeed, in the first place, the petitioner has not challenged Ext.P3 award. And since Ext.P6 order being only consequential, challenge against it would not arrest the legal consequences flowing from Ext.P3 award, which is the primary one. In my view, absence of challenge to Ext.P3 is fatal to the subsequent contentions made by the petitioner. And it is too well established to be disputed that without challenging the primary order, challenging only the consequential one is of no consequence.

14. Further, the contention of the learned counsel for the petitioner that Ext.P6 order is barred by limitation in terms of Section 33C(2) of the Act is misplaced. First, as has been held by the learned Division Bench, there is no limitation fixed for the enforcement of the award of the Labour Court. Second, the limitation that is spelt out, if it were to be called limitation, in Section 33C(2) of the Act is with regard to expeditious disposal of proceedings under Section 33 of the Act by the Labour Court, rather than a mandate to the workman to come before the Labour Court within three months. Since Section 33 of the Act involves the determination of pecuniary benefits due to the workman, the legislature in its wisdom has felt it desirable to protect the workman's interest by fixing a strict time frame for the determination of the issue, so that he/she would get the fruits of the award at the earliest.

15. Though there is a semblance of justification in the contention of the learned counsel for the petitioner that the first respondent submitted Ext.P4 application 1 ? years subsequent to Ext.P3 award, I am afraid it cannot be fatal to the first respondent's claim. Nor can it automatically terminate the operation of the award as has been held in *Indian Aluminium Co. Ltd. v. Aluminium Factory Workers' Union*, Always. Further, a perusal of Ext.P6 shows that the Labour Court has rightly excluded the period when the first respondent did not approach the employer, the petitioner Bank, expressing his willingness to join duty.

16. Under these circumstances, I am of the considered view that W.P.(C) No. 34323 of 2007 filed by the petitioner Bank cannot be sustained and it is accordingly dismissed. On the other hand, W.P.(C) No. 19414 of 2006 filed by the first respondent workman stands allowed.

17. As a result, it is directed that the petitioner Bank shall settle all the benefits to the first respondent as have been determined and directed in Ext.P6 order.

18. Writ Petition of the workman allowed.