(1994) 1 LLJ 442

High Court Of Kerala

Case No: W.A. No. 269 of 1993

Kerala Solvent Extractions Ltd.		APPELLANT
	Vs	
A. Unnikrishnan and Another		RESPONDENT

Date of Decision: June 4, 1993

Acts Referred:
Constitution of India, 1950 â€" Article 226

Citation: (1994) 1 LLJ 442

Hon'ble Judges: M. Jagannadha Rao, C.J; K. Sreedharan, J

Bench: Division Bench

Advocate: J.B. Koshy and Antony Dominic, for the Appellant; M. Ramachandran, (Workman) and Jose. K. Kochupappu, Govt. Pleader. for Respondent No. 2 (Lab. Court), for the Respondent

Judgement

Jagannadha Rao, C.J.
These two appeals are directed against the common judgment dated December 2, 1992, of the learned single Judge

in O.P. Nos. 8348 of 1992 and 12063 of 1992 disposing of writ petitions. The appellant before us is the Kerala Solvent Extractions Ltd. In the

writ petitions, the appellant questioned the correctness of the awards passed by the Labour Court in favour of the respondents workmen.

2. The workmen in question in the two writ petitions were employed by the appellant-company as badli headload workers in godowns. A notice

was issued as per Exhibit P-1 stating that only those persons who had studied upto VIII standard or below should apply. The workmen, who

applied for employment stating that they had passed VII standard did not specifically mention that they had passed SSLC. It was only after their

appointment that the appellant came to know that they had passed SSLC and that there was a violation of the notification. The appointments were

made in the year 1988, and the services of the workmen were sought to be terminated by the management in 1989, by Exhibit P-5 memo, and, in

fact, the termination orders were passed. The workmen questioned the same, and sought for a reference to the Labour Court. The question

referred to the Labour Court was as to whether the termination of service of the workmen was correct and whether they are entitled to back-

wages, if reinstated.

3. The Labour Court passed two awards, which were respectively published in the Kerala Gazette, dated May 19, 1992, and July 21, 1992,

setting aside the termination order without back-wages, but with continuity of service. The Labour Court came to the conclusion that the

notification in question did not specifically state that persons who had educational qualification above VIII standard were disqualified or ineligible,

nor did it say any fraud was played by the workmen. However, having regard to the facts and circumstances, the Labour Court though it fit to

deny backwages while ordering reinstatement. It also directed continuity of service.

4. When the above said awards were questioned by the appellant company before a learned single Judge of this Court, the learned single Judge

came to the conclusion that the workmen had withheld the information from the company, and that they had violated the terms of the notice inviting

applications. The learned single Judge then considered the merits of the case and set aside the awards in paragraph 7 of the judgment. However,

the learned Judge observed in paragraph 8 of the judgment that the case involved considerable hardship to the workmen, and that, therefore, as a

special case and not by way of a precedent the appellant-petitioner should not implement the dismissal order, and allow the workmen to continue

in service, as directed by the Labour Court. The writ petitions were disposed of in the light of the observations. Aggrieved by the common

judgment, these two writ appeals are preferred by the management.

5. After hearing counsel on both sides, we are in agreement with the learned single Judge to this extent, namely, that the workmen did not place the

relevant facts before the management pursuant to the advertisement. Had they placed the facts correctly before the management, they would not

have secured the employment. Be that as it may, the workmen were appointed in 1988, and their services were terminated in 1989. After

termination of their service, they had approached the Labour Court, which on a consideration of the facts and circumstances of the case, thought it

fit to direct reinstatement of the two workmen without back-wages, but with continuity of service.

6. The point for consideration in these writ appeals is whether this Court should interfere with such an order in exercise of its discretionary

jurisdiction under Article 226 of the Constitution of India.

7. We may point out that in this case this Court is not called upon to pass orders on compassionate grounds in favour of the workmen for the fault

committed on the part of the management. If that were the position, we would not have come forward to help the workmen. The position is the

reverse. Here, the Labour Court had thought it fit to grant certain benefit to the workmen, notwithstanding their fault and directed reinstatement,

without back-wages, but with continuity of service. The limited question before us is whether this Court should interfere with the order of the

Labour Court in exercise of its discretionary jurisdiction.

8. The Supreme Court had occasion to point out in several cases that notwithstanding any illegality committed by any Tribunal, the High Court

should still consider whether it was necessary to interfere in the interest of justice. We shall briefly refer to these cases. In Veerappa Pillai Vs.

Raman and Raman Ltd. and Others, the Supreme Court held as follows (headnote):

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate

Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to

exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in

manifest injustice.

9. Again, in D.N. Banerji v. P.R. Mukherjee, (1952-53) 4 FJR 443, the Supreme Court observed (at page 446):

Whether on the facts of a particular case, the dismissal of an employee was wrongful or justified is a question primarily for the Tribunal to decide

and here the Tribunal held that the dismissals were clear cases of victimisation and hence wrongful. Unless there was any grave miscarriage of

justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere.

10. In the present case, there is no violation of any law. At the most, there is a breach of terms of advertisement inviting applications. The Labour

Court considered the same, and thought it fit not to give undue importance to the terms of the notification so as to deny employment.

11. In A.M. Allison Vs. B.L. Sen, it was observed by the Supreme Court (p. 477):

Proceedings by way of certiorari under Article 226 are "not of course". The High Court has the power to refuse the writ if it is satisfied that there

was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Article 226, the

Supreme Court can refuse to interfere unless it is satisfied that the justice of the case requires it But, where it is not so satisfied, it will not interfere.

12. In Sangram Singh v. Election Tribunal, Kotah AIR, 1955 SC 425, it was observed by the Supreme Court (headnote):

That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law....Their powers are purely discretionary and

though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations

imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of cases unless substantial injustice has ensued, or is

likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion

injustice in a broad and general sense, for though no Legislature can impose limitation on these Constitutional powers it is a sound exercise of

discretion to bear in mind the policy of the Legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ

petitions should not be lightly entertained in this class of cases.

13. From the above decisions, it is clear that if any illegality or irregularity is committed by the Tribunal, it is not obligatory on the part of the High

Court to interfere, if justice of the case does not require such interference. In our opinion, the present case, wherein the workmen have been

terminated from service in 1989, and whose reinstatement has been ordered by the Labour Court, is not a fit case where this Court should

interfere in exercise of its powers under Article 226 of the Constitution of India to set aside the orders of reinstatement.

14. In the result, we set aside the order of the learned single Judge in so far as it set aside the awards of the Labour Court directing reinstatement.

We restore the awards with regard to the reinstatement without back-wages till today, but with continuity of service. The writ appeals are disposed

of accordingly.