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C.A.No. 6769 OF 2003
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6769 OF 2003

The Executive Engineer Podannur & Ors.....Appellants

Versus

Karthiyani & Ors.....Respondents

O R D E R

The appellant herein challenges an order of the Division Bench of the High Court of Kerala at Ernakulum which has confirmed an order made by the learned Single Judge of the same High Court who in turn affirmed the award of the Labour Court made by the Labour Court, Ernakulam. The issue that came up for consideration before the Labour Court was :
"Whether the action of the Executive Engineer (Construction), Southern Railway, Podannur in terminating the services of S.Smt. Chandrika and 47 others (list enclosed) on 2.7.1984 and 17.8.1984 is justified ?"

The Labour Court based on the material that was available before it and taking note of the fact that the appellant who had the necessary record to the dispute the claim of the respondents-workmen, having not produced the same came to the conclusion that the termination of the respondents-workmen was contrary to the Sections 25.F, 25.O and 25.N of the Industrial Disputes Act, 1947. Consequently, it directed the reinstatement of these workmen with full back wages. Being aggrieved by the said order of the Labour Court the appellant preferred writ petition before a learned Single Judge of the High Court of Kerala who agreeing with the finding of the Labour Court affirmed the award. In an appeal filed before the Division Bench of the High Court for the first time the appellant tried to justify its termination on the ground that the work that was being done by the respondents-workmen was in a project. We think the High Court rightly came to the conclusion that such a belated plea cannot be entertained. Their concurrent finding of fact that the termination of the workmen being contrary to the Sections 25.F, 25.O and 25.N of the Industrial Disputes Act, we are in agreement with the courts below. However, we do notice that the termination in question was with effect from 2.7.1984 and 17.8.1984 while the award was made on 17.6.1996 and when the matter was pending in writ petition before the Division Bench of the High Court no application under Section 17B of the Industrial Disputes Act was filed by the workmen to establish that they were not in employment nor any affidavit filed in this behalf. Taking into consideration all these facts we are of the considered opinion that this is not a fit case for grant of full back wages. In these circumstances, we modify the order of the Labour Court as affirmed by the High Court directing reinstatement of the respondents-workmen but we direct the respondents-workmen shall be entitled only to 50% of the back wages.
With the above modification this appeal is dismissed.

.....J.
(N. SANTOSH HEGDE)

.....J.
(D.M. DHARMADHIKARI)

.....J.
(ARUN KUMAR)

NEW DELHI,
APRIL 19, 2005.

ITEM NO.111

COURT NO.2

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6769 OF 2003

EXECUTIVE ENGINEER PODANNUR & ORS.

Appellant (s)

VERSUS

KARTHIYANI & ORS.

Respondent(s)

Date: 19/04/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant(s) Mr. Harish Chandra, Sr. Adv.

Mr. B.K. Prasad, Adv.

Mrs. Anil Katiyar, Adv.

Mr. Ajay Sharma, Adv.

For Respondent(s) Mr. B.V. Deepak, Adv.

for M/S. T.T.K. Deepak & Co., Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

With the modification the appeal is dismissed in

terms of the signed order.

(PAWAN KUMAR)

(PREM PRAKASH)

COURT MASTER

COURT MASTER

(signed order is placed on the file)