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W.P (C) No.14688 of 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 28<sup>TH</sup> DAY OF JULY 2025 / 6TH SRAVANA, 1947

WP(C) NO. 14688 OF 2019

AGAINST THE ORDER/JUDGMENT DATED IN ID NO.61 OF 2015 OF  
LABOUR COURT, KOLLAM

PETITIONER:

K.S.HARIHARAN,  
AGED 55 YEARS,  
S/O. (LATE) SREEDHARAN NAIR,  
MALAYATTIL HOUSE,  
THENHIPPALAM PO,  
MALAPPURAM DISTRICT,  
PIN-673 636.

BY ADVS.  
SHRI.A.JAYASANKAR  
SRI.MANU GOVIND  
SMT.NIMMY JOHNSON  
SHRI.S.SABARINADH  
AYESHA MARIA JOHN

RESPONDENTS:

1 THE LABOUR COURT  
KOLLAM-691 013.



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2        DESHABHIMANI DAILY  
         REPRESENTED BY ITS GENERAL MANAGER,  
         DESHABHIMANI ROAD,  
         THAMBANUR,  
         THIRUVANANTHAPURAM-695 001.

BY ADVS.  
SRI.G.BIJU  
SHRI.S.JAYAPRAKASH (MADAVOOR)  
SMT.C.S.SHEEJA (SR.GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 28.07.2025, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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**'C.R'**

**K.BABU, J.**

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**W.P (C) No.14688 of 2019**  
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Dated this the 28<sup>th</sup> day of July, 2025

**JUDGMENT**

The challenge in this Writ Petition is to the award dated 09.08.2018 passed by the Labour Court, Kollam in Industrial Dispute No.61 of 2015. The workman is the petitioner.

**The facts**

2. Respondent No.2 is a newspaper establishment as defined in Section 2(d) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short 'the Act'). The petitioner is a working Journalist as defined in Section 2(f) of the Act. As per Section 3 of the Act, the provisions of the Industrial Disputes Act, 1947 are applicable to the working Journalists also. The petitioner joined the service of respondent No.2, the Deshabhimani Daily, in 1990 as Sub



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Editor/Reporter. He was promoted as Senior Sub Editor and Chief Sub Editor.

2.1. As per order dated 17.03.2007, the petitioner was placed under suspension. The order of suspension contains certain allegations as to anti-party activities. The petitioner denied the allegations and assured the management that he would maintain more harmonious relation with the party. Therefore, the suspension was revoked by order dated 10.10.2007.

2.2. The petitioner was again suspended by order dated 12.01.2008, pending enquiry. A charge sheet was issued on 12.05.2008. The petitioner submitted explanation to the charges on 03.06.2008, denying the allegations in the charge. On 30.10.2008, the Deshabhimani Daily published a news item stating that the petitioner was dismissed from the service of respondent No.2.

3. The petitioner challenged his dismissal from service by filing Industrial Dispute No.61 of 2015 before the Labour Court, Kollam. The relevant pleadings set up by the petitioner are as



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follows:

3.1. The allegations in the charge memo dated 12.05.2008 were vague. He had submitted an explanation on 03.06.2008 expressing his willingness to prove innocence. Nothing was heard thereafter for months together and on 30.10.2008, the Deshabhimani Daily published a news item stating his dismissal from service. He did not get any intimation from the management as to the dismissal. No amount was paid towards subsistence allowance during his period of suspension.

3.2. When the petitioner came across the news item regarding his dismissal in the Deshabhimani Daily on 30.10.2008, he sent a registered letter on 01.12.2008 to the General Manager enquiring whether the news was true or not and requesting a copy of the dismissal order. No reply was given by the General Manager. The petitioner, therefore, presumed that the news item was incorrect. He went on sending registered letters to the General Manager seeking payment of subsistence allowance and reminding



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that disciplinary enquiry was yet to commence. But, the General Manager did not care to send any reply.

3.3. On 25.05.2011, another letter was sent to the General Manager seeking subsistence allowance. There was no response to that letter also. In such circumstances, on 09.12.2014, the petitioner submitted a complaint before the Labour Commissioner, Thiruvananthapuram alleging denial of employment. The Inspector of Newspaper Establishments initiated conciliation proceedings and issued notice to the Management.

3.4. The General Manager by his letter dated 02.02.2015 admitted that the management had dismissed the petitioner from their service. The General Manager also produced copies of the enquiry notice, enquiry report, dismissal order, postal certificate, press release, etc. The petitioner was also served with the copies of documents during the conciliation proceedings. It was at that time he could realise that the management had passed an order of dismissal against him on 29.10.2008. The petitioner was not served



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with the notice of enquiry. The findings of the Enquiry Officer are based on surmises and conjectures. It is vitiated by mala fides. The enquiry report was also not served on the petitioner. No second show cause notice was issued to him. The documents relied on by the management are frivolous. Since the conciliation proceedings were protracted, the petitioner was constrained to approach the Labour Court by initiating Industrial Dispute, invoking Section 2-A(2) of the Industrial Disputes Act.

4. The management resisted the application raising the following contentions:

4.1. The management dismissed the petitioner on 29.10.2008 based on specific charges and finding of guilty by the Enquiry Officer thereon. The dismissal order was communicated through post on 30.10.2008. The petitioner was placed under suspension for the second time with effect from 12.01.2008 due to anti-establishment activities. Statutory notices were served on the petitioner during the proceedings. The petitioner did not give a



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proper reply. The allegation that the petitioner was unaware of the order of dismissal is not true. The conciliation proceedings were initiated six years after his dismissal, which is only a tactful step adopted to initiate dispute under Section 2-A(2) of the Industrial Disputes Act. The claim of the petitioner is barred by limitation.

5. Based on the rival contentions, the Labour Court framed a preliminary issue as to whether the petition is maintainable in view of Section 2-A(3) of the Industrial Disputes Act. The Court insisted for evidence to decide the question whether the dispute is barred by limitation or not.

6. The evidence consists of oral testimony of WW1 & Exts.W1 to W6 on the side of the workman and oral testimony of MW1 & Exts.M1 to M4 on the side of Management.

The findings of the Labour Court.

- (i) The management has produced a copy of the letter dated 29.10.2008 and receipt under certification of post to prove the issuance of



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dismissal order to the petitioner.

- (ii) The petitioner got the dismissal order from the Deshabhimani Daily dated 30.10.2008.

7. I have heard Sri.A. Jayasankar, the learned counsel appearing for the petitioner, Sri. G.Biju, the learned counsel appearing for respondent No.2 and the learned Government Pleader.

8. The application referred to in sub-section (2) of Section 2-A of the Industrial Disputes Act before the Labour Court shall be made before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. Undoubtedly, the starting point of limitation would be the date of communication of the order of dismissal, discharge, retrenchment etc., to the workman. The time taken for getting the copy of the order is bound to exclude while reckoning the period of limitation. Such a requirement is there, because, the affected party has to produce copy of the order that he intends to challenge before the



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competent authority and more so, he is entitled to know the grounds under which he was dismissed, discharged or terminated from service.

9. The learned counsel for the petitioner submitted that what was published in the Deshabhimani Daily on 30.10.2008 was only a news item stating briefly that the petitioner was dismissed (Ext.P11). The learned counsel submitted that the dismissal order was not published in the Deshabhimani Daily. The learned counsel further submitted that the finding of the Tribunal that the petitioner got the dismissal order from the Deshabhimani Daily is totally perverse and baseless. The learned counsel further submitted that when the petitioner came across Ext.P11 Press release published in the Deshabhimani Daily, he waited for receiving the dismissal order, and thereafter, on 01.12.2008 he sent a communication to the General Manager requiring copy of the order of dismissal. The learned counsel also submitted that Ext.P10 endorsement regarding the certificate of posting dated 30.10.2008 has no credibility, as it



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cannot be treated as a document reflecting that the common course of business was followed as provided in Sections 16 and 114 of the Indian Evidence Act. The learned counsel relied on **L.M.S. Ummu Saleema v. B.B. Gujaral [(1981) 3 SCC 317]** and **State of Maharashtra v. Rashid B. Mulani [(2006) 1 SCC 407]** to contend that sending a communication and a certificate of posting may be of very little assistance to draw a presumption against the petitioner. The learned counsel would further submit that in any case, there is a rebuttal of the presumption if at all drawn in view of the evidence tendered by the petitioner.

10. The learned counsel for respondent No.2 submitted that the management could establish that the dismissal order was communicated to the petitioner by sending it through the postal department on 30.10.2008. The learned counsel submitted that Exts.M2 and M3 (Exts.P9 and P10 respectively in the Writ Petition) were produced before the Labour Court to prove the issuance of dismissal order to the petitioner. The learned counsel further



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submitted that the publication of the news item in the Deshabhimani Daily on 30.10.2008 was a sufficient communication of the order of dismissal. The learned counsel further submitted that the attempt of the petitioner by initiating conciliation was part of a tactic to invoke the provisions of Section 2-A(3) of the Industrial Disputes Act.

11. The Labour Court recorded the finding that the petitioner got the dismissal order from the Deshabhimani Daily dated 30.10.2008, which is the foundation of the conclusion that the application is not maintainable in view of Section 2-A(3) of the Industrial Disputes Act. The learned Judge found that as the petitioner got knowledge regarding the order of dismissal from the Deshabhimani Daily dated 30.10.2008, the period of limitation starts from that date. It is important to note that the witness (MW1) examined from the side of the management has no direct knowledge regarding the assertions in the counter.

12. The news item published on 30.10.2008 in the



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Deshabhimani Daily is marked as Exhibit P11, which reads thus:

“K. S. Hariharan, the Chief Sub Editor of Deshabhimani's Thiruvananthapuram unit, has been dismissed from the Deshabhimani. The action was taken after it was found that, while serving as the State Secretary of Adhinivesa Prathirodha Samithy, he engaged in conspiracy against the newspaper and its management, and took a public stance against them.”

13. Admittedly, the dismissal order was not published in the Deshabhimani Daily. I have held above that limitation as provided in Section 2-A(3) of the Industrial Disputes Act starts from the date on which the order of dismissal is served on the workman. The news item published in a newspaper is not sufficient compliance of service of the order of dismissal. The finding of the Tribunal to the contrary is erroneous and perverse. The Labour Court also recorded a finding that the management has produced Exhibit M2 and Exhibit M3 (Exts.P9 and P10 respectively in the Writ Petition) to prove the issuance of dismissal order to the petitioner.

14. The management relied on Ext.P10, a document stated to



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have been issued by the postal authorities with the endorsement 'under certificate of posting' showing the address of the petitioner. The petitioner has challenged even the correctness of the address shown in Exhibit P10.

15. The learned counsel for respondent No.2-Management submitted that a presumption is to be drawn that the order of dismissal was issued to the petitioner by post on 30.10.2008. The learned counsel for the petitioner challenged the admissibility of Ext.P10.

16. Presumptions of fact are inferences which the mind naturally and logically draws from given facts, irrespective of their legal effect. Not only are they always rebuttable, but the trier of fact may refuse to make the usual or natural inference notwithstanding that there is no rebutting evidence {Vide: Phipson on Evidence, Thirteenth Edition, Page Nos.4 and 5, Paragraph Nos.1-09}.

17. The presumption as provided in Section 16 or Section 114 of



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the Evidence Act is not mandatory. Neither Section 16 nor Section 114 of the Evidence Act compels the Court to draw a presumption. If it is proved that a letter was properly addressed, pre-paid and posted by registered post, service shall, under Section 27 of the General Clauses Act, be deemed to be duly effected.

18. The certificate of posting may also lead to a presumption that a letter addressed to a person was posted on the date endorsed thereon and in due course reached the addressee. Drawing of this presumption is with the aid of Section 114 of the Evidence Act, which is not mandatory. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand, the presumption may be drawn initially, but on a consideration of the evidence the Court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever dispatched as claimed.

19. The Honourable Apex Court had occasion to consider the



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reliability of the endorsement relating to certificate of posting. In **State of Maharashtra v. Rashid B. Mulani [(2006) 1 SCC 407]**, the Apex Court observed thus:

**"17.** A certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the post office. But when a mere certificate of posting is sought, no record is maintained by the post office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing antedated seal with the connivance of any employee of the post office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied as in this case. Be that as it may."

**20.** In **L.M.S. Ummu Saleema v. B.B. Gujaral [(1981) 3 SCC 317]**,

the Apex Court observed thus:

**"6.....**The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on August 14, 1980 and in due course reached the addressee. But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compels the court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the



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court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. After all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured. In the circumstances of the present case, circumstances to which we have already referred, we are satisfied that no such letter of retraction was posted as claimed by the detenu.”

21. It is the case of the petitioner that after coming across the news item published in the Deshabhimani daily on 30.10.2008, regarding his dismissal, he waited for some time, awaiting the order of dismissal. He waited till 01.12.2008. Exhibit P3 shows that the petitioner sent a letter to the General Manager on 01.12.2008 communicating that he had not received the order of dismissal and requesting to send a copy of the same. There was no response from the management. The management could have responded to Ext.P3 communication that they had sent the dismissal order on 30.10.2008. In the absence of any response to Ext.P3 communication dated 01.12.2008 requiring the order of dismissal, the contention of the petitioner gets credibility. He has given evidence that he had not received the copy of the order of dismissal



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till 02.02.2015, the date on which the management produced it before the Conciliation Officer. His statement on oath that no copy of the order was delivered to him is sufficient to rebut the presumption under Section 114 of the Evidence Act, if at all drawn.

22. I find no reason to doubt the veracity of the denial made by the petitioner. Therefore, respondent No.2-Management cannot succeed on the basis of the presumption under Section 114 of the Evidence Act based on Ext.P10. This Court comes to the necessary inference that the petitioner was not served with the order of dismissal till the matter was taken up before the Conciliation Officer in 2015.

23. Therefore, the application filed by the petitioner is within time and it is maintainable. In the result,

- (a) The Writ Petition is allowed.
- (b) The order dated 09.08.2018 in Industrial Dispute No.61 of 2015 (Ext.P15) passed by the Labour Court, Kollam stands set aside.



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- (c) The Industrial Dispute No.61 of 2015 stands restored to file.
- (d) The matter is remitted back to the Labour Court for consideration afresh.

It is made clear that I have not considered the merits of any of the contentions other than the question of limitation.

Sd/-  
**K.BABU,**  
**JUDGE**

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APPENDIX OF WP(C) 14688/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE CHARGE SHEET DATED 12.5.2008 ISSUED BY THE MANAGEMENT TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE EXPLANATION DATED 3.6.2008 MADE BY THE PETITIONER ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P3 TRUE COPY OF THE LETTER DATED 1.12.2008 SENT BY PETITIONER TO THE GENERAL MANAGER ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P4 TRUE COPY OF LETTER DATED 2.8.2010 SENT BY PETITIONER TO GENERAL MANAGER SEEKING PAYMENT OF SUBSISTENCE ALLOWANCE AND REMINDING THAT THE DISCIPLINARY ENQUIRY ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P5 TRUE COPY OF LETTER DATED 25.5.2011 SENT BY PETITIONER ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 2.2.2015 FROM THE 2ND RESPONDENT TO THE LABOUR COMMISSIONER ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P7 COPY OF THE ENQUIRY NOTICE DATED 1.9.2008 AS PRODUCED BY THE 2ND RESPONDENT BEFORE THE CONCILIATION OFFICER ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P8 COPY OF THE ENQUIRY REPORT DATED 10.10.2008 ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P9 TRUE COPY OF DISMISSAL ORDER DATED 29.10.2008 ALONG WITH ITS ENGLISH TRANSLATION.



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- EXHIBIT P10 TRUE COPY OF THE POSTING CERTIFICATE FOR THE DISMISSAL ORDER.
- EXHIBIT P11 COPY OF THE PRESS RELEASE DATED 30.10.2008 ISSUED BY THE GENERAL MANAGER ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P12 TRUE COPY OF THE INDUSTRIAL DISPUTE NO.61/2015 DATED 22.5.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P13 TRUE COPY OF THE WRITTEN STATEMENT DATED 6.2.2016 FILED BY THE MANAGEMENT IN ID NO.61/2015.
- EXHIBIT P14 TRUE COPY OF THE REJOINDER DATED 9.3.2016 IN ID NO.61/2015.
- EXHIBIT P15 TRUE COPY OF THE AWARD DATED 13.9.2018 ID NO.61/2015 OF THE LABOUR COURT, KOLLAM.