
(1981) 12 KL CK 0002
In the High Court Of Kerala

Haridasan Pillai

APPELLANT

Vs

Appellate Authority and Others

RESPONDENT

Date of Decision : 23-12-1981

Acts Referred:

Kerala Shops and Commercial Establishment Act, 1960 — Section 18, 18(2), 18(3), 2(6), 3

Citation : (1982) 1 LLJ 266

Hon'ble Judges : K.K. Narendran, J

Bench : Single Bench

Judgement

Narendran, J.—A money-bee has come to Court challenging the decision of the Appellate Authority u/s 18(3) of the Kerala Shops and Commercial Establishments Act, 1960, for short the Shops Act, dismissing his appeal against the termination of his services as money-bee of the 3rd respondent-Bank, as not maintainable. The 1st respondent-Appellate Authority held that no appeal u/s 18(2) of the Shops Act will lie as the provisions of the Act are not applicable to the petitioner since he falls u/s 3(1)(b) of the Act. The short point that arises for consideration is whether the provisions of the Shops Act will not apply to persons doing service in an establishment simply because their work mainly involves travelling and they are persons employed as canvassers and caretakers and their names do not appear in the muster rolls and hence no appeal by them is maintainable u/s 18 if their services are dispensed with.

2. The petitioner is a money-bee appointed for collection of small savings deposits at the Aroor branch of the 3rd respondent-Bank as per Ext. P-I order dated 73-3-1972. Exhibit P-2 is a letter issued to the petitioner by the 2nd respondent Manager of the Aroor branch informing him that the Bank has no other alternative but to terminate the petitioner's service as money-bee of the branch. Exhibit P-3 is a show-cause notice sent to the petitioner. The petitioner's services were dispensed with, with effect from 20-11-1976. This was challenged by the petitioner before the 1st respondent in Exhibit P-4 appeal. Exhibit P-5 is the written objections filed by the Bank before the 1st respondent Appellate

Authority. By Exhibit P-6 the 1st respondent dismissed Exhibit P-4 appeal saying:

Since the appellant falls u/s 3(1)(b) of the Act, the provisions of the Act are not applicable to the appellant. So, the appeal u/s 18(2) will not lie. Hence I hold that the appeal is not maintainable.

3. It was under the above circumstances that the petitioner money-bee approached this Court with this original petition. A counter-affidavit has been filed on behalf of the 3rd respondent-Bank justifying Exhibit P-6 order. In para 11 of the counter-affidavit it is stated:

The petitioner was not an employee of the bank as defined in Section 2(6) of the Shops and Commercial Establishments Act. Even if that is not so, the Act did not apply to him in view of Section 3(1)(b) thereof.

4. Section 2(6) of the Shops Act reads:

(6) "employee" means a person wholly or principally employed in, and in connection with, any establishment and includes an apprentice ;

Section 3(1)(b) of the Act reads:

3. Exemptions :- (1) Nothing contained in this Act shall apply to -

(a) ...

(b) persons whose work mainly involves travelling, and persons employed as canvassers and caretakers and whose names do not appear in the muster rolls ;

S. 4 of the Act reads:

4. Power of Government to apply Act to exempted persons or establishments:- Notwithstanding anything contained in Section 3, the Government may, by notification in the Gazette, apply all or any of the provisions of this Act to any class of persons or establishments mentioned in that section, other than those mentioned in Clause (c) and (f) of Sub-section (1) and modify or cancel any such notification.

Notification No. 8149/H3/62/HLD dated 18-10-1963 published in Kerala Gazette dated 5th November, 1963, which appears on page 166 of the Kerala Laws Manual by Shri K. Ramakumar, Volume VII. (First Edition) reads:

In exercise of the powers conferred by Section 4 of the Kerala Shops and Commercial Establishments Act 1960, (Act 34 of 1960) the Government of Kerala hereby direct that the provisions of the said Act except Sections 6, 7, 8, 9 and 10 shall apply to persons whose work mainly involves travelling and persons employed as canvassers and caretakers.

The petitioner money-bee can come under the category of canvassers mentioned in Section 3(1)(b) of the Shops Act. So, as per Section 3, nothing contained in the Act will apply to such person. But Section 4 of the Act which empowers the

Government to apply the Act to person exempted u/s 3 is an overriding provisions. By a notification u/s 4 Government can apply all or any of the provisions of the Act to any class of person mentioned in Section 3. By notification dated 18-10-1963 Government have applied the provisions of the Act except Sections 6 to 10 ""to persons whose work mainly involves travelling and persons employed as canvassers and caretakers" In view of this notification the exemption provided for in Section 3(1)(b) has been virtually taken away. So, categories of persons like the petitioner engaged as canvassers can also file an appeal u/s 18 of the Act if their services are dispensed with and if they are employees as defined in Section 2(6) . The petitioner's appeal will become not maintainable only if he is not an employee, as u/s 18(2) the right of appeal is conferred on the employee. So in view of the Government notification dated 18-10-1963 the conclusion of the 1st respondent Appellate Authority that the appeal is not maintainable cannot be sustained. Hence Ext. P-6 order has to be set aside.

5. Going by Ext.P-1 it cannot be said that the contention of the respondent-Bank that the petitioner was only an agent is absolutely baseless. But what is stated in Ext. P-2 is that the bank had "no other alternative but to terminate your services from the post of money-keeper." If the petitioner was only an agent why should the bank proceed on the basis that he was occupying a post. If he was occupying a post there is no reason why he should not be an employee. If, as a matter of fact, the petitioner was only an agent why should he be issued a show cause notice Ext. P-3. These are also matters which the Appellate Authority should consider. I set aside Ext. P-6 and direct the Appellate Authority to consider Ext. P-4 appeal afresh and pass orders within three months after affording the parties a reasonable opportunity of being heard, untrammelled by anything said in this judgment on the merits. The original petition is allowed to the extent indicated above. No costs.