

(2015) 01 KL CK 0251

In the High Court Of Kerala

Case No : Writ Petition (C). No. 3299 of 2012 (J)

Mathew George

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FFF, 33C(2)

Citation : (2015) 01 KL CK 0251

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; V.K. Rafeeq, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—Petitioner challenges Ext. P6 order issued on an application filed under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act, for short). Petitioner is the Managing Director of a private limited company, who is the respondent in Ext. P6. The management establishment is a dealer of Steelage Industries Limited, Mumbai, dealing in safe, strong room door, lockers and allied products. Admittedly, the petitioner had a branch office at Kozhikode, under which respondents 2 and 3 were said to have been employed. On the alleged closure of the establishment, respondents 2 and 3 raised a dispute with respect to the denial of employment, in which notice was issued by the Deputy Labour Officer, as is evidenced at Ext. P2. Obviously, respondents 2 and 3 did not pursue with the proceedings under Ext. P2 and filed a claim petition under Section 33C(2) before the Labour Court, Kozhikode numbered as C.P.7 of 2010 which led to the passing of the impugned order at Ext. P6.

2. Petitioner's contention against Ext. P6 is that, the Labour Court could not have decided the issue under Section 33C(2) of the Act, since, the claim necessarily involved an adjudication as to the status of respondents 2 and 3 and

as to whether the respondents are entitled to retrenchment compensation. Learned counsel for the party respondents would, on the other hand, contend that, the closure of the branch office at Kozhikode, having been admitted by the management, the entitlement to closure compensation under Section 25FFF is a statutory right, which the respondent-workmen could agitate under Section 33C(2) of the Act.

3. Learned counsel for the petitioner relies on the decisions in Haridas Vs. Labour Court, (2006) 2 ILR (Ker) 73 : (2006) 2 KLT 641 : (2006) 3 LLJ 63 and D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another, AIR 2009 SC 395 : (2008) 106 CLT 376 : (2008) 118 FLR 1196 : (2008) 7 JT 401 : (2008) 2 LLJ 1066 : (2008) 7 SCC 22 : (2008) 2 SCC(L&S) 210 to buttress his contentions. Learned counsel for the respondents would rely on the decisions in Mangalore Ganesh Beedi Works v. The District Labour Officer, Cannanore and others (1972 KHC 232), Cannanore Co-operative Milk Supply Union Ltd. Vs. The Labour Court and Others , Sahu Minerals and Properties Ltd. Vs. Presiding Officer, Labour Court and Others, AIR 1975 SC 1745 : (1975) 31 FLR 162 : (1975) 2 LLJ 341 : (1976) 3 SCC 93 : (1976) 1 SCR 263 : (1975) 7 UJ 607 , R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, AIR 1972 SC 451 : (1972) 24 FLR 169 : (1972) LabIC 285 : (1972) 1 LLJ 231 : (1972) 1 SCC 154 : (1972) 2 SCR 580 : (1972) 4 UJ 291 , Hondaram Ramchandra Vs. Yeshwant Mahadev Kadam (dead) through L.Rs., (2008) 116 FLR 362 : (2008) 1 JT 60 : (2008) 1 LLJ 860 : (2007) 14 SCALE 641 : (2007) 14 SCC 277 : (2009) 3 SLJ 312 & G 4 S Security Services (India) Pvt. Ltd. Vs. Satheesh Kumar, (2010) 1 ILR (Ker) 316 : (2010) 1 KLT 463 : (2010) 3 LLJ 695 to refute the challenge made against the proceeding under Section 33C(2) and to sustain such proceedings.

4. The admitted facts are that, respondents 2 and 3 were attached to the Kozhikode branch office of the petitioner establishment. The party respondents, who are the claimants before the Labour Court, claim that they were employed as Office Assistants and Service Technician respectively by the management. The management contended that the second respondent was the Manager of the branch office at Kozhikode and the third respondent was an independent service technician, who was engaged for the after sale service carried on by the management. It is also the admitted case that, the third respondent had sought for resignation by Ext. P1, in which, however, the management directed continuance presumably to tide over the exigency of no other Service Technician being available. The closure of the branch at Kozhikode is admitted, but, however the management's specific case is that, the third respondent cannot claim any closure compensation, since, he had admittedly resigned from the services and the second respondent, being the Manager, could not have raised a claim, assuming the status of a workman under the Act. In any event, the second respondent was asked to report to the office of the petitioner at Ernakulam and on her refusing to do so; she has obviously abandoned employment; a voluntary act. The second respondent's contention against that is that, the management

did not substantiate such claim by production of any document before the Labour Court, Kozhikode.

5. Primarily, it is to be noticed that, respondents 2 and 3 had initially raised an industrial dispute, insofar as the denial of employment as per Ext. P2. It is not clear as to why they did not pursue the same. On the mere admitted fact that there was closure of branch office at Kozhikode, they opted to file an application under Section 33C(2), contending that, their employment had been severed for reason of such closure and hence they are entitled to closure compensation. Going by the admitted facts only a branch office was closed and the workmen could not claim closure compensation on such closure of branch, especially if the establishment is continued. The management establishment continued its functioning, admittedly, in Kochi. The branch at Kozhikode was not an independent entity nor could the said branch be deemed to be the employer of the respondent-workmen.

6. The workmen could not have confined their claim for employment to the branch office at Kozhikode alone. Definitely, the workmen, on closure of the Kozhikode office, would have been entitled for continuance of employment in the management, especially at Kochi. It is also pertinent that, on closure of branch office at Kozhikode, the management had not issued any letter of termination, upon which alone there could be a valid claim for closure compensation raised. In the context of the management establishment, admittedly having continued in Kochi, respondents 2 and 3 cannot be said to have any valid claim for closure compensation on the premise that the branch office, Kozhikode had been closed.

7. Evidently, there could have been maintained, an industrial dispute, with respect to the allegation of denial of employment. That was not pursued and the workmen chose to avail of the remedy under Section 33C(2), which confines itself to computation of valid and legal claims, in terms of money raised by workmen. The petitioners, having been found to be not entitled to any closure compensation, going by the undisputed facts, an examination as to the scope of Section 33C(2), as discernible from the decisions cited would be unnecessary.

In such circumstance, this Court does not find any reason to uphold Ext. P6 order. Ext. P6 would stand set aside. Writ petition is allowed. No costs.