

(1991) 09 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 9597 of 1987

Narmada Building Materials Pvt. Ltd.

APPELLANT

Vs

Devassy

RESPONDENT

Date of Decision : 23-09-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(2)

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

Citation : (1993) 3 LLJ 463

Hon'ble Judges : Shamsuddin, J

Bench : Single Bench

Advocate : Govt. Pleader, P.F. Thomas and Sunil Thomas, for the Appellant; P.V. Chandramohan and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shamsuddin, J.—In this original petition the petitioner challenges Ext. P-3 order passed by the appellate authority under the Kerala Shops and Commercial Establishments Act, 1960 directing the petitioner to reinstate the 1st respondent in service with back wages amounting to Rs. 3,780/65 within 30 days from the date of the order or to Pay Rs. 4,380/65 including the back wages mentioned above towards compensation within 30 days.

2. The petitioner is a Private Limited Company constituted under the provisions of the Indian Companies Act. It mainly deals with building materials for which it has a godown in Trichur town. The 1st respondent was employed in the godown as a Watchman on a monthly remuneration of Rs.200/- Ext P-1 states that the appointment was initially for six months and the service of the 1 st respondent can be terminated on one month"s prior notice. It is not disputed that the 1 st respondent was continuing as a Watchman for more than six months.

3. While matters stood so, the petitioner passed an order terminating the service of the 1 st respondent. This order has not been produced before this Court. Aggrieved by the said order, the 1 st respondent filed an appeal before the 2nd

respondent u/s 18(2) of the Kerala Shops and Commercial Establishments Act, 1960. The 2nd respondent allowed the appeal and passed an order as indicated above.

4. In this original petition the counsel for the petitioner challenges Ext.P-3 order.

5. The main contention raised by the learned counsel is that the Court below committed an error apparent on the face of the record in holding that termination would amount to retrenchment under the Industrial Disputes Act. According to learned counsel, the 1st respondent approached the 2nd respondent u/s 18(2) of the Kerala Shops and Commercial Establishments Act and therefore the only question to be considered by the Appellate Authority was whether the appellant was entitled to any relief based on the provision of the Kerala Shops and Commercial Establishments Act. Section 18 of the Kerala Shops and Commercial Establishments Act states that no employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice. Proviso to the said Section states that such notice shall not be necessary where the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose. Learned counsel for the petitioner submitted that in view of provision contained in Section 18 of the Kerala Shops and Commercial Establishments Act, the only question to be considered in the appeal was whether there is reasonable cause for terminating the service of the 1st respondent, but that has not been done by the 2nd respondent. Instead, the 2nd respondent considered the question whether the 1st respondent is entitled to the benefit of Section 25-F of the Industrial Disputes Act and found that the 1st respondent has continuous service of not less than one year. In that view of the matter the 2nd respondent allowed the appeal and passed the impugned order. Section 25-F of the Industrial Disputes Act reads as follows :-

"Conditions precedent to retrenchment of workmen - No workmen employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :-

(a) the workman has been given one month's notice in writing including the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days", average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government, or such authority as may be specified by the appropriate Government by notification in the Official Gazette"

6. In view of the finding entered by the 2nd respondent it has to be held that the 1st respondent had continuous service of not less than one year. It is not disputed that before retrenching the 1st respondent the provisions contained in Section 25-F of the Industrial Disputes Act have not been complied with. The compensation contemplated under Clause (b) was not paid and notice in the prescribed manner is not served on the appropriate authority.

7. However, learned counsel for the petitioner vehemently contended that the provisions of Industrial Disputes Act cannot be called in aid in deciding appeal u/s 18 of the Kerala Shops and Commercial Establishments Act. The appellate authority has considered this aspect and negatived the contention of the petitioner. Section 25-J of the Industrial Disputes Act lays down as follows:

Effect of laws inconsistent with this Chapter -

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946)

Provided that where under the provisions of any other Act or Rules, orders or notifications issued thereunder or under any Standing Orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes but the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provision of this Chapter".

8. It is contended by the learned counsel for the petitioner that the provisions contained in the Industrial Disputes Act cannot affect the rights, jurisdiction and authority of the Appellate Authority u/s 18(2) of the Kerala Shops and Commercial Establishments Act in deciding appeals, but in view of the specific provisions contained in Section 25-J of Industrial Disputes Act the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of the Industrial Disputes Act.

9. The question whether the appellate authority constituted under the Andhra Pradesh Shops and Establishments Act is competent to invoke the provisions contained in the Industrial Disputes Act in settling the rights and liabilities of employees was considered by a Division Bench of Andhra Pradesh High Court in N.V. Purnachandra Rao and Others Vs. Krishna District Cooperative Marketing Society Ltd. and Others, Based on Sub-section (2) of Section 25-J, the Andhra

Pradesh High Court held that Appellate Authority constituted under Andhra Pradesh Shops and Establishments Act has jurisdiction to take into account the liabilities and rights under the Industrial Disputes Act in considering an appeal under Andhra Pradesh Shops and Establishments Act. I respectfully agree with the view taken by the Andhra Pradesh High Court. In view of Sub-section (2) of Section 25-J of Industrial Disputes Act the rights and liabilities of employees and workmen insofar as they relate to lay-off and retrenchment will have to be determined in accordance with the provisions of Industrial Disputes Act. In the circumstances, the Appellate Authority constituted under Kerala Shops and Establishments Act has to consider the rights and liabilities of workmen under Industrial Disputes Act in disposing of appeal u/s 18(2) of the Kerala Commercial Shops and Establishments Act. The contention of learned counsel for the petitioner that the Appellate Authority can only consider whether there is violation of Section 18(2) of the above Act cannot therefore be accepted.

10. It is finally contended that it has not been established that the petitioner's company is an Industry, but no such contention is raised before the Appellate Authority or in the original petition. In the circumstances, I do not find any justification in entertaining such a plea for the first time at the time of argument.

12. In C.M.P. No. 29723/1987 this Court ordered on 18.11.1987 for payment of Rs. 1500/- to the respondent and accordingly the said amount has been paid. The petitioner will be entitled to get credit of that amount towards the liability under Ext. P-3 order. The respondent will be entitled to his cost in the original "petition which I fix at Rs. 500/-. The petitioner will pay the balance amount together with the cost within a period of one month from today.

Original petition is disposed of as above.