

(1966) 10 KL CK 0009
In the High Court Of Kerala

Neroth (C.C.) (Proprietor, Sessions Company

APPELLANT

Vs

Govinda Kurup (K.) and Others

RESPONDENT

Date of Decision : 14-10-1966

Acts Referred:

Constitution of India, 1950 — Article 223

Citation : (1967) 2 LLJ 422

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Judgement

V.P. Gopalan Nambiyar, J.—The only ground urged in support of this writ petition is that u/s 18(2) of the Kerala Shops and Commercial Establishments Act (34 of 1960) an appeal shall lie to the appellate authority only against a written order dispensing with the services of the authority and that as there was no such order In the present case, the appeal before the appellate authority was not maintainable. The objection in this form was not raised before the appellate authority and I must decline to entertain it for the first time In these proceedings. The appeal before the appellate authority seems to have proceeded on the basis that there was no denial of work to the employee, but only a wilful abstention from work by him. It is prejudicial to the employee to entertain this point for the first time in these proceedings under Article 223.

2. That apart, the language of Section 18 of the Act does not seem to contemplate a written order dispensing with the services of the employee. It provides for an appeal by any employee whose services are dispensed with. The requirement of an order dispensing with the services can be spelt out, if at all, only from Rule 3 of the Kerala Shops and Commercial Establishments Rules, 1961, which provides that the appeal u/s 18 of the Act shall be preferred within thirty days from the date of delivery of the order terminating his service with the employer, and that the said thirty days shall be reckoned from the date on which the order is delivered to the employee either personally or If that be not practical, by prepaid registered post, etc. It is too much to read from this rule,

which only provided the period of limitation for preferring the appeal, that In every case there should be a written order and that In the absence of any such order, no right of appeal can be exercised u/s 18 of the Act. I cannot accept the contention urged by the counsel for the petitioner.

3. The original petition falls and is dismissed. No costs.