

(2004) 12 KL CK 0047
In the High Court Of Kerala
Case No : W.A. 1932 of 1996

P.C. Thresia

APPELLANT

Vs

Corporate Manager, CMS Schools

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Shops and Commercial Establishment Act, 1960 — Section 36, 5, 6

Citation : (2005) 1 ILR (Ker) 157 : (2004) 2 KLJ 1021 : (2005) 1 KLT 109 :
(2005) 1 LLJ 1019

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P. Ramakrishnan, for the Appellant; K.C. John (Sr.), K.K. John and
M.A. Vaheeda (GP), for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—The question posed for consideration in this case is whether the provisions of the Kerala Shops and Commercial Establishments Act, 1960 would apply to all establishments in the State whose activities are mainly educational and hostels attached to such establishments. Learned single judge in The Corporate Manager Vs. Thressia and Another, against which this appeal arises, has taken the view that it would not. Learned single judge, in our view, took the said decision since the notification issued by the Government of Kerala bearing number L1-290/50 DD(2) dated 15.7.1950 in exercise of the powers conferred by Section 5 of the Kerala Shops and Commercial Establishments Act, 1960 was not brought to the notice of the learned judge. Appellant herein was a cook in a hostel attached to Baker Memorial High School, Kottayam. According to her, she has got 25 years service in the said establishment. She took leave for ayurvedic treatment after informing the employer. She was given ayurvedic treatment in a hospital from 20.6.1987 to 16.8.1987. After treatment on 17.08.1987 she had reported for duty with medical certificate. She was denied employment, consequently she filed petition to the first respondent on 9.10.1987

to which she did not receive any reply. Since appellant was denied employment and she approached the Corporate Manager to which also she did not get reply. She filed appeal before the appellate authority redressing her grievances. Contention was raised by the Management before the appellate authority that their establishment would come within the purview of the Act. Contention was rejected and the appeal was decided on merits. On the side of the employee A.Ws 1 to 3 were examined and Exts. A1 to A8 documents were produced. On the side of the Management R.W. 1 was examined and Exts. R1 and R2 were produced. After considering the oral and documentary evidence, the appellate authority allowed the appeal. It was held that the employee is eligible for reemployment from the date on which she produced certificate to the effect that she had no contagious or infectious disease and can resume duty as cook. It was also ordered that the period from 17.8.1987 till reemployment or otherwise would be regularised on production of a non employment certificate from a respectable person. Appellate Authority ordered that on reemployment employee should be given the present minimum wages or at the rate fixed in the boarding house whichever is higher and can continue upto 60 years to till the extended period as they deem fit. Against the said order Management approached this court and this court by judgment dated 1.8.1996 held that the establishment would not come within the purview of the Act. Aggrieved by the said judgment this appeal has been preferred.

2. The Kerala Shops and Commercial Establishments Act, 1960 came into force on 1.3.1962 which repealed the Travancore-Cochin Shops and Establishments Act, 1125. u/s 6 of the said Act no employee in any establishment shall be required or allowed to work for more than eight hours in any day and forty eight hours in any week. However, proviso to Section 36 stipulated that anything done under the said enactments which could have been done under this Act if it had been in force shall be deemed to have been done under this Act. Consequently notification was issued by the Travancore -Cochin Government exempting hostels from the purview of the Travancore-Cochin Shops and Establishments Act 1125.

3. The Kerala Shops and Commercial Establishments Act, 1960 has come into force on 1.3.1962. Section 5 deals with exemption, which reads as follows:

5. Exemptions.- The Government may, if they are satisfied that public interest so requires or that the circumstances of the cases are such that it would be just and proper to do so having regard to the nature and capacity of the establishment, by notification in the Gazette, exempt either permanently or for any specified period, any establishment or class of establishments in any area or persons or class of persons to which or to whom this Act applies, from all or any of its provisions subject to such restrictions and conditions as the Government deem fit.

Government of Kerala latter issued notification dated 17.8.1979 in exercise of the powers conferred by Section 5 of the Act whereby notification No L1.290/50 DD(2) dated 15.7.1950 has been cancelled. Resultantly, provisions of the Kerala Shops and Commercial Establishments Act, 1960 would be applicable to all

establishments in the State whose activities are mainly educational and hostels attached to such establishments. Above being the legal position, the decision in P.C. Thresia's case, supra, is has not been correctly decided. We therefore hold that respondents establishment would come within the purview of the Act. The next question to be considered is whether this court under Article 226 of the Constitution of India is justified in interfering with the appellate order. Register produced would conclusively show that the appellant had worked from 1967 till April 1987. Wage book Ext. R2 also would indicate payments. Apart from the fact she was ill there is no reason for denying employment to her. Corporate Manager has got a case that she is overaged. Documents produced before the appellate authority would show it is not so. Facts would indicate that she was working from 1967 till April 1987 and that she was paid Rs. 150/- per month upto April 1987. On analysing the entire facts and circumstances of the case, appellate authority has come to the conclusion rightly. We find no illegality or irregularity in the order so as to interfere with the same in the writ petition. The judgment of the learned judge is set aside and the appeal would stand allowed.