

(2013) 10 KL CK 0076

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21190 of 2013

Shwas Homes Private Limited

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 4 KHC 523 : (2014) 2 LLJ 41

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : B. Ashok Shenoy, C.G. Preetha, K.V. George and P.N. Rajagopalan Nair, for the Appellant; P.M. Sameer, Senior Government Pleader, Peeyus A. Kottam, for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner, admittedly, is an establishment covered under the Maternity Benefit Act, 1961 (for brevity, "the M.B. Act"). The fourth respondent, an employee of the petitioner raised a claim under the Act and an order for payment was made by the Competent Authority; the third respondent as per Ext. P3. An appeal is provided from the said order u/s 17(3) of the Act. The petitioner within the stipulated time filed Ext. P4 before the second respondent. Since the second respondent did not consider the appeal, the petitioner was before this Court earlier and by Ext. P8, it was directed that the second respondent (who was the first respondent therein) consider the appeal and pass final orders on Ext. P4. Strangely enough the second respondent chose to issue Ext. P9 order despite there being a direction to consider the appeal and pass final orders. In Ext. P9, the second respondent refused to entertain the appeal on the ground that he is not the Appellate Authority to consider an appeal against the order passed by the Assistant Labour Officer Grade-II, Ernakulam; under the Act Again, a lawyer's notice was issued by Ext. P10 when the second respondent issued Ext. P11, holding that the appeal can be entertained by the second respondent only if the petitioner's establishment comes under the purview of the Factories Act, 1948 (for brevity, "the Factories Act"). It was found that the petitioner being an establishment coming under the Kerala Shops and

Commercial Establishments Act, 1960 (for brevity, "the Shops Act"), the appropriate authority would be the one prescribed under the Shops Act; and not under the Factories Act.

2. What is stated in Exts. P10 and P11, is at best the understanding of the second respondent and not an opinion supported by the statutory provisions. The M.B. Act was enacted by the Parliament to regulate the employment of women in certain establishments, for periods before and after child birth and to provide for maternity benefit. The application of the Act in the first instance, u/s 2 was to be applied to every establishment inter alia being a factory and to every shops or establishments coming within the meaning of any law for the time being in force; in relation to such establishments in a State. There is no dispute that the law applicable to shops and establishments in the State of Kerala is the Shops Act. The orders passed under the Shops Act are definitely appealable to the authority prescribed under the Shops Act.

3. The M.B. Act, however, provided for an appeal under sub-section (3) of Section 17, wherein any person aggrieved by the decision of the Inspector under sub-section (2), could approach the "prescribed authority" within 30 days from the date on which the said decision is communicated to such person. u/s 28, the appropriate Government being the State Government, was inter alia conferred with the powers to make Rules for carrying out the purpose of this Act, in any matter, which is to be, or may be prescribed (sub-section (k) of Section 28).

4. Rules have been framed by the appropriate Government, i.e.: The Kerala Maternity Benefit Rules, 1964, which by Rule 11 provides for an appeal against the decision of the Inspector under sub-section (2) of Section 17 to the "Competent Authority". The "Competent Authority" has been defined under Rule 2(b) as follows:

"Competent Authority" means,--(i) in relation to a plantation the Chief Inspector of Plantations; and (ii) in relation to any other establishment, the Chief Inspector of Factories.

5. In the circumstances, though an establishment covered under the Act is not a factory, the appropriate Government thought it fit to provide for an appeal from the orders of the Inspector under the Maternity Benefit Act to the Chief Inspector of Factories. A notification, SRO No. 549/2004 under the Factories Act has also been placed before me across the bar, wherein the Director of Factories and Boilers, Thiruvananthapuram is notified as acting in the capacity of "Chief Inspector" under sub-section (2) of Section 8 of the Factories Act, 1948. Hence, the question whether the appeal is to be filed under the Shops Act, does not at all arise since the second respondent is the properly constituted authority to entertain an appeal under the M.B. Act, read with the Rules framed by the State.

6. In such circumstances, there shall be a direction to the second respondent to consider Ext. P4 appeal with notice to the fourth respondent within a period of two months from the date of receipt of a certified copy of the order. The

petitioner and the fourth respondent shall appear before the second respondent on 04/11/2013, on which date, the second respondent shall give a date of hearing, to complete the pleadings and orders shall be passed within two months thereafter. The interim order of stay granted in the writ petition shall be in operation till the disposal of the appeal as directed by this Court. Before leaving the matter, it is disconcerting to note that the authority constituted under the M.B. Act has refused to consider the appeal, directed to be considered by Ext. P8 judgment of this Court. If the authority entertained a doubt or was definite about the lack of jurisdiction, it should have sought clarification from this Court. The authority was also represented by the learned Government Pleader as is clear from Ext. P8. This Court does not want to dilate further on this aspect.

The writ petition is allowed leaving the parties to suffer their costs.