

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

OP(LC).No. 3 of 2011 (O)

PETITIONER:

**DR.K.P.S.PRABHU, AGED 49 YEARS,
S/O.K.P.NARENDRA PRABHU, S.M.HOSPITAL,
THANA, KANNUR-670 012.**

**BY ADVS.SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU
SMT.C.S.RAJANI**

RESPONDENT(S):

- 1. USHA K., D/O.ACHUTHAN, THAVAKKARA,
NEAR HARIDAS COLONY,
P.O.CIVIL STATION, PIN-670 002.**
- 2. SUJANA E., D/O.KUMARAN, KARAYAN HOUSE,
KODAPPARAMBA, P.O.THANA,
KANNUR, PIN-670 012.**
- 3. VINODINI K., D/O.KUMARAN,
KALLADA HOUSE, P.O.CHOVVA-670 006.**

**THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE PETITION FILED BY THE RESPONDENTS.

EXHIBIT P2 : TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER.

EXHIBIT P3 : TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER FOR AMENDING THE COUNTER STATEMENT.

EXHIBIT P4 : TRUE COPY OF THE ADDITIONAL RE-JOINDER STATEMENT FILED BY THE RESPONDENTS TO EXTS. P3.

EXHIBIT P5 : TRUE COPY OF THE ORDER DATED 4.11.2010.

RESPONDENT'S EXHIBITS:

- NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.
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O.P.(L.C) No. 3 of 2011 - O
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Dated this the 2nd day of March, 2015

J U D G M E N T

The petitioner management is aggrieved with the order passed by the Labour Court at Ext.P5, under Section 33C(2) of the Industrial Disputes Act, 1947 (for brevity, 'the I.D Act'). The short controversy is as to whether there should be a reference and an adjudication, to establish the status of the workmen, before a claim could have been raised under Section 33C(2) of the I.D Act. The petitioner is a hospital and the three claimants before the Labour Court were alleged to be part-time Sweepers.

2. The claimants/respondents however, claim that they were permanent employees of the management and were entitled to minimum wages as prescribed under the Minimum Wages Act. With respect to a claim under the Minimum Wages Act, this Court has in **G.IV.S Security Services (India) Pvt. Ltd. v. Satheesh Kumar [2010 (1) KLT 463]**, held that despite there being provision in the

Act itself for realisation of minimum wages, that would not preclude an application under Section 33C(2) of the I.D Act. However, the compelling contention taken in the above writ petition is that, herein the claimants were part-time workers and they were entitled to be paid only minimum wages as applicable to part-time workers who are employees for less than four hours. The specific reference was made to Rule 26 clause (b), wherein, an employee who works for a period not exceeding four hours, is not eligible to receive wages for a full normal working day. The Labour Court however, found that there was no evidence produced to show that, the claimants were part-time employees.

3. This Court is of the opinion that, the Labour Court misdirected itself in so finding, since, the claimants who assert full-time employment ought to establish that they were permanent workers. True the management had initially raised a contention that, the claim itself was not moved by the claimants therein. However, later on, on the claimants asserting that they had moved the petition under Section 33C(2) of the I.D Act, the management had sought

for amendment of the written statement taking a contention specifically that, the claimants were only part-time workers. Hence, the burden was on the claimants to establish that they were permanent employees.

4. In any event, the same would be a matter, which had to be considered in adjudication. The finding of the Labour Court that no evidence was produced to establish that they were permanent employees would in fact indicate that there is a question to be adjudicated upon, which could be done only in a reference. Section 33C(2) of the I.D Act is akin to execution proceedings and the same could be invoked only when the benefits claimed are computable in terms of money. When the status of a permanent workman itself is in dispute that cannot be adjudicated under Section 33C(2) of th I.D Act. Hence, Ext.P5 is set aside.

The writ petition would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge