

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

W.A.No. 1768 of 2015 () IN W.P.(C) NO.7764/2014

AGAINST THE COMMON JUDGMENT IN WP(C) 7764/2014 of HIGH COURT OF KERALA
DATED 10-04-2015.

APPELLANT(S)/RESPONDENTS 1 AND 2:

1. THE DIRECTOR,
INDIAN INSTITUTE OF SPICES RESEARCH (I.I.S.R) MARIKUNNU P.O.,
KOZHIKODE, PIN-673 012
2. THE FARM SUPERINTENDENT, INDIAN INSTITUTE OF
SPICES RESEARCH, PERUVANNAMUZHI,
QUILANDY TALUK, KOZHIKODE, PIN. 673 528.

BY ADVS.M/S.VARGHESE & JACOB
SRI.P.JACOB VARGHESE (SR.)
SRI.VIVEK VARGHESE P.J.

RESPONDENT(S)/PETITIONERS & RESPONDENT NO.3:

1. PERAMBRA AREA ESTATE LABOUR UNION,
C.I.T.U., IISR, PERUVANNAMUZHY PO, REGD.K 1081,
AFI 15-87 REPRESENTED BY ITS SECRETARY, MR.K.BALAN,
AGED 57 YEARS,
S/O.CHATHU, NADUKKANDI VEEDU, P.O.KADIYANGAD (VIA)
PERAMBRA, KOZHIKODE (DT) PIN.673 525.
2. MR.K. BALAN, S/O.CHATHU,
NADUKKANDI VEEDU, P.O.KADIYANGADU (VIA) PERAMBRA,
KOZHIKODE (DT) PIN.673 525.
3. MR.K. DEVADASAN,
KARAYULLATHIL VEEDU, P.O.AVUKKA,
(VIA)PERAMBRA KOZHIKODE (DT) PIN.673 528.
4. MR.K.A. JOSEPH,
KOLLAMKUNNEL VEEDU, P.O.MUTHUKAD, PERUVANNAMUZHI (VIA),
PERAMBRA, KOZHIKODE, PIN.673 528.
5. MR.K. RAJAN,
KIZHAKKAYIL VEEDU, P.O.PERUVANNAMUZHI (VIA),
PERAMBRA, KOZHIKODE, PIN.673 520.

P.T.O.

6. MR.P.A. BENOY,
PUTHYADATH VEEDU, P.O.PERUVANNAMUZHI (VIA),
PERAMBRA , KOZHIKODE, PIN.673 620.
7. MR.V.P. MOHAN,
VARAPPURATH VEEDU, P.O.KADIYANGADU, PERAMBRA (VIA),
KOZHIKODE, PIN.673525
8. MR.K.PADMANABHAN,
KATCHIYIL HOUSE, P.O.KADIYANGADU, PERAMBRA (VIA),
KOZHIKODE, PIN.673525
9. MR.T.P. RAGHAVAN,
THEKKEPARAMBIL VEEDU,
P.O.PERUVANNAMUZHI (VIA) PERAMBRA, KOZHIKODE DISTRICT.
PIN.673 620.
10. MR.K.K. KUNJIRAMAN,
KARUVARAKKUNNUMMAL VEEDU, P.O.CHEMBANODU
(VIA) PERUVANNAMUZHI, PERAMBRA, KOZHIKODE, PIN.673 620.
11. MR.M.P.PADMANABHAN,
MALAPPOYIL VEEDU, P.O.NOCHAD (VIA)
NADUVANNUR PIN.673 624.
12. MR.N. BALAN,
NIRAVATHU VEEDU, P.O.KALPPATHUR,
(VIA)MEPPAYUR PIN.673 524.
13. MR.K.K. RAJAN,
MOYORAKKUNNUMMEL VEEDU,
P.O.PERUVANNAMUZHI PERAMBRA (VIA),
KOZHIKODE DISTRICT. PIN.673520.
14. MR.P. SOMAN,
PARIYARATH VEEDU, P.O.PERAMBRA,
KOZHIKODE DIST. PIN.673 525
15. MR.T.S. RAVINDRAN,
THANDASSERI VEEDU, P.O.PERUVANNAMUZHI, PERAMBRA (VIA),
KOZHIKODE DISTRICT, PIN.673 620.
16. MR.K.K. BALAN,
KARUVARAKKUNNUMMAL VEEDU, P.O.CHEMBANODU,
(VIA) PERUVANNAMUZHI, PERAMBRA, KOZHIKODE DISTRICT
PIN.673 620
17. MR.N. SAJEEVAN,
NADUKKANDI VEEDU, P.O.KADIYANGAD,
(VIA) PERAMBRA KOZHIKODE DISTRICT PIN.673 525.

18. MR.T.K. PADMANABHAN,
THIRIKKOTTAMMAL VEEDU, P.O.KADIYANGAD, (VIA) PERAMBRA,
KOZHIKODE DISTRICT, PIN.673 525.
19. MR.K. SATHEESAN,
KARAYULLATHIL VEEDU, P.O.AVUKKA,
PERUVANAMUZHI (VIA) PERAMBRA, KOZHIKODE DISTRICT,
PIN.673 620.
20. MR.T.P.DAMODARAN,
THEKKEPERUVANAMITTAL, P.O.CHERUVANNUR, (VIA) MEPPAYUR,
PIN. 673 524
21. MR.V.K. MADHAVAN,
THACHOLI VEEDU, P.O.KOOTHALI, (VIA) PERAMBRA,
KOZHIKODE DISTRICT, PIN.673 532.
22. MR.M.P. MURALIDHARAN,
P.O.THANDORAPPARA, (VIA)KAYANNA, PIN.673 526.
23. MR.V. RADHAKRISHNA,
VAZHAYIL VEEDU, P.O.PERUVANAMUZHI, PERAMBRA,
KOZHIKODE DISTRICT, PIN.673 620.
24. MR.K.M. SUDHEER,
KAYAMANNIL VEEDU, CHANIYAM KADAVU P.O.,
POCHERI, VADAKARA, PIN.673 626.
25. MR.K. SHANMUGHAN,
KACHADATH VEEDU, P.O.PERUVANAMUZHI, PERAMBRA,
KOZHIKODE DISTRICT, PIN.673 620.
26. MR.C. GANGADHRAN,
CHEROTH VEEDU, P.O.CHERUVANNUR, (VIA)MEPPAYUR,
PIN.673 524
27. MR.VIJAYAN M.P.,
SOUHRUDAYA, P.O.KOOTHALI, PERAMBRA (VIA),
KOZHIKODE DISTRICT, PIN. 673 532.
28. MR.P.V. SURESH,
PUTHENVEETIL VEEDU, P.O.PERUVANAMUZHI, (VIA) PERAMBRA,
KOZHIKODE DISTRICT, PIN.673 620.
29. MR.JOHNSON GEORGE,
THAYYIL VEEDU, P.O.MUTHUKAD, (VIA)PERUVANAMUZHI,
PERAMBRA, KOZHIKODE DISTRICT, PIN.673 528.

30. MR.K.J. SILAS,
KAKKATHURUTHUMMEL VEEDU,
MUTHUKAD P.O. PERUVANAMUZHI (VIA), PERAMBRA,
KOZHIKODE DISTRICT, PIN.673 620.

31. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM, PIN-695 001.

R1-R30 BY ADV. SRI.PHILIP ANTONY CHACKO
R31 BY GOVERNMENT PLEADER, SRI. P.M. SANEER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16-10-2015, ALONG WITH
WA. 1798/2015, THE COURT ON 28.10.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.A.No. 1768 of 2015

APPENDIX

APPELLANTS' EXHIBITS: NIL

RESPONDENTS' EXHIBITS:

EXHIBIT R1(A): TRUE COPY OF THE DETAILS OF ATTENDANCE OF CASUAL WORKERS FOR THE PERIOD FROM 2009-10 TO 2013-14 DATED 06.09.2014 ISSUED BY THE 2ND APPELLANT TO THE 2ND RESPONDENT.

RESPONDENTS' ANNEXURES:

ANNEXURE R31(A): TRUE PHOTOCOPY OF G.O.(P) NO.156/2012/AGRI. DATED 27.06.2012.

ANNEXURE R31(B): TRUE PHOTOCOPY OF G.O.(P) NO.204/2011/FIN. DATED 02.05.2011.

ANNEXURE R31(C): TRUE PHOTOCOPY OF G.O.(P) NO.466/2014/FIN. DATED 28.10.2014.

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

W.A. Nos.1768 & 1798 of 2015

Dated this the 28th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

These appeals are filed by Respondents 1 and 2 against the common judgment of the learned Single Judge dated 10.04.2015 in W.P.(C) Nos.7764 and 12379 of 2014. By the said judgment, learned Single Judge has allowed the writ petitions and granted the reliefs sought for. It is aggrieved by the judgment, these writ appeals are preferred.

2. Since the writ petitions are disposed of by the learned Single Judge by a common judgment and the subject matter of the writ petitions are concerning the employees, common in both the writ petitions and the intrinsic connection in the subject matter, we are disposing these appeals also by a common judgment. The facts given in W.A.No.1768 of 2015 are narrated for the purpose of the disposal of these appeals.

3. The facts required for the disposal of the appeals are as follows:

4. As per Ext.P1 award dated 29.06.1999, the Labour Court, Kozhikode found that the denial of employment to the workmen, by the 1st and 2nd Respondents was not justified and accordingly the Labour Court directed the Manager of the 1st Respondent to recommend the services of the party Respondents herein as casual workers within one month from the date of publication of the Award in the official Gazette. Further, it was found by the Labour Court that the workers were not entitled to receive any back wages but ordered to provide compensation of Rs.1,000/- each to the workers.

5. This was challenged by the appellants before this Court by filing O.P.No.27513 of 1999. That Original Petition was dismissed by observing that the Management never disputed that the workers were employed for the work in the Farm of the appellants. The only dispute that was raised in that case was whether the Respondents are contract employees or casual employees. The workers contended that they were denied employment with effect from 26.08.1995 onwards. The management did not raise any case that the

workers were provided with work after the said date. Therefore, this Court found that the workers were denied employment by the management.

6. Aggrieved by the said judgment, appellants preferred W.A.No.1049 of 2008 before a Division Bench of this Court and as per Ext.P3 judgment, the Division Bench clarified that whenever there is work, these workers should be given employment as casual workers. It was further observed that no purpose would be served by substituting the casual workers working for so many years with another set of casual workers and therefore, the Division Bench refused to interfere with the impugned judgment. However, it was clarified that only when casual work is available, these casual workers should be engaged and if there are contract workers whenever casual work is available, there is no point in replacing them with other casual workers.

7. It was contended by the Respondents that in compliance with the directions contained in Exts.P2 and P3 judgments, the Respondents were following the directions till 08.07.2010, however, on 09.07.2010, the 2nd Respondent issued a communication to the casual workers dated

16.07.2010, stipulating a Rainy Season Arrangement by which directed the casual workers with seniority 1 to 17 in the renewed seniority list were to attend work from 16th July to 31st July and casual workers with seniority 17 to 31 were to attend the work from August 1 to 14. In effect, 15 days employment was denied pursuant to the said direction.

8. Consequent to the said order, the workers staged 'Dharna' for two days and thereafter the Respondents filed representation dated 07.08.2010 before the 1st appellant, contending that the action of the management was in absolute violation of Exts.P2 and P3 judgments. It was also contended by the Respondents that the workers had completed 7 years to 20 years on daily wage basis and therefore they are entitled for employment without any break under the appellants. Thus, challenging the attempt of the appellants, Respondents filed W.P.(C) No.36816 of 2010 before this Court. By this time, the State Government increased the minimum wages for the Farm Casual Workers and Casual Labourers to Rs.300/- per day. Thus, the workers through 1st Respondent Union, submitted a representation before the appellants on 09.06.2011. Later, in the presence of Assistant Labour Commissioner (Central),

Ernakulam, a settlement dated 24.10.2011 was arrived at as per Ext.P5. In accordance with the terms of the settlement, the wages and arrears at the minimum rate were paid to the Respondents. Later, the State Government increased the wages of casual workers and casual labourers, as per the order dated 26.02.2012 with retrospective effect from 01.07.2009. In the light of the said Government Order, another representation was made by the 1st Respondent before the appellants. Accordingly, the said representation was considered by the appellants and it was agreed to increase the minimum wages to the party Respondents at the rate of Rs.340/- per day and 40% of Dearness Allowance (D.A.), as per order dated 19.12.2012. Later, the said order was corrected and D.A. was reduced to 38%.

9. However, the appellants did not pay the arrears for want of evidence for payment of arrears to Casual Farm Workers in other farms. In such circumstances, 1st Respondent produced necessary evidence. In spite of all these efforts, the arrears were not paid and thereupon 1st Respondent again filed representation before the Superintendent of the concerned Farm. It was the case of the

Respondents that in spite of all these efforts, there was no action from the side of the appellants. Consequent to which, notices were issued and as a retaliation, from 25.04.2013 work was declined to the Respondents. It was also informed in the order dated 16.04.2013 that Respondents are entitled to get Rs.300/- only as minimum wages and therefore the excess amounts paid would be recovered. Aggrieved by this, petitioners preferred W.P.(C) No.11576 of 2013, which is pending consideration before this Court.

10. In the above circumstances, the Management called the Unions for a settlement talk. But since nothing worked out, 1st Respondent preferred a petition to the Assistant Labour Commissioner informing the denial of employment. In the meanwhile, in July, 2013 1st appellant issued notices calculating the excess amount paid to the party Respondents and further stipulating that the sum will be recovered at the rate of Rs.1,000/- per month from each casual labourer with effect from 01.07.2013. Thus the 2nd appellant started to recover the excess amount paid to the Respondents at the rate specified above.

11. Thereupon, Respondents filed complaint before the Assistant Labour Commissioner. Since the said proceedings were being protracted, Respondents filed W.P.(C) No.26380 of 2013, seeking to fix a time limit for disposal of Ext.P16 petition. The said writ petition was disposed of by judgment dated 29.10.2013, directing the Assistant Labour Commissioner (Central) to conclude the proceedings so pending within a period of three months from the date of receipt of a copy of the judgment. Since the matter could not be resolved amicably, the Assistant Labour Commissioner closed the proceedings. It was in this background, Respondents had filed W.P.(C) No.7764 of 2014.

12. W.P.(C) No.12379 of 2014 was filed by the Respondents seeking to quash order dated 30.04.2014 issued by the appellants regulating the casual employment and thus declining casual work for the Respondents for 15 days in a month and also seeking a writ of mandamus to follow the directions contained in Ext.P2 judgment, confirmed by Ext.P3 judgment in the Writ Appeal and for other related reliefs.

13. The learned Single Judge after evaluating the facts and circumstances, pleadings of the rival parties in the writ

petitions and counter and appreciating the evidence on record, directed the appellants to follow and implement Exts.P6, P7 and P22 orders, which are the orders issued by the State Government to the Farm employees of the State Government, which is applicable to the Respondents herein by virtue of the orders passed by the Central Government, which are binding on the appellants. It was further directed to pay wages at the rate of Rs.360/- or Rs.350/-, as the case may be, along with 45% D.A. per day in accordance with the year of service with arrears of salary from 01.07.2009, within six months from the date of receipt of a copy of the judgment. It is challenging the said common judgment, these writ appeals are preferred.

14. Heard learned Senior Counsel for the appellants, Sri. P. Jacob Varghese, learned counsel for the Respondents 1 to 30, Sri. Philip Antony Chacko and learned Government Pleader for the 31st Respondent.

15. Learned Senior Counsel for the appellants submitted that, as per Ext.P2 judgment modified by Ext.P3 judgment in writ appeal, appellants were directed to provide employment to the Respondents when casual work is available with the appellants in preference to other contract workers. Learned

Senior Counsel also contended that as per the Circulars and orders dated 09.09.1990 and 29.04.1993, Government of India had issued orders banning engagement of casual workers and the Institute stopped engagement of casual workers with effect from 22.01.1987 and thereafter whenever there was casual work, same was carried out through the contract workers. It was further contended that Respondents were employed as per the judgment of this Court in Writ Appeals referred *supra*. It was also contended that the appellants being a funded organization under the Indian Council of Agricultural Research, Krishi Bhavan, New Delhi, are bound to follow all the rules and regulations of Government of India as well as Indian Council of Agricultural Research. It is also contended that all these staff of the Institute are permanent and their salaries are paid at the pay scales proposed by the Central Pay Commission and accepted by the Union Government.

16. It is the further contention of the learned Senior Counsel that the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India vide an Office Memorandum dated 07.06.1988

expressed its policy regarding engagement of casual workers and persons on daily wages and payment of their daily wages. In the said Office Memorandum, it was stipulated that the casual workers may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. The said Office Memorandum is produced as Ext.R1(f) in W.P.(C) No.12379 of 2014 pertaining to W.A.No.1798 of 2015 herewith disposed of. It is also contended by the appellants that the Respondents are engaged by the appellants for works totally different from regular employees and subsequent to the implementation of the 6th Central Pay Commission recommendations, Group-D posts are not existing in Government Departments and therefore the Respondents are entitled only for the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration.

17. Learned Senior Counsel also contended that the Respondents being daily rated workers are entitled only for minimum wages fixed and revised by the Minimum Wages Board/Committee of the Government of India or the State

Government from time to time, whichever is higher. Based on the notification so issued by the State Government, Rs.300/- per day was fixed as minimum wages to the Respondents and thereafter either the Union Government or the State Government has not increased the minimum wages. It is further contended that the part-time casual workers are available at the State Government Farms and these workers with temporary status are getting daily wages at a rate based on the minimum pay scale of permanent employees carrying out duties similar to that of casual workers. The daily wage of these sort of casual workers, i.e. casual workers with temporary status was based on State Pay Commission recommendations. But the Respondents are neither permanent, semi-permanent or temporary to claim minimum daily wage based on State or Central Pay Commission recommendations as in that case.

18. That apart, it is contended that, the Respondents are entitled only for the minimum daily wage recommended by Minimum Wages Advisory Board/Committees constituted by Central or State Governments from time to time. Learned Senior Counsel also contended that the order dated

27.06.2012 of the State Government on which the Respondents are relying for higher minimum wages, is issued by Department of Finance, Government of Kerala and not by the Labour and Rehabilitation Department of the Government and further that the order is issued in connection with the implementation of the recommendations of the 9th Pay Commission, Government of Kerala and not with regard to the payment of minimum wages on daily rated casual workers and therefore Ext.P6 will not apply to the appellants. It is the further contention of the learned Senior Counsel that the representations made by the Respondents relating the said State Government order were on a wrong understanding that the same applies to them, whereas in fact, the same is not applicable to the Respondents. In that circumstances, learned Senior Counsel contended that the judgment of the learned Single Judge cannot be sustained either on law or on facts.

19. *Per contra*, learned counsel for the party Respondents submitted that the order dated 27.06.2012 is applicable to the Farm employees under the Government in various Farms under the State Government and therefore having not made any explanation or differentiation among the

Inter-departmental communication, all the workers of the Farm are entitled to get the said pay and allowance. Therefore the appellants who are bound by Ext.R1(f) orders of the Government of India *supra*, are bound to follow the said order since the rates prescribed therein are superior to the rates prescribed by the Government of India. It is also contended that the recovery proceeded with by the appellants is on a wrong understanding that petitioners were entitled to get only Rs.300/- and therefore any amount paid as excess was liable to be recovered. It is also contended by the learned counsel that instead of following the orders passed by the Government of India and the State Government, as a retaliation measure, the Respondents are being harassed by the appellants unnecessarily. It is also contended that as of right Respondents are entitled to get the amounts fixed by the State Government as per order dated 27.06.2012, 26.02.2011 and the information contained in Ext.P22 filed along with W.P.(C) No.7764 of 2014. Therefore, the learned counsel contended that there is no illegality in the judgment of the learned Single Judge warranting interference of this Court in appeal.

20. We have evaluated the rival contentions, the pleadings made in the writ petitions as well as the writ appeals and perused the records. We are of the considered opinion that as contended by the learned counsel for Respondents, the appellants are bound by the orders referred above passed by the State Government, which are binding on the appellants as per Ext.R1(f) notifications issued by the Union Government *supra*. Either in the order dated 27.06.2012 or in the order dated 26.02.2011, it does not make a distinction with regard to the Farm employees and the employees/workers of other Departments. On the other hand, it is clear from the said orders that they relate to the workers and employees under the State Government. That being the situation, it is evident that Respondents are also entitled to get similar treatment in accordance with law. State Government has filed counter affidavit in the writ appeal and produced Exts.R31(a) to R31(c) orders, from which it is clear and specific that the case put forth by Respondents 1 to 30 is true and correct. The counter fully supports the stand adopted by the party Respondents.

21. In view of the factual and legal circumstances discussed above, the arguments advanced by the learned Senior Counsel for the appellants that Ext.P6 is not binding on the appellants, in view of the issuance of the same by the Finance Department, cannot be sustained. On a perusal of the records, we do not find any reason to arrive at a conclusion different from the one arrived at by the learned Single Judge in the impugned judgments. Therefore, we have no hesitation to hold that there is no illegality or other legal infirmities in the impugned judgments, warranting our interference in these appeals.

Resultantly, appeals fail and they are accordingly dismissed.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-
28.10.2015