

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 9596 of 2006 (P)

PETITIONER :

**ASOK LAL, AGED 32, S/O. THANKAPPAN,
MEMANAPARAMBIL HOUSE, ARPPOOKKARA VILLAGE
KOTTAYAM TALUK.**

BY ADV. SRI.N.J.MATHEWS

RESPONDENT(S) :

- 1. STATE OF KERALA,
REP.BY SECRETARY TO GOVERNMENT
LABOUR AND REHABILITATION DEPARTMENT
GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM.**
- 2. THE WELFARE FUND INSPECTOR,
KERALA TODDY WORKERS WELFARE FUND BOARD,
KOTTAYAM.**
- 3. N.VIJAYALAKSHMI,
ASARI PARAMBIL HOUSE,
RAMAPURAM P.O., KOTTAYAM DISTRICT.**
- 4. K.R.SUDHAN,
KUNNUPURATH HOUSE,
KADANAD P.O., KOTTAYAM.**
- 5. A.K.JANARDANAN,
ARAYATTUZHUM, ARPPOOKKARA WEST,
KADANAD P.O., KOTTAYAM.**

R1 BY GOVT. PLEADER SRI. R. RANJITH

R2 BY ADVS. SRI.K.D.BABU, SC

SRI.A.K.JOHN, SC

R3 BY ADVS. SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)

SRI.A.R.DILEEP

SMT.KAVITHA GANGADHARAN

R4 & R5 BY ADV. SRI.GEORGE POONTHOTTAM

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

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF DETERMINATION ORDER BEARING NO. K2/PALA
87,88/2000/01 DATED 29.9.01.
- EXT.P2 COPY OF CERTIFICATE NO. K2/4582/02 DATED 30.7.02 ISSUED BY 2ND
RESPONDENT.
- EXT.P3 COPY OF DETERMINATION ORDER BEARING
NO. K2-PALA 87, 88/2001-02 DATED 26.7.02 PASSED BY 2ND
RESPONDENT.
- EXT.P4 COPY OF ORDER OF ASSISTANT EXCISE COMMISSIONER KOTTAYAM
BEARING NO. K5-1699/03 DATED 10.6.03.
- EXT.P5 COPY OF ORDER OF 1ST RESPONDENT BEARING
NO.G.O.(RT) 440/06/L.B.R. DATED 25.2.06.

RESPONDENT'S EXHIBITS :

- EXT.R3(a) : COPY OF ORDER DATED 24.9.2003 IN IA NO. 1020/03 IN WA
NO. 1202/03.
- EXT.R3(b) COPY OF ORDER DATED 1.4.2005.
- EXT.R3(c) COPY OF JUDGMENT DATED 26.5.2005.

//TRUE COPY//

P.S. TO JUDGE

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K. Vinod Chandran, J.

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W.P.(C)No.9596 of 2006

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Dated this the 3rd day of February, 2015.

JUDGMENT

1. Petitioner challenges Ext.P5 order passed in appeal filed by the third respondent. Appeal is one filed against the determination order for the year 2001-02, in the case of one “Pala Kallu Chethu Vyavasaya Thozhilali Co-operative Society”, which was the licensee of two toddy shops bearing Reg.Nos.87 and 88, which are respectively Kollappally and Nadumuri shops. The said shops were re-numbered as 6 and 7 respectively and the third respondent was the licensee for the year 2002-03 of Shop No.6 and the petitioner, of Shop No.7. The shops would be referred to as Kollappally and Nadumuri, since there is a change in the numbers.
2. Both the shops for the year 2000-01 were under a different licensee, against whom, Ext.P1 assessment order was passed. Respondents 4

and 5 were the employees of Nadumuri shop. Subsequently, the Co-operative Society took on licence, both these shops and Ext.P3 is the determination order, passed against the Co-operative Society for the year 2001-02. In that determination order, respondents 4 and 5 were shown as being employees of Kollappally shop. The third respondent, who came into possession of Kollappally shop in the subsequent year, as a licensee, was aggrieved with the said assessment order, passed with respect to the earlier licensee.

3. A reading of the various orders produced herein would indicate that, there was a dispute as to the employment of respondents 4 and 5. The dispute even led to the filing of a writ petition for police protection, by the third respondent, in which, the third respondent had specifically contended that, respondents 4 and 5 were the employees of Nadumury shop. It is also seen from Ext.P5 order that, O.P.No.17735 of 2002 filed by the third respondent was

disposed of, granting police protection on the ground that respondents 4 and 5 were not registered under Kollappally shop.

4. The petitioner also challenged Ext.P3, by way of a writ petition, which was dismissed on the ground that the assessment order of 2001-02 indicated respondents 4 and 5 to be the employees of Kollappally shop. However, an appeal was filed, in which the Division Bench found that, it cannot be unequivocally said that, respondents 4 and 5 were employed in Kollappally shop, since, for the earlier year, i.e., 2000-01, in Ext.P1, respondents 4 and 5 were said to be the employees of Nadumury shop. The Division Bench, by Ext.R3(c), directed the third respondent to file appeal from Ext.P3 order, which culminated in Ext.P5. Ext.P5 is impugned in this writ petition by the petitioner, who is said to be the licensee of Nadumury shop in the subject year.

5. The appellate authority, in fact, based its decision on Rule 33(2)(c)

of the Kerala Toddy Workers' Welfare Fund Scheme, 1969. The said

Rule reads as follows:

“If a registered employee is retrenched or discharged or voluntarily leaves the employment in the toddy shop or premises where he was working and obtained employment in another shop or premises this change shall not affect his status as a registered employee and shall be eligible for all the benefits under this Scheme as he would have been entitled to as if no such change had taken place.

Provided that the employee shall inform the Chief Welfare Fund Inspector or any other officer so authorised within one month of his joining the new shop or premi' of the change that has occurred:

Provided further that in the cases mentioned above, if the period between the time the employee leaves the earlier toddy shop or premises and obtained employment in the subsequent toddy shop or premises exceeds three months at a time, such periods of un-employment shall be deducted from the total period counting from the date of his registration to the date when he is paid off”.

6. Hence, if a particular employee is registered in a toddy shop, on

transfer of such employment to another shop, though it shall not affect the employee's status as a registered employee, the same shall be informed to the Chief Welfare Fund Inspector or any other officer so authorised, within one month of such transfer of employment being effected. Evidently, no such intimation was granted.

7. The determination order, under the Kerala Toddy Workers Welfare Fund Act, at the first instance, is Ext.P1, for the year 2000-01. In that year, respondents 4 and 5, admittedly, were employees of Nadumuri shop, under which, the registration was granted under the Welfare Fund Act. If there was any transfer effected in the subsequent year, i.e., 2001-02, then, necessarily, an intimation ought to have been given to the Welfare Fund Inspector, as provided in the aforesaid rule. For the year 2001-02, admittedly, both the shops were under the same management, a co-operative society. Probably, the employees would have been employed in both shops by the

management. However, that is of no consequence, since, the scheme specifically provides for continuance of registration only, if such transfer has been intimated to the Welfare Fund Inspector. No such transfer, having been intimated to the Welfare Fund Inspector and there being no dispute with respect to the employment of respondents 4 and 5, in the Nadumury shop in the earlier year, Ext.P5, insofar as it finds respondents 4 and 5 to be not employed in the Kollappally shop, cannot be faulted.

In such circumstances, there would be no reason why, any interference should be caused to Ext.P5 order of the appellate authority. Writ petition would stand dismissed.

K. Vinod Chandran, Judge.

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