

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 3299 of 2012 (J)

CP.NO.7/2010 OF LABOUR COURT, KOZHIKODE

PETITIONER :

**MATHEW GEORGE,
MANAGING DIRECTOR,
KURUVITHADAM ASSOCIATES PRIVATE LIMITED,
BEHIND SONY WORDLD, MG ROAD, ERNAKULAM-682 016.**

BY ADV. SRI.P. RAMAKRISHNAN

RESPONDENT(S):

- 1. LABOUR COURT,
KOZHIKODE-673 020.**
- 2. ANANDAKUMARI M.,
D/O. GOPALAN NAIR, PARAYIL HOUSE, EDAKKAD,
KOZHIKODE-673 005.**
- 3. SREENIVASAN P.K., S/O. PADMANABHAN KIDAVU,
PUTHIYETTUMKANDY, EDAKULAM,
QUILANDY-673 306.**

**R1 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
R2 & R3 BY ADV. SRI.K.M.FIROZ
SMT.M.SHAJNA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1: TRUE COPY OF LETTER DATED 22-08-2008 SENT BY THE 3RD RESPONDENT.**
- EXHIBIT P2: TRUE COPY OF NOTICE DATED 11-05-2009 ISSUED BY THE DISTRICT LABOUR OFFICER, KOZHIKODE.**
- EXHIBIT P3: TRUE COPY OF CLAIM STATEMENT DATED 09-04-2010 FILED BY RESPONDENTS 2 AND 3 BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P4: TRUE COPY OF COUNTER STATEMENT FILED BY THE PETITIONER.**
- EXHIBIT P5: TRUE COPY OF REJOINDER FILED BY RESPONDENTS 2 & 3.**
- EXHIBIT P6: TRUE COPY OF ORDER DATED 28-11-2011 PASSED BY THE 1ST RESPONDENT LABOUR COURT.**

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.S.TO.JUDGE

K. Vinod Chandran, J.

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W.P.(C)No.3299 of 2012

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Dated this the 13th day of January, 2015.

JUDGMENT

1. Petitioner challenges Ext.P6 order issued on an application filed under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act, for short). Petitioner is the Managing Director of a private limited company, who is the respondent in Ext.P6. The management establishment is a dealer of Stealage Industries Limited, Mumbai, dealing in safe, strong room door, lockers and allied products. Admittedly, the petitioner had a branch office at Kozhikode, under which respondents 2 and 3 were said to have been employed. On the alleged closure of the establishment, respondents 2 and 3 raised a dispute with respect to the denial of employment, in which notice was issued by the Deputy Labour Officer, as is evidenced at Ext.P2. Obviously, respondents 2 and 3 did not pursue with the proceedings under Ext.P2 and filed a

claim petition under Section 33C(2) before the Labour Court, Kozhikode numbered as C.P.7 of 2010 which led to the passing of the impugned order at Ext.P6.

2. Petitioner's contention against Ext.P6 is that, the Labour Court could not have decided the issue under Section 33C(2) of the Act, since, the claim necessarily involved an adjudication as to the status of respondents 2 and 3 and as to whether the respondents are entitled to retrenchment compensation. Learned counsel for the party respondents would, on the other hand, contend that, the closure of the branch office at Kozhikode, having been admitted by the management, the entitlement to closure compensation under Section 25FFF is a statutory right, which the respondent-workmen could agitate under Section 33C(2) of the Act.

3. Learned counsel for the petitioner relies on the decisions in **M.A.Haridas and others v. Labour Court and others ((2006 KHC 359)** and **Krishnan D. and another v. Special Officer,**

Vellore Coop.Sugar Mill and another (2008 KHC 4762) to buttress his contentions. Learned counsel for the respondents would rely on the decisions in Mangalore Ganesh Beedi Works v. The District Labour Officer, Cannanore and others (1972 KHC 232), Cannanore Coop. Milk Supply Union Ltd. v. Labour Court (1983 KHC 153), Sahu Minerals and Properties Ltd. v. Presiding Officer, Labour Court (1976 KHC 804), R.B.Bansilal Abirchand Mills Co.Pvt. Ltd. v. Labour Court (1972 KHC 365), Hondaram Ramchandra v. Yeshwant Mahadev Kadam (2007 KHC 7868) & G4S Security Services India (Pvt.) Ltd. v. Satheeshkumar K. and others [2010 (1) KHC 342] to refute the challenge made against the proceeding under Section 33C(2) and to sustain such proceedings.

4. The admitted facts are that, respondents 2 and 3 were attached to the Kozhikode branch office of the petitioner establishment. The party respondents, who are the claimants before the Labour Court, claim that they were employed as Office Assistants and Service Technician

respectively by the management. The management contended that the second respondent was the Manager of the branch office at Kozhikode and the third respondent was an independent service technician, who was engaged for the after sale service carried on by the management. It is also the admitted case that, the third respondent had sought for resignation by Ext.P1, in which, however, the management directed continuance presumably to tide over the exigency of no other Service Technician being available. The closure of the branch at Kozhikode is admitted, but, however the management's specific case is that, the third respondent cannot claim any closure compensation, since, he had admittedly resigned from the services and the second respondent, being the Manager, could not have raised a claim, assuming the status of a workman under the Act. In any event, the second respondent was asked to report to the office of the petitioner at Ernakulam and on her refusing to do so; she has obviously abandoned employment; a voluntary act. The second

respondent's contention against that is that, the management did not substantiate such claim by production of any document before the Labour Court, Kozhikode.

5. Primarily, it is to be noticed that, respondents 2 and 3 had initially raised an industrial dispute, insofar as the denial of employment as per Ext.P2. It is not clear as to why they did not pursue the same. On the mere admitted fact that there was closure of branch office at Kozhikode, they opted to file an application under Section 33C(2), contending that, their employment had been severed for reason of such closure and hence they are entitled to closure compensation. Going by the admitted facts only a branch office was closed and the workmen could not claim closure compensation on such closure of branch, especially if the establishment is continued. The management establishment continued its functioning, admittedly, in Kochi. The branch at Kozhikode was not an independent entity nor could the said branch be deemed to be the employer of the

respondent-workmen.

6. The workmen could not have confined their claim for employment to the branch office at Kozhikode alone. Definitely, the workmen, on closure of the Kozhikode office, would have been entitled for continuance of employment in the management, especially at Kochi. It is also pertinent that, on closure of branch office at Kozhikode, the management had not issued any letter of termination, upon which alone there could be a valid claim for closure compensation raised. In the context of the management establishment, admittedly having continued in Kochi, respondents 2 and 3 cannot be said to have any valid claim for closure compensation on the premise that the branch office, Kozhikode had been closed.
7. Evidently, there could have been maintained, an industrial dispute, with respect to the allegation of denial of employment. That was not pursued and the workmen chose to avail of the remedy under Section 33C(2), which confines itself to computation of valid and legal

claims, in terms of money raised by workmen. The petitioners, having been found to be not entitled to any closure compensation, going by the undisputed facts, an examination as to the scope of Section 33C(2), as discernible from the decisions cited would be unnecessary.

In such circumstance, this Court does not find any reason to uphold Ext.P6 order. Ext.P6 would stand set aside. Writ petition is allowed. No costs.

K. Vinod Chandran, Judge.

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