

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

W.P.(C).No.7751 of 2007 (W)

PETITIONER(S):-

K.CHANDRASEKHARAN PILLAI,
CHANDRA VILLA,
SOUTH MAINAGAPPILLY, MAINAGAPPILLY P.O., KOLLAM.

BY ADVS.SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA.

RESPONDENT(S):-

1. THE LABOUR COURT, KOLLAM.
2. MANAGER, AMBANADUU ESTATE,
KAZHUTHURUTTY P.O., THENMALA.
3. THE GENERAL SECRETARY,
QUILON DISTRICT PLANTATION FOREST AND
GENERAL WORKERS UNION (BMS),
BMS OFFICE, PUNALUR.

R1 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

R2 BY ADVS. SRI.U.K.RAMAKRISHNAN (SENIOR ADVOCATE)
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P(C).NO.7751 OF 2007-W

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 TRUE COPY OF AWARD DATED 28.2.2006 OF THE
 1ST RESPONDENT IN I.D.31/02.

RESPONDENT'S EXHIBITS:-

NIL.

Vku/

(true copy)

K.Vinod Chandran, J.

W.P.(C).No.7751 of 2007-W

Dated this the 22nd day of January, 2015

JUDGMENT

The petitioner on the claim that he was a “workman” under the Industrial Disputes Act, 1947 [for brevity “ID Act”], under the 2nd respondent, challenged his order of dismissal, which issue was referred for adjudication by the appropriate Government. The justifiability of the dismissal was the issue referred and the management raised a contention that the petitioner, for whom the Union sought for a reference, was not a “workman” as defined under the ID Act.

2. A reading of Exhibit P1 would indicate that the preliminary question considered was whether the dismissed employee was a “workman” under the ID Act and the said issue was found against him. Then the issue with respect to the dismissal was considered and on the basis of the evidence led before the Labour Court, it was found to be unjustified. However, since the maintainability itself was found against the workman, the Labour Court refused to interfere with the dismissal.

3. The learned counsel for the petitioner would place before me three decisions of the Hon'ble Supreme Court, in ***Prem Sagar v. S.V.Oil Company* [AIR 1965 SC 111]**, ***Ananda Bazar Patrika (P) Ltd. v. The Workmen* [1970 (3) SCC 248]** and ***Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah* [(2006) 6 SCC 548]**, to contend that the mere fact that an employee was drawing wages more than that stipulated in the exemption provided under Section 2(s) or the designation of an employee would not decide the issue as to the coverage under the definition of "workman" under the ID Act.

4. In the present case, admittedly, the petitioner was drawing an amount of Rs.2,497/-; above the limit of Rs.1,600/- as provided then in the ID Act. The employee was also styled a "Supervisor".

5. ***Prem Sagar*** (*supra*) laid down the broad parameters under which the question of coverage under the Madras Shops and Establishments Act, 1947 had to be decided. It was held that a consideration as to whether a particular employee exercising managerial powers would have to be looked at specifically examining the nature of work he/she is

engaged in. The test which could be reasonably applied in deciding such question was also laid down; but, however, it was observed that it is difficult to lay down exhaustively all such tests which could be employed by the Courts.

6. **Ananda Bazar Patrika** (*supra*) was a case in which the Hon'ble Supreme Court specifically found that the workman was not challenged, about the nature of his duties, when he was in the box. The evidence of the two witnesses who were examined in favour of the management were also looked into. Both were found to have made general statements, without specifying the duties assigned. One of the said witnesses was an employee who took over from the workman in the dispute and who did not state as to any supervisory duties having assigned to him. The decision is on the basis of facts and cannot be imported as a general principle.

7. **Anand Regional Coop. Oil Seedsgrowers' Union Ltd.** (*supra*) laid down that an undue importance to a designation of the employee or the nature assigned and the class to which he belongs would not be proper and the primary duties are to be looked at.

8. It is to be noticed that, in the present case, the employee had deposed that there are two types of Supervisors; one on the factory side and the other on the Field. The employee admitted to be a Supervisor in the Field and he also contended that there were workers who were supervised by him and he had been reporting any lapses on their part to his superiors. The Labour Court found that the dominant nature of employment is supervisory in character and held that the petitioner is not a “workman” as defined under Section 2(s) of the ID Act. This Court does not find any reason to interfere with the said factual finding.

9. In the light of the above, this Court would not go into the charges; whether proved or not. It was unnecessary for the Labour Court also to have looked into that, when the preliminary finding took away the jurisdiction vested in the Labour Court.

The writ petition would stand dismissed. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

vkul/-

(true copy)