

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

WP(C).No. 6518 of 2010 (L)

PETITIONER(S):

**K.T.MATHEW, AGED 69 YEARS,
SON OF THOMAS, KALAPURACKAL, PAIKA,
POOVARANY, KOTTAYAM DISTRICT-686 577.**

**BY ADVS.SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.SOBHAN GEORGE**

RESPONDENT(S) :

- 1. THE PRESIDING OFFICER,
LABOUR COURT, ERNAKULAM.**
- 2. M.M.JOSEPH,
MANJALAMKUNNEL HOUSE, KAYOORI, ANIKKAD.P.O - 686 503,
KOTTAYAM DISTRICT.**

**R1 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN
R2 BY ADV. SRI.P.RAMAKRISHNAN**

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY DISSOLUTION DEED DATED 28.07.1999 EXECUTED BETWEEN THE PARTNERS OF KALAPURACKAL MOTOR SERVICE.**
- EXHIBIT P2: TRUE COPY OF LETTER DATED 31.07.1999 SENT BY PETITIONER TO THE REGISTRAR OF FIRMS, THIRUVANANTHAPURAM WITH ENCLOSURE BEING COPY OF FORM V.**
- EXHIBIT P3: TRUE COPY OF POSTAL ACKNOWLEDGEMENT CARD SIGNED BY THE REGISTRAR OF FIRMS, THIRUVANANTHAPURAM, DATED 06.10.1999.**
- EXHIBIT P4: TRUE COPY OF MEMORANDUM OF SETTLEMENT DATED 31.07.1999 ENTERED INTO BETWEEN K.T.MATHEW & 2 ORS. AND WORKMEN REPRESENTED BY THEIR UNIONS, KOTTAYAM DISTRICT MOTOR & MECHANICAL WORKERS UNION (CITU) & ORS., BEFORE DISTRICT LABOUR OFFICER, KOTTAYAM.**
- EXHIBIT P5: TRUE COPY OF CLAIM PETITION DATED 30.09.2003 FILED AS C.P.NO.75 OF 2003, BY 2ND RESPONDENT BEFORE 1ST RESPONDENT.**
- EXHIBIT P6: TRUE COPY OF WRITTEN STATEMENT DATED 06.08.2007 FILED BY PETITIONER IN C.P.NO.75 OF 2003 BEFORE 1ST RESPONDENT.**
- EXHIBIT P7: TRUE COPY OF ORDER DATED 30.11.2009 PASSED BY THE 1ST RESPONDENT IN C.P.NO.75 OF 2003.**
- EXHIBIT P8: TRUE COPY OF NOTICE NO.B.705/2010 DATED 02.02.2010 ISSUED BY DISTRICT LABOUR OFFICER, KOTTAYAM TO PETITIONER.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K. Vinod Chandran, J.

W.P(C) No.6518 of 2010-L

Dated this the 2nd day of March, 2015

JUDGMENT

The petitioner is the management and the 2nd respondent is a workman before the Labour Court, Ernakulam in the petition under Section 33C(2) of the Industrial Disputes Act, 1947 [for short "ID Act"]. The workman was dismissed from service on certain allegations, which, on a reference made, was set aside. The workman was reinstated in service in April, 1998 and continued upto March, 2003, when he was superannuated. An application under Section 33C(2) of the ID Act was filed, for wages, as per the Kerala Motor Transport Workers Payment of Fair Wages Act, 1971 [for short "Fair Wages Act"]. The same was allowed from the date of his reinstatement, upto the date of his superannuation.

2. The management challenges the said order, on four grounds; one, that the workman had raised a claim from 1998, after his superannuation in 2003. The workman being a retired workman, cannot seek remedy under Section 33C(2) of the ID Act,

since he would not be a person coming within the definition of Section 2(s) of the ID Act. The further contention is that, there being delay of more than five years, the claim would be stale.

3. As to the retired workman being entitled to move an application under Section 33C(2) of the ID Act, the issue stands covered by a Division Bench decision of this Court reported in ***Thomas P.K And Others v. Sahitya Pravarthaka Co-op. Society, Kottayam and Others* [2014 (3) KHC 195]**. Hence, even a retired workman would be entitled to invoke the provisions of Section 33C(2) of the ID Act.

4. As to the stale claim, it is the settled position that there is no delay insofar as the proceedings under the ID Act is concerned and the Limitation Act would not be applicable [*vide Nityanand M.Joshi and Another v. The Life Insurance Corporation of India and Others* (AIR 1970 SC 209)]. However, the Supreme Court has also held that the relief could be moulded on a consideration of the aspect of delay, in ***Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82]**.

5. What assumes significance is the management's contention on two other aspects. The management herein, admittedly, was employing the workman, when he was terminated. He was reinstated pursuant to the order of the Labour Court by the petitioner/management. However, after reinstatement in 1999, more specifically on 31.07.1999, there was a dissolution of the partnership firm; which was a partnership of the petitioner herein and his two sons. The three partners divided between themselves the vehicles; and the employees were also assigned to each of the said individual owners from then onwards.

6. Exhibit D2 settlement was produced, wherein the District Labour Officer [for short "DLO"] has also endorsed the settlement by which *inter alia* the 2nd respondent was assigned to one of the sons, being one Saji Mathew. The Labour Court found that there was no reason for the DLO to have intervened and, hence, there was no conciliation as provided under the ID Act and held that the settlement is not a binding one. That finding, according to this Court, is not correct. When there was a dissolution of a firm, either the employer or the employee would

have approached the DLO and it was on such disputes arising between the management and employees that the DLO had intervened and conciliated the matter by Exhibit D2 settlement. The finding of the Labour Court that the settlement is not binding, cannot be upheld. The same has to be set aside. I do so.

7. The management has taken a stand as to the dissolution of the firm and assignment of the workman to one individual member of the erstwhile partnership firm, in the written statement itself. In such circumstances, appropriate proceedings should have been taken against that person, by the petitioner. The petitioner would have left open the remedies even at this point of time, subject, however to the appropriate forum deciding the efficacy of such proceedings initiated belatedly.

8. The next argument of the management is that the management had produced the muster roll, as also the wage register, in the latter of which the petitioner had signed. While the 2nd respondent admitted the wage register, he disputed the muster roll, contending that those are self-serving documents of the management. The Labour Court was inclined to believe the

deposition of the workman as against the documents produced by the management. In doing so, the Labour Court has relied on a self-serving statement of the workman as against a register maintained as per the statutory prescription. It is also common knowledge that the transport workers are not employed on all days in the entire month. Hence, when the management has produced muster roll and attendance register, no reliance could have been placed on the wages register to hold that the wages paid were lesser than that under the Fair Wages Act. The fair wages has to be determined on the basis of the muster roll and the attendance of the person and the same has to be computed on the number of days the workman had attended duty. In such circumstance, this Court is of the opinion that the matter has to be remanded back to the Labour Court for fresh consideration.

9. Exhibit P7 insofar as it relates to maintainability of a petition under Section 33C(2) of the ID Act by a retired workman as also maintainability on the aspect of delay, are answered against the management; and would stand upheld. However, with respect to the other two aspects, the Labour Court shall consider

the issues, afresh, in accordance with law, within a period of six months from today. The contentions on the two aspects remanded for *de novo* consideration are left open.

The writ petition is partly allowed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vkul

[true copy]