

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 6718 of 2012 (L)

PETITIONER(S):

**E.K. RAMACHANDRAN NAIR
AGED 61 YEARS, S/O. LATE KESAVAN NAIR, POTTAMMAL HOUSE
MOREEKARA P.O. KAKKODI, KOZHIKODE-673 611.**

**BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SMT.M.A.RUXANA**

RESPONDENT(S):

- 1. THE CHAIRMAN, KERALA LABOUR WELFARE FUND BOARD
KERALA LABOUR WELFARE FUND BOARD BUILDING
T.C.NO. 28/2857(1), KUNNAMPURAM ROAD, VANCHIYOOR P.O.
THIRUVANANTHAPURAM-34.**
- 2. THE COMMISSIONER
KERALA LABOUR WELFARE FUND BOARD
KERALA LABOUR WELFARE FUND BOARD BUILDING
T.C.NO. 28/2857(1), KUNNAMPURAM ROAD, VANCHIYOOR P.O.
THIRUVANANTHAPURAM-34.**
- 3. LABOUR COURT
ERNAKULAM-682031.**

**RR1 & 2 BY ADV. SRI.K.ANAND (A.201)
R1 & 2 BY ADV. SMT.LATHA KRISHNAN
R BY GOVERNMENT PLEADER SRI. MANOJ KUNJACHAN
R BY SRI.B.S.KRISHNAN (SR.)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: PHOTOCOPY OF THE C.P. 34/09 BEFORE THE 3RD RESPONDENT.

EXHIBIT P2: PHOTOCOPY OF THE ORDER BEARING NO. E-2402/97 DATED 12-06-97 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P3: PHOTOCOPY OF THE DUTY SCHEDULE OF THE PETITIONER DATD 01-05-97.

EXHIBIT P4: PHOTOCOPY OF THE REPRESENTATION TO HOLIDAY HOME MANAGER DATED 08-06-01.

EXHIBIT P5: PHOTOCOPY OF THE RECOMMENDATION LETTER DATED 15-06-01 TO THE LABOUR COMMISSIONER, THIRUVANANTHAPURAM BY MANAGER, HOLIDAY HOME, KUMALY.

EXHIBIT P6: PHOTOCOPY OF THE WRITTEN STATEMENT IN C.P 34/09 BEFORE THE LABOUR COURT, ERNAKULAM, FILED BY RESPONDENTS 1 AND 2.

EXHIBIT P7: PHOTOCOPY OF THE G.O.(MS) 66/72/LBR DATED 19-07-72.

EXHIBIT P8: PHOTOCOPY OF THE ORDER OF THE 3RD RESPONDENT IN C.P. 34/09 DATD 29-02-12.

EXHIBIT P9: PHOTOCOPY OF THE JUDGMENT IN O.P. 23098/00 DATED 30-05-06 OF THE HONOURABLE HIGH COURT.

RESPONDENTS' EXHIBITS : NIL

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.
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W.P.(C) No.6718 of 2012 - L
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Dated this the 10th day of March, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P8 order passed under Section 33C(2) of the Industrial Disputes Act, 1947 (for brevity, 'the I.D Act). The claim raised was for realisation of overtime wages for the period from 01.05.1997 to 31.12.2001. The petitioner is said to have been continuously put in a night shift from 6 p.m to 8 a.m. The petitioner hence claimed overtime wages beyond the eight hour work.

2. The Labour Court raised two issues as to whether the petition filed for overtime wages is maintainable under Section 33C(2) of the I.D Act and as to whether the management liable to pay the amount claimed. Admittedly, the petitioner was working in a Holiday Home at Kumali under the respondent Board, which according to

the petitioner is a lodging house as indicated in Ext.P7 notification. The contention was that, the establishment would be covered under the Kerala Shops and Commercial Establishments Act, 1960 (for brevity 'the Shop Act') and the eight hour duty prescribed in that Act would be squarely applicable to the petitioner.

3. However, the specific contention taken by the Board before the Labour Court was that, the employees of the establishment, in which the petitioner was working was covered by the Kerala Subordinate Service Rules and the conditions of service of appointment are regulated by G.O. No.E/10869/1987 dated 22.01.2001. Hence, though the establishment is a lodging house as has been noticed in Ext.P7 notification, the establishment would not be covered under the Act, for reason of the exemption in Section 3(f) of the Shop Act. The service of the employees of the establishment being governed by a separate law, the provisions of the Shop Act would not be applicable.

4. Further, the petitioner had a contention that, the petitioner had preferred a claim before the Labour Welfare Commission on 15.06.2001, a copy of which is produced as Ext.P5. There was nothing to indicate that Ext.P5, in fact was sent to the Commission. The petitioner hence was found to have not raised a claim prior to his retirement. Admittedly, the petitioner voluntarily retired from the service as on 01.06.2005. The petitioner's claim related to the period between 01.05.1997 and 31.12.2001. The petitioner had specifically claimed that, the petitioner's retirement was on account of the deterioration of his health, due to consistent work in the night shift. The petitioner was found to have availed leave from 01.01.2002 and to 31.12.2004 when the petitioner had been conducting the canteen in the Holiday Home on a contract basis. The contention of poor health hence, stood dispelled.

5. Herein, the back ground facts are slightly relevant. The petitioner was initially appointed as a

Waiter-cum-Room Boy and later was re-designated as a Catering Assistant. The canteen attached to the Holiday Home was given on a contract and the employees were hence, accommodated in the Holiday Home itself. It was thus the petitioner was directed to work in the reception. But, for the petitioner's claim that, the petitioner was consistently asked to do the night shift. Nothing was produced except one duty schedule of staff as on 01.05.1997. It cannot be said that the duty schedule remained as such from 01.05.1997 to 31.12.2001. Yet again, the petitioner's claim was for overtime wages, which entitlement he seeks to claim from the provisions of the Shop Act, the Shop Act was found to be not applicable to the establishment, in which the petitioner was working. Hence, the claim of the overtime wages could not be carried unless a right is established. Section 33C(2) of the I.D Act only can compute in terms of money, a right available to a workman **(Krishnan and Another v. Special Officer, Vellore**

Co-operative Sugar Mill Ltd. and another [(2008) 7 SCC 22]). The right itself being not established no claim under Section 33C(2) of the I.D Act could be entertained.

In such circumstance, for all the above grounds, the writ petition is devoid of merit and the same is dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge