

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 3980 of 2014 (V)

PETITIONER(S):

1. YESODHARAN R, DEEPTHI BHAVAN,
THOPPIL, MULAKKALATHUKAVU P.O.,
KILIMANOOR, THIRUVANANTHAPURAM DISTRICT.
2. G.SATHEESAN, CHALUVILA VEEDU,
PAMPURANCHERRY, KALLUVATHUKKAL P.O.,
KOLLAM DISTRICT.
3. G.SUNDARESAN, VILAYIL VEEDU,
PAMPURANCHERRY, PARIPPALLY P.O.,
KOLLAM DISTRICT.
4. R.RAVEENDRAN RAVEENDRA VILASAM,
JAWAN JUNCTION, KOLLAKKARANCHERRY,
PARIPPALLY P.O., KOLLAM DISTRICT.
5. S.RAMABHADRAN, VADAKUVILA VEEDU,
CHAVAKKAD, PARIPPALLY P.O.,
KOLLAM DISTRICT.

**BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.M.S.VIJAYACHANDRAN BABU**

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION (A) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.
2. THE LABOUR COMMISSIONER,
THOZHIL BHAVAN, PMG JUNCTION,
THIRUVANANTHAPURAM, PIN-695033.
3. SRI.AKBAR HYDER MUSALIAR, PROPRIETOR,
CASHEW FACTORY NO.25, KALLAMBALAM,
THIRUVANANTHAPURAM, PIN-695017.

WP(C).No. 3980 of 2014 (V)

4. LABOUR COURT, KOLLAM, PIN-691013.

*ADDL. R5 IMPEADED

5. THE KERALA STATE CASHEW DEVELOPMENT CORPORATION,
KOLLAM - 691001, REPRESENTED BY ITS
MANAGING DIRECTOR.

ADDL.R5 IS IMPEADED AS PER ORDER
DATED 21.02.2014 IN IA.2705/2014.

R1, R2 & R4 BY GOVERNMENT PLEADER SRI.R.RANJITH
R3 BY ADV. SRI.ARUN BABU
ADDL.R5 BY ADV. SRI.C.UNNIKRISHNAN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF GOVERNMENT ORDER, GO(RT) 1872/2012/LBR
DATED 4-12-2012 ISSUED IN THE CASE OF THE 1ST PETITIONER.
- EXHIBIT P2 : TRUE COPY OF THE SUMMONS DATED 19-2-2013 ISSUED BY THE
4TH RESPONDENT TO THE 1ST PETITIONER IN ID 104/2012.
- EXHIBIT P3 : TRUE COPY OF THE JUDGMENT DATED 15-11-2012 PASSED BY THIS
HON'BLE COURT IN OP 10546/2002.
- EXHIBIT P4 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
1ST PETITIONER BEFORE THE 1ST RESPONDENT DATED 28-5-2013.
- EXHIBIT P5 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
2ND PETITIONER BEFORE THE 1ST RESPONDENT DATED 28-5-2013.
- EXHIBIT P6 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
3RD PETITIONER BEFORE THE 1ST RESPONDENT DATED 28-5-2013.
- EXHIBIT P7 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
4TH PETITIONER BEFORE THE 1ST RESPONDENT DATED 28-5-2013.
- EXHIBIT P8 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
5TH PETITIONER BEFORE THE 1ST RESPONDENT DATED 28-5-2013.
- EXHIBIT P9 : TRUE COPY OF THE COMMUNICATION ISSUED BY THE
1ST RESPONDENT DATED 26-11-2013.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

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K. Vinod Chandran, J.

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W.P.(C)No.3980 of 2014

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Dated this the 1st day of April, 2015.

JUDGMENT

1. Petitioners are aggrieved with Ext.P1 reference, as modified in Ext.P9. The dispute raised is with respect to the denial of employment to the petitioners. Petitioners allege that they were employed under the additional fifth respondent and that, on the additional fifth respondent taking over certain factories of private individuals as per the Kerala Cashew Factories (Requisitioning) Act, 1979, (for brevity, the “Requisitioning Act”), petitioners were transferred to cashew factory, so taken over from the third respondent. Subsequently, the Requisitioning Act was invalidated by the Honourable Supreme Court and the additional fourth respondent resumed possession of the cashew factories, so requisitioned, back to its individual owners, herein the third respondent.

2. Petitioners were declined work by the third respondent as also by the

additional fifth respondent. Petitioners raised a dispute before the District Labour Officer, which ended in failure and culminated in Ext.P1 reference. However, when reference was made, the additional fifth respondent was neither impleaded nor was the question of denial of employment by the additional fifth respondent referred for adjudication. In such circumstance, an application was filed at Ext.P4 for amending the reference, which culminated in Ext.P9 order being passed, impleading the additional fifth respondent as the second management. However, the question of denial of employment referred for adjudication being confined to the denial by the first management, the petitioners are aggrieved, insofar as the adjudication being rendered nugatory, for reason of there being no proper reference made. The petitioners also contend that, they are similar to those petitioners in Ext.P3, which judgment has acquired finality.

3. A similar issue raised by certain employees, employed originally by

the additional fifth respondent and then transferred to the cashew factories requisitioned by them, was considered in Ext.P3. This Court, after considering the contentions of the parties and the decision of the Honourable Supreme Court, found that the said employees were the employees of the Cashew Development Corporation.

4. Since the petitioners claim that, they are similarly situated as the petitioners in Ext.P3, definitely, the reference of the dispute should be as to the denial of employment by the additional fifth respondent or the additional third respondent, which has to be adjudicated by the Labour Court. In such circumstance, this Court has called for the files of the Government, in which, the applications filed before the District Labour Officer, clearly indicates that, the petitioners contended that, they were the employees of the Kerala Cashew Development Corporation Ltd., which was impleaded in the complaint, as the first opposite party. In such circumstance, Exts.P1

and P9 are set aside.

5. Appropriate Government, being the first respondent, shall, within a period of two months from today, refer the dispute, as to the justifiability of denial of employment by the Kerala Cashew Development Corporation and the third respondent, to the appropriate Labour Court. The writ petition would stand allowed. All contentions of either party are left open. This Court has merely recorded the submission of the petitioners that, the petitioners are similarly situated as the petitioners in Ext.P3 and the same would have to be adjudicated upon by the Labour Court, on sufficient evidence being adduced. Needless to say the Labour Court would also have to consider as to who denied employment; whether it was the Corporation or the third respondent. No costs.

K. Vinod Chandran, Judge.

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