

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No.16785 of 2004 (W)

PETITIONER:

**V.DINESH BABU,S/O.GOPALAN,
KANDAMKULANGARA VAYAL,P.O.CIVIL STATION,
KOZHIKODE.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENTS:

- 1. K.SREEDHARAN,KRISHNA AGENCIES,
17/588,PAVAMANI,KOZHIKODE-673 004.**
- 2. K.SUSEELA,W/O.K.SREEDHARAN,
KRISHNA AGENCIES,17/588,PAVAMANI,
KOZHIKODE-673 004.**
- 3. THE INDUSTRIAL TRIBUNAL,KOZHIKODE.**

**R1,R2 BY SRI.M.C.SEN (SENIOR ADVOCATE.)
ADV.SRI.M.P.SREEKRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

W.P(C) NO.16785/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF CLAIM STATEMENT 23.1.2003 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT IN I.D.NO.69/2002.

EXT.P2:TRUE COPY OF STATEMENT DATED 20.2.2003 FILED BY RESPONDENTS 1 & 2 BEFORE THE 3RD RESPONDENT IN I.D. NO.69/2002.

EXT.P3:TRUE COPY OF REJOINER DATED 30.4.2003 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT IN I.D.NO.69/2002.

EXT.P4:TRUE COPY OF ADDITIONAL TATEMENT DATED 5.6.2003 FILED BY RESPONDENTS 1 & 2 BEFORE THE 3RD RESPONDENT IN I.D.NO.69/2002.

EXT.P5:TRUE COPY OF COUNTER STATEMENT DATED 6.8.2003 FILED BY RESPONDENTS 1 & 2 BEFORE THE 3RD RESPONDENT IN I.D.NO.69/2002.

EXT.P6:TRUE COPY OF AWARD DATED 18.3.2004 OF THE 3RD RESPONDENT IN I.D.NO.69/2002.

EXT.P7:TRUE COPY OF DEPOSITION DATED 9.10.2003 OF THE PETITIONER IN I.D.NO.69/2002.

EXT.P8:TRUE COPY OF DEPOSITION DATED 9.10.2003 OF THE 1ST RESPONDENT IN I.D.NO.69/2002.

EXT.P9:TRUE COPY OF LIST OF DOCUMENTS DATED 22.5.2003 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT IN I.D.NO.69/2002.

EXT.P10:TRUE COPY OF ADDITIONAL LIST OF DOCUMENTS DATED 17.7.2003 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT IN I.D.NO.69/2002.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

K. Vinod Chandran, J.

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W.P.(C)No.16785 of 2004

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Dated this the 5th day of March, 2015.

JUDGMENT

1. Whether admitted bickerings between parties can lead to a presumption of denial of employment, is the question, which arises in the aforesaid case. Petitioner is a workman and respondents 1 and 2, husband and wife, is the management before the Industrial Tribunal, Kozhikode. The question referred was, as to the justifiability of denial of employment to the petitioner, with effect from 23.3.2001. Petitioner asserted that, he had been working from 18.1.1985 till 23.3.2001, on the later date, on which, he was assaulted by the son of the management. An FIR was registered, but, however, the claim was that, the management, using their influence, succeeded in referring the issue. However, there was absolutely nothing produced, to indicate the employment as such.
2. Ext.W1 produced by W.W.1 is the First Information Report registered in March, 2001, wherein, the Kasaba Police Station have

registered an F.I.R. regarding the incident, stated to have occurred on 23.3.2001. The F.I.R. is pursuant to a complaint by the petitioner that the son of the management assaulted him. Exts.W2 to W6 are the various communications, addressed to the petitioner, in the address of the management, by third parties. Exts.W7 to W25 are the account books and Exts.W27 and W28 are the discharge card as also the accident register-cum- wound certificate, with respect to the incident giving rise to the W1 FIR. As was mentioned by this Court, at the beginning, what is proved, is only the fact that, there were bickerings between the petitioner and the management or rather the son of the management, which is disclosed from Ext.W1 FIR and Exts.W27 and W28 discharge card and accident register-cum-wound certificate. The employment, as such, remains without proof.

3. The Industrial Tribunal found that, no reliance can be placed on communications of third parties, addressed to the petitioner, since, in all probability, considering the nature of relationship between the son

of the management and the petitioner, as spoken of by the management, the petitioner would have given the address of the establishment, for receiving communications. That, definitely, would not prove that, there was any employment with the establishment.

4. The books of accounts was clearly admitted by the petitioner, in cross examination, to have no connection with M/s.Krishna Agencies, the management. Learned counsel for the petitioner, in fact, stressed on the fact that, the management had deposed that, such books of accounts, produced by the petitioner could, at best, be of a commission agent of the establishment. Learned counsel would point out that, the management had been consistently shifting their stand. Initially, it was contended that, the petitioner, a stranger, then he was described as an acquaintance of their son and at the time of evidence, a commission agent. The inconsistency in defence cannot be taken as a proof of the petitioner's employment, which was his duty to establish; as the one who asserted it. Petitioner, who had

raised the claim, had the duty to establish that he had been employed, as claimed. It is also to be noticed that the management did not even admit that the petitioner was a commission agent.

5. The management also produced a rent deed, Ext.W2, which, admittedly, was one executed, one year after the petitioner is said to have been employed in the establishment. While the petitioner's claim was that, he was employed on 18.1.1985, the management specifically contended that, the establishment commenced only after the rent deed Ext.M2 was executed on 1.2.1986. The management also produced the registration certificate, issued under the Kerala Shops and Commercial Establishments Act, 1960 (for brevity, the "Act"), which indicates that, none were employed in the establishment. This assumes significance, especially in the context of the reasons, stated by the petitioner, for denial of employment.
6. Petitioner's specific case is that, on demand of minimum wages, the management terminated his employment unceremoniously and that

too after assaulting him. If such a claim for minimum wages was raised, then, definitely, the petitioner would have raised it before the statutory authority. Petitioner's claim is that, he was employed from 1985 to 2001, without sufficient wages. It is difficult to believe that, a person, who has continued almost 15 years in an establishment, would not have taken up the matter of insufficiency of wages, before the statutory authority, especially in the context of the management establishment, being registered under the Act. It is also to be noticed that, the management had a specific case that the petitioner was employed under the Calicut Automobile Spare Parts Dealers Association. Petitioner did not challenge the said statement made by the management in cross-examination. This Court does not find any reason to interfere with the award of the Industrial Tribunal. Writ petition is dismissed. No costs.

K. Vinod Chandran, Judge.

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