

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No.7764 of 2014 (U)

PETITIONER'S:

1. PERAMBRA AREA ESTATE LABOUR UNION, C.I.T.U,IISR,
PERUVANNAMUZHY P.O,REG.K 1081 AFI 15-87,
REPRESENTED BY ITS SECRETARY,
K.BALAN,AGED 56,S/O.CHATHU,NADUKKANDI VEEDU,
P.O.KADIYANGAD (VIA),PERAMBRA,KOZHIKODE (DT),PIN.673 525.
2. K.BALAN,AGED 56 YEARS,S/O.CHATHU,
NADUKKANDI VEEDU,P.O.KADIYANGAD (VIA),
PERAMBRA,KOZHIKODE (DT),PIN.673 525.
3. K.DEVADASAN,KARAYULLATHIL VEEDU,P.O.AVUKKA,
(VIA)PERAMBRA,KOZHIKODE (DT),PIN.673 528.
4. K.A.JOSEPH,KOLLAMKUNNEL VEEDU,P.O.MUTHUKAD,
PERUVANNAMUZHI (VIA),PERAMBRA,KOZHIKODE (DT),PIN.673 528.
5. K.RAJAN,KIZHAKKAYIL VEEDU,P.O.PERUVANNAMUZHI (VIA),
PERAMBRA,KOZHIKODE (DT),PIN.673 620.
6. P.ABENOY,PUTHYADATH VEEDU,P.O.PERUVANNAMUZHI
(VIA) PERAMBRA, KOZHIKODE (DT),PIN.673 620.
7. V.P.MOHAN,VARAPPURATH VEEDU,P.O.KADIYANGAD,
PERAMBRA,KOZHIKODE (DT),PIN.673525.
8. K.PADMANABHAN,KATCHIYIL HOUSE,P.O.KADIYANGADU,
PERAMBRA (VIA),KOZHIKODE (DT),PIN.673525.
9. T.P.RAGHAVAN,THEKKEPARAMBIL VEEDU,
P.O.PERUVANNAMUZHI,(VIA) PERAMBRA,
KOZHIKODE (DT),PIN.673 620.
10. K.K.KUNJIRAMAN,KARUVARAKKUNNUMMAL VEEDU,
P.O.CHEMBANODU,(VIA) PERUVANNAMUZHI,
PERAMBRA,KOZHIKODE (DT),PIN.673 620.
11. M.P.PADMANABHAN,MALAPPOYIL VEEDU,
P.O.NOCHAD,(VIA) NADUVANNUR,PIN.673 624.
12. N.BALAN,NIRAVATH VEEDU,P.O.KALPPATHUR,
(VIA) MEPPAYUR,PIN.673 524.

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13. K.K.RAJAN,MOYORAKKUNNUMMEL VEEDU,
P.O.PERUVANNAMUZHI,PERAMBRA (VIA),
KOZHIKODE (DT),PIN.673520.
14. P.SOMAN,PARIYARATH VEEDU,P.O.PERAMBRA,
KOZHIKODE DT.,PIN.673 525.
15. T.S.RAVINDRAN,THANDASSERI VEEDU,
P.O.PERUVANNAMUZHI,PERAMBRA (VIA),
KOZHIKODE (DT).,PIN.673 620.
16. K.K.BALAN,KARUVARAKKUNNUMMAL VEEDU,
P.O.CHEMBANODU,(VIA) PERUVANNAMUZHI,
PERAMBRA,KOZHIKODE (DT).,PIN.673 620.
17. N.SAJEEVAN,NADUKKANDI VEEDU,P.O.KADIYANGAD,
(VIA) PERAMBRA,KOZHIKODE (DT).,PIN.673 525.
18. T.K.PADMANABHAN,THIRIKKOTTAMMAL VEEDU,
P.O.KADIYANGAD,(VIA) PERAMBRA,
KOZHIKODE (DT).,PIN.673 525.
19. K.SATHEESAN,KARAYULLATHIL VEEDU,P.O.AVUKKA,
PERUVANNAMUZHI (VIA),PERAMBRA,
KOZHIKODE (DT).,PIN.673 620.
20. T.P.DAMODARAN,THEKKEPERUVANAMITTAL,
P.O.CHERUVANNUR,(VIA) MEPPAYUR,PIN-673 524.
21. V.K.MADHAVAN,THACHOLI VEEDU,P.O.KOOTHALI,
(VIA) PERAMBRA,KOZHIKODE (DT).,PIN.673 532.
22. M.P.MURALIDHARAN,P.O.THANDORAPPARA,
(VIA)KAYANNA,PIN.673 526.
23. V.RADHAKRISHNA,VAZHAYIL VEEDU,
P.O.PERUVANAMUZHI,PERAMBRA,
KOZHIKODE (DT).,PIN.673 620.
24. K.M.SUDHEER,KAYAMANNIL VEEDU,
CHANIYAM KADAVU P.O,POCHERI,VADAKARA,PIN.673 626
25. K.SHANMUGHAN,KACHADATH VEEDU,
P.O.PERUVANAMUZHI,PERAMBRA,
KOZHIKODE (DT).,PIN.673 620.
26. C.GANGADHRAN,CHEROTH VEEDU,P.O.CHERUVANNUR
(VIA)MEPPAYUR,PIN.673 524.
27. VIJAYAN M.P.,SOUHRUDAYA,P.O.KOOTHALI,
PERAMBRA (VIA),KOZHIKODE DT.,PIN. 673 532.

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28. **P.V.SURESH,PUTHENVEETIL VEEDU,
P.O.PERUVANAMUZHI,(VIA) PERAMBRA,
KOZHIKODE (DT).,PIN.673 620.**
29. **JOHNSON GEORGE,THAYYIL VEEDU,
P.O.MUTHUKAD,(VIA)PERUVANAMUZHI,
PERAMBRA,KOZHIKODE (DT).,PIN.673 528.**
30. **K.J.SILAS,KAKKATHURUTHUMMEL VEEDU,
MUTHUKAD P.O.,PERUVANAMUZHI (VIA),
PERAMBRA,KOZHIKODE (DT).,PIN.673 620.**

**BY ADVS.SRI.PHILIP ANTONY CHACKO
SRI.P.M.SEBASTIAN**

RESPONDENT'S:

1. **DIRECTOR,INDIAN INSTITUTE OF SPICES RESEARCH (I.C.A.R),
MARIKUNNU P.O,KOZHIKODE,KOZHIKODE (DT),PIN.673 012.**
2. **THE FARM SUPERINTENDENT INDIAN INSTITUTE OF
SPICES RESEARCH,PERUVANNAMUZHI,
QUILANDY TALUK,KOZHIKODE,PIN.673 528.**
3. **STATE OF KERALA,REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT,THIRUVANANTHAPURAM,PIN-695 001.**

**R1 & R2 BY SRI.P.JACOB VARGHESE (SENIOR ADVOCATE)
ADV.SRI.VIVEK VARGHESE P.J.,S.C
R3 BY GOVT. PLEADER SRI.RAFEEK V.K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12.03.2015 ALONG WITH WPC.12379/2014, THE COURT
ON 10-04-2015, DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1-THE TRUE COPY OF AWARD DATED 29-6-1999 BY THE LABOUR COURT KOZHIKODE.

EXT.P2-THE TRUE COPY OF JUDGMENT DATED 18-3-2008 IN OP NO.27513 OF 1999 BY THE SINGLE JUDGE OF THIS HON'BLE COURT IN THE ORIGINAL PETITION FILED BY THE RESPONDENTS 1 AND 2.

EXT.P3-THE TRUE COPY OF JUDGMENT DATED 5-1-2009 I WA NO.1049 OF 2009 BY THE DIVISION BENCH OF THIS HON'BLE COURT IN THE WRIT APPEAL FILED BY THE RESPONDENTS 1 AND 2.

EXT.P4-THE TRUE COPY OF THE ORDER NO.L.W.(2)18358/2011 ISSUED BY THE AGRICULTURAL DIRECTOR TO ALL PRINCIPLE AGRICULTURAL OFFICERS AND ALL FARM OFFICERS.

EXT.P5-THE TRUE COPY OF THAT SETTLEMENT DATED 24-10-2011 BETWEEN THE MANAGEMENT AND THE 1ST RESPONDENT UNION.

EXT.P6-THE TRUE COPY OF THAT ORDER DATED 27-6-2012 ISSUED BY THE AGRICULTURE AND FARM DEPARTMENT,GOVERNMENT OF KERALA.

EXT.P7-THE TRUE COPY OF THE ORDER DATED 26-2-2012 ISSUED BY THE FINANCE (PRC-C) DEPARTMENT,GOVERNMENT OF KERALA.

EXT.P8-THE TRUE COPY OF THE COMMUNICATION DATED 19-12-2012 SENT BY THE 1ST RESPONDENT TO THE SECRETARY TO THE 1ST PETITIONER.

EXT.P9-THE TRUE COPY OF THE CORRIGENDUM DATED 3-1-2013 ISSUED BY THE 1ST RESPONDENT TO THE 1ST PETITIONER.

EXT.P10-THE TRUE COPY OF THE WAGE BILL OF THE PETITIONERS FROM 15TH DECEMBER 2012 TO 31ST MARCH 2013 DATED NIL PREPARED BY THE INDIAN INSTITUTE OF SPICES RESEARCH, PERUVANNAMUZH.

EXT.P11-THE TRUE COPY OF THE SAKSHIPATHRAM DATED 31-10-2012 ISSUED BY THE SUPERINTENDENT OF THE DISTRICT AGRICULTURAL FARM, KOOHALI.

EXT.P12-THE LETTER DATED 2-3-2013 GIVEN BY THE SECRETARY OF THE 1ST PETITIONER AND THE CALCULATION STATEMENT PREPARED GIVEN BY THE SUPERINTENDENT OF THE 2ND RESPONDENT DATED NIL FOR THE PERIOD 2009 JULY TO DECEMBER 2012.

EXT.P13-THE TRUE COPY OF ORDER DATED 16-4-2013 ISSUED BY THE 1ST RESPONDENT.

EXT.P14-THE TRUE COPY OF THE COMMUNICATION DATED 15-4-2013 ISSUED BY THE 1ST RESPONDENT TO THE SECRETARY OF THE 1ST PETITIONER.

**EXT.P15-THE TRUE COPY OF COMMUNICATION DATED 16-4-2013 ISSUED BY THE
1ST RESPONDENT TO THE SECRETARY OF THE 1ST PETITIONER.**

**EXT.P16-THE TRUE COPY OF THE PETITION FILED ON 23-4-2013 BEFORE THE
A.L.C.**

**EXT.P17-THE TRUE COPY OF THAT OFFICE NOTE DATED 2-7-2013 ISSUED BY
THE ADMINISTRATIVE OFFICER OF THE 1ST RESPONDENT.**

**EXT.P18-THE TRUE COPY OF THE LETTER DATED 8-10-2013 ISSUED BY
ADMINISTRATIVE OFFICER OF 1ST RESPONDENT.**

**EXT.P19-THE TRUE COPY OF THE JUDGMENT DATED 29-10-2013 WPC.26380 OF
2013.**

**EXT.P20-THE TRUE COPY OF THE OBJECTION DATED 19-11-2013 FILED BY THE
ADMINISTRATIVE OFFICER OF THE 1ST RESPONDENT BEFORE THE
A.L.C.**

**EXT.P21-THE TRUE COPY OF THE PROCEEDINGS OF THE A.L.C. FROM 20-6-2013
TO 15-1-2013**

**EXT.P22-THE TRUE COPY OF THE CERTIFICATE DATED 19-4-2013 ISSUED BY
THE SENIOR AGRICULTURAL OFFICER STATE SEED FARM P.O.,
PERAMBRA TO THE SECRETARY OF THE 1ST PETITIONER.**

**EXT.P23-THE TRUE COPY OF THE LETTER DATED 8-3-2014 ISSUED BY THE
P.T.KURIAN, CONTRACTOR TO THE SECRETARY OF THE 1ST
PETITIONER.**

**EXT.P24-THE TRUE COPY OF THAT INTERIM ORDER DATE 9.4.2014 PASSED BY
THIS HONOURABLE COURT W.P(C) NO.7764/2014.**

EXT.P25-THE TRUE COPY OF THAT ORDER DATED 30.4.2014.

**EXT.P26-THE TRUE COPY OF THAT OBJECTION DATED 3.5.2014 FILED BY THE
1ST PETITIONER UNION THROUGH ITS SECRETARY.**

**EXT.P27-THE TRUE COPY OF THE LETTER DATED 6.3.2014 ACCEPTING THE
QUOTATIONS FROM ADDON INTEGRATED FACILITY SOLUTION WITH
EFFECT FROM 1.4.2014 TO 31.3.2015 FROM THE INDIAN INSTITUTE OF
SPICES RESEARCH, MARIKUNNU P.O., KOZHIKODE-12.**

**EXT.P28-THE TRUE COPY OF THE QUOTATIONS FROM THE AGENESES/
CONTRACTORS DATED 7.4.2013 FOR THE YEAR 2014-2015 AT IISR,
CHELAVOOR/IISR EXPERIMENTAL FARM, PERUVANNAMUZHI/KVK,
PERUVANNAMUZHI FROM THE INDIAN INSTITUTE OF SPICES
RESEARCH, MARIKUNNU P.O., KOZHIKODE-12.**

**EXT.P29-THE TRUE COPY OF THE REGISTERED COVERING LETTER
DATED 18.9.2014 ALONG WITH REPLY AND THE ATTENDANCE
REGISTER OF THE 29 CASUAL WORKERS (PETITIONERS) FROM 1ST
APRIL, 2009 TO 30TH JUNE, 2014.**

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EXT.P30:THE TRUE COPY OF THAT SAKSHIPATHRAM DATED 27.6.2014 ISSUED BY THE SUPERINTENDENT,DISTRICT AGRICULTURE FARM, KOOHALI,PERUVANNAMUZHY.

EXT.P31-THE TRUE COPY OF THAT ORDER DATED 3.12.2014 IN W.P(C) NO.7764/2014 BY THIS HONOURABLE COURT.

EXT.P32-THE TRUE COPY OF THAT ORDER DATED 25.2.2008 ISSUED ON BEHALF OF THE AGRICULTURE (FARM) DEPARTMENT BY AGRICULTURE PRODUCTION COMMISSIONER,TRIVANDRUM.

EXT.P33-THE TRUE COPY OF THAT NOTIFICATION S.R.O NO.674/2009 DATED 11.8.2009 ISSUED BY THE SECRETARY TO GOVERNMENT LABOUR AND REHABILITATION (E) DEPARTMENT GOVERNMENT OF KERALA.

RESPONDENT'S EXHIBITS & ANNEXURES:

EXT.R1(a):TRUE COPY OF LETTER NO.D.654/014 DATED 20.11.2014 ISSUED BY SUPERINTENDENT,DIST.AGRICULTURAL FARM,KOOHALI TO THE 1ST RESPONDENT.

EXT.R1(b):TRUE COPY OF THE CIRCULAR O.M.51016/90 ESTT.(C) DATED 10.9.1993 ISSUED BY MINISTRY OF PERSONNEL,PUBLIC GRIEVANCES AND PENSIONS (DEPT.OF PERSONNEL AND TRAINING).

EXT.R1(c):TRUE COPY OF THE DETAILS OF ATTENDANCE OF CASUAL WORKERS FOR THE PERIOD FROM 2009-10 TO 2013-14 AS PER THE ENDT.9)346) 2014 ESTT.VOLIV DATED 3.9.2014 VIDE LETTER NO.IISR / PMY/RTI-2014-15 DATED 6.9.2014 OF THE FARM SUPERINTENDENT,IISR,PERUVANNAMUZHI.

ANNEXURE R1(a):TRUE COPY OF THE LETTER DATED 28.9.2013 OF THE PETITIONER UNION TO THE RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.7764 & 12379 of 2014

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Dated this the 10th day of April, 2015

JUDGMENT

The first among these writ petitions originated when respondents 1 and 2 started to recover amounts from the present salary of the petitioners on the ground that the salary and dearness allowance paid to them were in excess.

2. In W.P(C) No.7764 of 2014, the petitioners seek to implement Exts.P6, P7 and P8 orders, and for a direction to pay the arrears due to them with effect from 1.7.2006 within a time frame fixed by this Court.

3. The second writ petition, i.e., W.P(C) No.12379 of 2014 was filed when a subsequent order was passed denying employment to the petitioners, for a week. In that case, the petitioners allege that the contract workers under the contractor with higher pay stipulation are even now working in the farm when they were denied employment as

per Ext.P18 in that writ petition.

4. The petitioners through their union had represented to respondents 1 and 2 to re-fix and disburse to them the salary at ₹340/- with 45%, and its arrears of the same from 1.7.2009. As a counter blast, the first respondent passed Ext.P11 order dated 16.4.2013 denying employment to the petitioners. Challenging that order, the petitioners filed W.P(C) No.11576 of 2013 before this Court and that writ petition is pending consideration before this Court. Subsequently, as per the order dated 25.4.2013, the petitioners were re-employed from 16.5.2013 onwards.

5. The petitioners further allege that as per Ext.P1 award and Ext.P2 judgment, confirmed and clarified by Ext.P3 judgment by a Division Bench of this Court, they had been re-employed as casual workers from 2009. They were working under the first respondent continuously for more than 7 years to 20 years. The petitioners further allege that large number of workers are required for the farm

of the respondents and large number of workers under the contractors are working in the farm at all times. The petitioners filed Ext.P14 complaint before the third respondent. The judgment in W.P(C) No.26380 of 2013 fixed a time limit and Ext.P16 was disposed off by the third respondent closing the same.

6. As the respondents started to recover amounts from the present salary alleging that the salary and dearness allowance paid to the petitioners were in excess, the petitioners filed W.P(C) No.7764 of 2014 before the mid-summer holidays. Subsequent to that, Ext.P18 order was passed by the respondents denying employment to the petitioners, for a week. This course was done at a time when tones of ginger and turmeric seeds were to be planted after the first rains; it is alleged. The contract workers under the contractor with higher pay stipulation are now working in the farm; so allege the petitioners.

6. Respondents 1 and 2 filed a detailed counter affidavit contending as follows:

The appointment and service conditions of the personnel and employees of the respondent institute is regulated under the provisions of the Central Administrative Tribunal's Act. The institute is a unit of the Indian Council of Agricultural Research (ICAR). The ICAR and all its institutes are controlled by the Central Government and notified under the Central Administrative Tribunals Act. Therefore, the subject matter in dispute cannot be entertained under Article 226 of the Constitution of India being governed exclusively by the provisions of the Central Administrative Tribunals Act. The petitioners have already raised the subject matter in dispute as an industrial dispute before the Assistant Labour Commissioner and the Assistant Labour Commissioner have already initiated conciliation proceedings under the provisions of the Industrial Dispute Act.

It was further stated that respondents 1 and 2 have already submitted their contentions before the Labour Commissioner and after detailed hearing, the Labour Commissioner has submitted

failure report to the Central Government for appropriate future proceedings. Thus, the petitioners having availed of their legally sustainable remedies under the Industrial Disputes Act, are estopped from filing the writ petitions under Article 226 of the Constitution of India.

It was further stated that the IISR has three establishments for achieving its mandates- (i) The Institute has its headquarters near Chelavoor, about 12 kms. away from the Kozhikode City (ii) a research farm is located at Peruvannamuzhi in kozhikode District of Kerala, about 55 kms. away from the head quarters and (iii) a Cardamon Research Centre (CRC) at Appangala in Kodagu district of Karnataka, for exclusively carrying out the research works of Cardamon. It was further stated that as per orders issued by the Government of India and endorsed by the ICAR, the institute had stopped the engagement of casual workers with effect from 22.1.1987. Copy of the order/circular dated 9.9.1992 and 29.4.1993

issued by the ICAR endorsing circulars/orders of Government of India are produced and marked as Exts.R1(a) and (b). According to them, after 1987, whenever intermittent or seasonal works are available at the Institute, such works are specified and given on contract basis following strictly the procedure laid down in the General financial rules, applicable to all Central Government Officers and Institutions under ICAR.

It was further stated that the petitioners raised an industrial dispute before the Labour Court, Kozhikode against reducing their wages and termination of their services by the respondents. The Labour Court ordered to reinstate them as casual workers. The Labour Court in Ext.R1(C) award clarified that the present petitioners are only casual workers on daily wages. The respondents filed O.P No.27513 of 1999 before this Court against the award of the Labour Court and this Court upheld the findings of the Labour Court by Ext.R1(d).

The respondents filed W.A No.1049 of 2008 before a Division Bench of this Court wherein this Court by Ext.R1(d) judgment dated 5.1.2009 directed the respondents to consider the petitioners as casual workers whenever there is work. The petitioners were engaged for casual works by the respondents in the form of the institute at Peruvannamuzhi by implementing the judgment with effect from 1.4.2009. The Division Bench before passing the judgment made the following observations:

“Further there are practical difficulties also for engaging casual workers from the candidates advised by the employment exchange. Whenever casual work is being available, informing the employment exchange and getting workers would be difficult and by the time necessity of engaging casual workers would be over. It is also difficult to engage regular workers if the work is not

regular and only when occasionally work arises such workers are engaged. Therefore, whenever work is there, these workers should be given employment as casual workers.”

This Court has recognized the seasonality of agricultural operations before passing the above order and directed the respondents to engage the petitioners only when casual work is available with the respondents.

The Indian Institute of Spices Research, a public funded organisation has to follow all the rules and regulations of Government of India/ICAR in recruitment procedures. The organisation cannot encourage back door entry of any person into its services by accepting representation of the petitioners through their Union. Salaries of the Institute are paid at pay scales proposed by the Central Pay Commission and accepted by the Union Government. The Ministry of Personnel, Public Grievance and Pensions

(Department of Personnel and Training) of Government of India vide Office memorandum dated 7.6.1988 has circulated its policy regarding engagement of casual workers and persons on daily wages and payment of their daily wages. Para (v) of the memorandum reads:

“In case where the work done by casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever higher, as per the Minimum Wages Act, 1948.”

The petitioners are engaged by the respondents for works totally different from regular employees and subsequent to the implementation of the 6th Central Pay Commission recommendations, Group D posts are non-existent in Government departments.

The Central/State Government issued separate notifications on revision of minimum wages of daily rated agricultural and other workers. A true copy of an order dated 17.9.2011 issued by the Ministry of Labour, Government of India is produced as Ext.R1(g). In Kerala State such notifications are issued by the Labour and Rehabilitation Department of the Government. A copy of the notification dated 10.8.2009 of Labour and Rehabilitation Department of the Government, published in the Kerala Gazette increasing the minimum wages in 2009 is produced as Ext.R1(h).

As clarified by the Labour Court, the petitioners are only daily rated wagers. The petitioners being daily rated workers are entitled only for the minimum wages fixed revised and revised by the Minimum Wages Board/Committee of the Government of India or the State Government of Kerala from time to time, whichever rate is higher. The Government of Kerala revised the rate of minimum wages to ₹300/- per day in the State vide Gazette notification with

effect from 1.4.2011. Based on the gazette notification and the copy of an order produced by the petitioners from the District Agricultural Farm at Koothali the IISR, increased the daily rate of minimum wage to ₹300/-. Copy of the letter dated 1.10.2011 is produced as Ext.R1 (i). Either the Government of India or the Government of Kerala has not increased the rate of minimum wages so far higher than ₹300/-. The official communication by the District Agricultural Farm at Koothali to the Institute confirms the same. Copy of the official communication letter dated 18.4.2013 issued by the District Agricultural Farm is produced as Ext.R1(j).

The Government of India issued a circular on 12.4.1991 granting one time dispensation by which those casual labourers who were in service as on 29.11.1989 and had completed 240 days of service in a year had to be granted Temporary Status (TS) in Central Departments from that date. Copy of the circular dated 10th September, 1993 is produced as Ext.R1(k). The circular was strictly

complied with by all the ICAR institutes by granting temporary status to the available casual labourers. Government of India have not modified the circular afterwards. Item No.5 of the circular further clarifies that only casual workers with temporary status are entitled for wages at daily rates with reference to the minimum of pay scale for a corresponding regular group “D” official, including DA, HRA, and CCA. Similarly part time casual workers are available at the Kerala Government Farms. These casual workers' (casual labourers with TS or part time) are getting daily wages at a rate based on the minimum of pay scale of permanent employees, carrying out duties similar to that of casual workers. These casual workers' (casual labourers with TS or part time) daily salary is revised based on State Pay Commission recommendations. The petitioners are neither permanent, semi permanent or temporary to claim minimum daily wage based on State or Central Pay Commission recommendations as in the instant case. The petitioners are entitled only for the minimum

daily wage, recommended by the Minimum Wages Advisory Board/Committees constituted by the Central/State Governments from time to time.

The Kerala Government Order dated 27.6.2012 on which the petitioners relied for higher minimum wages is issued based on Department of Finance, Kerala Government and not by the Labour and Rehabilitation Department of the Government. Copy of the Government order dated 27.6.2012 is produced as Ext.R1(l). The order is issued in connection with the implementation of the recommendations of the 9th pay commission of the Government of Kerala with a pay scale and not with the payment of minimum wages to daily rated casual workers. Therefore, the Government order dated 27.6.2012 is not relevant in this case.

The petitioners are engaged on need basis and on daily wages rate as and when casual work is available with the respondent on their farm. There is no formal/provisional appointment order

issued to them under service rules. They are also not entitled for absorption in service in future vacancies. The judgment of the CAT Bench, Madras in **S. Babu and others v. District, Foreign post, Chennai** (OA No.973 of 2011 with M.A No.753 of 2011) is relevant in the present case. The relevant portion of the judgment is produced hereunder:

“..... the applicants were engaged on need basis and on daily wages rate as and when required and there is no formal/provisional appointment order issued to them under service rules. They also cannot be treated on par with GDS or temporary status casual labourer or casual labourer.----- since the applicants have been engaged after 1.9.1993, they cannot be treated as casual labourers”.

Copy of the same is produced herewith as Ext.R1(m).

7. I have heard the learned counsel for the petitioners and the learned senior counsel for respondents 1 and 2.

8. As per Ext.P1 award dated 29.6.1999, the Labour Court, Kozhikode found that the denial of the employment by the manager of the institution was not justified and accordingly, the manager was directed to recommend them in service as casual workers within one month from the date of publication of the award in the official gazette. It was found that the workers were not entitled to any back wages and each workers were entitled to get compensation of ₹1,000/-. This was challenged by the respondents in O.P No.27513 of 1999 before this Court. That original petition was dismissed. It was observed that this Court was not inclined to accept the case of respondents 1 and 2 that the petitioners in that original petition were workers employed through contractors. This Court also observed that the manager never disputed the fact that the workers were employed to the work in the petitioners' farm. In that case, the only dispute

raised was whether they were contract employees or casual employees. The contention of the workers was that they were denied employment with effect from 26.8.1995 onwards. The management had no case that the workers were given work after the said date. Therefore, this Court also found that the workers were denied employment by the management.

9. When the aforesaid judgment was challenged in W.A No.1049 of 2008 before a Division Bench of this Court as per Ext.P3 judgment in the writ appeal, the Division Bench clarified that whenever work is there, these workers should be given employment as casual workers. It was also observed that no purpose would be served by substituting these casual workers, working for so many years, by another set of casual workers. Therefore, the Division Bench refused to interfere with the impugned judgment.

10. However, it was clarified that only when casual work is available, these casual workers should be engaged and if there are

contract workers whenever casual work is available, there is no point in replacing them with other casual workers.

11. Ext.P3 judgment was dated 5.1.2009. The petitioners point out that till 8.7.2010 the respondents were following the aforesaid directions in the judgment. The matters were thus going on smoothly without any disturbance to casual workers. However, on 9.7.2010, the second respondent stating that from 16.7.2010 onwards, as per the rainy season arrangement, issued communication to the casual workers directing the casual workers with seniority 1 to 17 in the renewed seniority list to attend the work from 16th July to 31st July and casual workers with seniority 17 to 31 from that list to attend the work in the estates from August 1 to 14. In effect, 15 days employment was denied on account of that direction.

12. When they came to know about this, the petitioners staged a Dharna with the union leaders for nearly two days. A compromise talk was called by respondents 1 and 2. In the compromise talk, it

was resolved that the matter would be further discussed and a decision would be reached before the Onam holidays. Thereafter, the petitioners filed representation dated 7.8.2010 before the first respondent. The petitioners point out that farm contract workers are engaged to do the work under the contracts. Even today such workers are engaged. The petitioners further point out that the communication denying 15 days of work was issued when a large number of contract workers were engaged under the contractors in the farm run by respondents 1 and 2. Therefore, the said communication was against the direction of this Court in W.A No.1049 of 2009; so allege the petitioners.

13. The petitioners further point out that even in the year 2010 they had completed more than 7 years to 20 years of work on daily wage basis and, therefore, they are entitled for employment without any break under the respondents. Challenging the attempt of the respondents, the petitioners filed W.P(C) No.36816 of 2010 before

this Court. By this time, the Government of Kerala increased the minimum wages for the farm casual workers and casual labourers as ₹300/- per day as per Ext.P4. In the light of Ext.P14, the first petitioner union submitted a representation before the management on 9.6.2011. Later, in the presence of the Assistant Labour Commissioner (Central), Ernakulam, a settlement dated 24.10.2011 (Ext.P5) was arrived at. As per the settlement, the wages and arrears in the minimum rate were paid to the petitioners.

14. Later, the State Government increased the salary of casual workers and casual labourers as per Ext.P7 dated 26.12.2012. Retrospective effect to that order was given as per the Government order dated 26.2.2012. In the light of the said Government order, another representation was made by the first petitioner to the first respondent. That representation was considered and the management agreed to increase the minimum wages to the petitioners ₹340/- per day and 40% as dearness allowance as per Ext.P8 letter dated

19.12.2012. To that, there was a correction as per Ext.P9 dated 3.1.2013 by which the dearness allowance was reduced to 38%. The petitioners have produced Ext.P10 wage bill of the petitioners from 15.12.2012 to 31.3.2013.

15. The petitioners further allege that after Ext.P10, no arrears of minimum wages were paid as the management wanted evidence regarding the payment of arrears to casual farm workers in other farms. Therefore, the union produced Ext.P9 dated 31.10.2010 issued by the District Agricultural Farm, Koothali. When the Secretary of the first respondent union approached the Director of the respondent institute for getting arrears of minimum wages in February, 2013, the Director informed the union secretary that regarding the arrears all matters are entrusted with the Superintendent of the farm. Therefore, the union filed representation before the Superintendent who preferred a calculation statement. Ext.P12 is the letter dated 2.3.2013 given by the Secretary of the first petitioner and the claim statement

prepared by the Superintendent of the second respondent. There was no action in the matter.

16. The first petitioner sent notices dated 11.4.2013 to the respondents. The petitioners allege that as a counter blast to the notices, order dated 16.4.2013 denying employment from 22.4.2013 was served on the Secretary of the first petitioner on 17.4.2013. Ext.P13 is the copy of the said order. In Ext.P13 communication dated 15.4.2013, the petitioners were informed that they will be entitled to get ₹300/- as minimum wages and therefore, the excess amounts paid would be recovered. Aggrieved by Ext.P13, the petitioners filed W.P(C) No.11576 of 2013. In the meanwhile, the management called the union for a settlement talk.

17. The union had given a petition to the Assistant Labour Commissioner informing the denial of employment. Ext.P16 is the copy of the petition. In the meanwhile, in July, 2013, the first respondent issued notice calculating, the excess amount paid to them

would be recovered at the rate of ₹1,000/- per month from each casual labour with effect from 1.7.2013. Ext.P17 is the office note dated 2.7.2013 issued by the Administrative Officer of the first respondent. After the issuance of Ext.P17, the second respondent started to recover the excess amount paid to the petitioners at the rate of ₹1,000/- per months.

18. The petitioners made Ext.P18 complaint to the Assistant Labour Commissioner. As the proceedings were delayed, the petitioners filed W.P(C) No.26380 of 2013 for fixing a time limit for disposal of Ext.P16 petition. The writ petition was disposed of by Ext.P19 judgment. Therefore, the Administrative Officer of the first respondent filed their objection (Ext.P20) before the Assistant Labour Commissioner. The matters could not be resolved amicably. Therefore, the Assistant Labour Commissioner closed the proceedings as per Ext.P21. The petitioners point out that raising of the industrial disputes and decision by the Labour Court would

consume years for a final decision. Before that time, many of the petitioners would reach superannuation. It is with this background, the petitioners have approached this Court.

19. It was argued by the learned counsel for the petitioners that the salary given to the petitioner by respondents 1 and 2 is very meager now. In the very same estate under the first and second respondents, the contract workers under the contractor were given ₹600/- (for male workers) and ₹400/- (for female workers), for 8 hours. Ext.P23 which is the copy of the request of the Secretary of the first petitioner to the registered contractor of the estate would show the salary of the male workers and the female workers working under the contractor for 8 hours.

20. Ext.P22 certificate dated 19.4.2013 issued by the Senior Agricultural Officer, State Seed Farm P.O., Perambra would show that the petitioners who have more than 15 years service are entitled to get minimum wages at the rate of ₹360/- per day (8 hours work)

and the petitioners who have more than 5 years, upto 15 years service are entitled to get minimum wages @ ₹350/- per day (for 8 hours) together with the dearness allowance payable to the Government employees from time to time. This court finds no reason to place the petitioners on a different footing.

In the result, the writ petitions are disposed of as under:

Respondents 1 and 2 are directed to follow and implement Exts.P6, P7 and P22 produced in W.P(C) No.7764 of 2014 within three months from the date of receipt of a copy of this judgment.

Respondents 1 and 2 are directed to pay salary at the rate of ₹360/- or ₹350/-, as the case may be, along with 45% dearness allowance per day according the year of service with arrears of salary from 1.7.2009 within six months from the date of receipt of a copy of this judgment.

Till the salary is re-fixed at the aforesaid rate, no recovery steps shall be initiated against the petitioners.

The respondents are also directed not to deny employment to the petitioners when the contract workers are engaged in the estate under the contractors.

The respondents are also directed to follow the judgment of this Court in O.P No.27513 of 1999 which was clarified by a Division Bench of this Court in W.A No.1049 of 2008.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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