

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 30893 of 2004 (C)

PETITIONER(S) :

1. C.A.SAHADDEVAN, WATCHMAN,
KERALA WATER AUTHORITY, PUBLIC HEALTH SECTION,
PERUMBAVOOR.

2. K.P.VARGHESE, WATCHMAN,
KERALA WATER AUTHORIT

BY ADVS.SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.LUIZ GODWIN D'COUTH.

RESPONDENT(S) :

1. THE MANAGING DIRECTOR, KERALA WATER
AUTHORITY, 'JALA BHAVAN, VELLAYAMBALAM
THIRUVANANTHAPURAM.

2. THE EXECUTIVE ENGINEER, KERALA WATER
AUTHORITY, PUBLIC HEALTH DIVISION, PERUMBAVOOR.

3. THE ASSISTANT EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, PUBLIC HEALTH SUB, DIVISION
PERUMBAVOOR.

4. THE ASSISTANT ENGINEER, KERALA WATER
AUTHORITY, PUBLIC HEALTH SECTION, PERUMBAVOOR.

5. LABOUR COURT, ERNAKULAM.

R1 TO R4 BY STANDING COUNSEL SRI.MILLU DANDAPANI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P. (C) NO. 30894/2004

APPENDIX

PETITIONERS' EXTS:

EXT.P1- TRUE COPY OF THE COMMON APPOINTMENT ORDER ISSUED BY THE 2ND RESPONDENT IN RESPECT OF THE PETITIONERS NO.E1-3749/87 DT.27.4.1988.

EXT.P2- TRUE COPY OF THE LETTER OF THE SECRETARY, PSC, BEARING NO.AIII (4) 298/88/CW DT.25.11.1992.

EXT.P3- TRUE COPY OF THE DUTY CHART OF THE WATCHERS IN THE DIVISION STORE, PERUMBAVOOR OF THE WATER AUTHORITY DT.9.5.1988.

EXT.P4- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE 2ND RESPONDENT DATED 24.9.1994.

EXT.P5- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE 2ND RESPONDENT DATED 18.4.1995.

EXT.P6-TRUE COPY OF THE CLAIM PETITION NO.62/1996 FILED BY THE 1ST PETITIONER BEFORE THE HONOURABLE LABOUR COURT, ERNAKULAM DT.10.10.1996.

EXT.P7- TRUE COPY OF THE C.P.NO.63/1996 FILED BY THE 2ND PETITIONER BEFORE THE HON'BLE LABOUR COURT, ERNAKULAM DATED 10.10.1996.

EXT.P8- TRUE COPY OF THE JUDGMENT IN C.P.NOS.62/1996 & 63/1996 OF THE HON'BLE LABOUR COURT, ERNAKULAM DATED 29.3.2004.

/TRUE COPY/

P.S. TO JUDGE.

s1.

K. Vinod Chandran, J.

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W.P.(C)No.30893 of 2004

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Dated this the 13th day of January, 2015.

JUDGMENT

1. Petitioners are two workmen, who had filed an application before the Labour Court, Ernakulam for payment of overtime wages between the period 1988 to 1995. Admittedly, the petitioners were appointed as provisional employees in the respondent Authority and subsequently, by reason of the decision of the Hon'ble Supreme Court in **Jacob v. Kerala Water Authority (1990 (2) KLT 673)**, petitioners were directed to be regularised. Petitioners' contention was that they were the only persons appointed as workmen to the Division Store at Perumbavoor and they were made to work for 12 hours in a day alternatively and hence, they are entitled to overtime wages for the work done by them beyond the period of eight hours.
2. Learned counsel would place reliance on the decisions in **Town**

Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and others reported in (A.I.R. 1969 S.C. 1335), Special Officer, Velloore Co-operative Sugar Mills v. Presiding Officer, Labour Court, Velloore and others (2005 LAB I.C. 1594) and Vishram Chandrakant Dalvi v. Daily Publications (Laws (BOM) 2009-7-129) to contend that, legally established rights were entitled to be claimed under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”, for short) and the Labour Court ought to have permitted the petitioner to adduce evidence and proceed with the matter, in accordance with the provisions of Section 33C(2) of the Act.

3. The order impugned is Ext.P8, in which a preliminary finding was entered by the Labour Court that the matter is not entitled to be proceeded with under Section 33C(2), since, the right, claimed by the workmen, involved an investigation as to the determination of the claimant's right and the corresponding liability of the opposite party.

Such investigation was held to be outside the purview of Section 33C(2) of the Act.

4. On going through the common order at Ext.P8, it is indicated that, both the workmen claimed to have been posted at the Division Store, Perumbavoor and they alleged engagement in 12 hour duty, in a day, as Watchman, for which, a consequential claim was raised for overtime wages. The respondent filed a written statement, denying the claim and also challenging the maintainability of the application under Section 33C(2), for the alleged reason of there being no enforceable existing right to receive a monetary benefit.
5. Petitioners are said to be appointed provisionally as Watchmen in a scale of pay as per order dated 27.4.1988. The appointments were said to be provisional and was liable to be terminated on completion of 179 days or as and when the regular hands join duty. The provisional appointment was extended for various periods and as per the decision in **Jacob's** case (*supra*), petitioners and other similarly

placed persons were directed to be regularised as per order dated 27.4.1988.

6. It was contended that, there was no specification of duty hours for the provisional appointment and the petitioners were obliged to work for 12 hours and they were the only persons appointed at Division Store, Perumbavoor. Duty was said to be arranged as Day and Night Watchman and hence, there was no special right or award in terms of overtime allowance and there is no question of quantification or computation of any monetary benefits, without an adjudication of the legal right, was the contention raised by the opposite party.
7. When the matter was pending, the opposite party filed an application for considering the question of maintainability as a preliminary issue. The contention of the opposite party that the petitioners were not amenable to the provisions of the Act was negatived, since, it was found by the Labour court that, the respondent authority would come within the meaning of “industry” under Section 2(j) of the Act.

8. The question looked into, as a preliminary issue, was whether the claim raised by the petitioner is capable of determination under Section 33C(2) of the Act. The Labour Court, having found that the respondent authority is an industry coming within the meaning of Section 33C(2). The respondent authority, had also clearly admitted that the petitioners were the only persons engaged in the Division Store, having day and night duty. The Labour Court, on such admission, ought to have decided on the question as to whether the petitioners have to be permitted to adduce evidence as regards the question of overtime wages. The facts, as stated by the Labour Court in its award, disclose that the petitioners were asked to work for 12 hours continuously and the claim arises from the overtime work they have admittedly done. The petitioners were directed to put in hours beyond the normal working hours specified. If such overtime work was directed to be put in, then the question as to the source from which a right arises to the claim for overtime wages was payable had

to be looked into.

9. The Labour Court ought to have examined whether the service conditions of similarly placed employees specify the duty hours and entitle such workmen to overtime wages for duty beyond the specified working hours. The specification, as to normal working hours in an industry as regulated by the various welfare enactments also had to be examined. If, on such examination, a right is discernible, definitely the workman would be entitled to claim it under Section 33C(2), since then it falls for no adjudication of such right.

10. This Court is of the opinion that the same could not have been decided as a preliminary issue and necessarily, the Labour Court ought to have permitted both the petitioners and the respondent to adduce evidence and if there was an adjudication necessitated with respect to such right, then the Labour Court ought not to have proceeded under Section 33C(2) of the Act. However, such a

procedure was not adopted. It was incumbent on the Labour Court to permit the petitioners to adduce evidence before rendering a decision on the application under Section 33C(2).

11.In such circumstances, Ext.P8 is set aside and the claim petition bearing Nos.C.P.62/96 and 63/96 shall be restored to the files of the Labour Court, Ernakulam. The parties shall appear before the Labour Court on 27.1.2015 and after permitting both the parties to adduce evidence, the matter shall be considered expeditiously, at any rate, within a period of six months from the date of receipt of a certified copy of this judgment.

Writ petition is disposed off.

Sd/-

K. Vinod Chandran, Judge.

sl.

(true copy)