

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 19825 of 2015 (C)

PETITIONER(S):

1. JIJO JOSEPH GEORGE, AGED 25 YEARS,
S/O GEORGEKUTTY P.J., PORUNNARAPALLIL HOUSE,
KALAVAMKODAM P.O.- 688 583, CHERTHALA,
ALAPPUZHA DISTRICT.
2. SANOOP.T, AGED 27 YEARS,
S/O CHANDRAN, THUNDIYIL HOUSE, PUTHUPANAM,
VADAKARA-673 105, KOZHIKODE DISTRICT.
3. PRAVEEN T.N., AGED 27 YEARS,
S/O NAAYANAN NAIR T.N., THAZHENJARAKKATU HOUSE,
CHULLOR P.O., 673 601, NIT, KOZHIKODE DISTRICT.

**BY ADVS.SRI.P.SAMSUDIN
SRI.K.C.ANTONY MATHEW
SRI.JITHIN LUKOSE**

RESPONDENT(S):

1. ASSISTANT LABOUR OFFICER,
KOZHIKODE THIRD CIRCLE, KOZHIKODE-673 020.
2. P. MOHANDAS, PROPRIETOR NEELAKANDAN
AUTOMOBILE MECHANICAL ENGINEERING,
PUTHIYANGADI P.O-673 021, PUTHIYAPPA,
KOZHIKODE DISTRICT.

R1 BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE GAZETTE NOTIFICATION DATED 26.12.2014.
- EXHIBIT P2: TRUE COPY OF THE SSI REGISTRATION CERTIFICATE DATED 27.5.2011 ISSUED TO 2ND RESPONDENT.
- EXHIBIT P3: TRUE COPY OF THE AGREEMENT DATED 6.7.2011 ENTERED IN TO BETWEEN THE ASST. EXECUTIVE ENGINEER PWD MECHANICAL SUB DIVISION KOZHIKODE AND THE 2ND RESPONDENT.
- EXHIBIT P4: TRUE COPY OF THE GAZETTE NOTIFICATION DATED 4.6.2013 SHOWING THE NAME OF APPROVED WORK SHOPS.
- EXHIBIT P5: TRUE COPY OF THE RELEVANT PAGES OF THE MUSTER ROLL MAINTAINED BY THE 2ND RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE RELEVANT PAGES OF THE WAGE REGISTER MAINTAINED BY THE 2ND RESPONDENT.
- EXHIBIT P7: TRUE COPY OF THE EXPERIENCE CERTIFICATES ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- EXHIBIT P8: TRUE COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.
- EXHIBIT P9: TRUE COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE 2ND RESPONDENT TO THE 3RD PETITIONER.
- EXHIBIT P10: TRUE COPY OF THE GENERAL CONDITIONS
- EXHIBIT P11: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT IN RESPECT OF THE 1ST PETITIONER.
- EXHIBIT P12: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT IN RESPECT OF THE 2ND PETITIONER.
- EXHIBIT P13: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT IN RESPECT OF THE 3RD PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A. TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19825 of 2015

Dated this the 20th day of July, 2015

J U D G M E N T

The petitioner has approached this Court aggrieved by the refusal of the 1st respondent in attesting the experience certificate issued by the employer of SSI unit as per the Kerala Minimum Wages Rules, 1958.

2. The petitioner, who are aspirants to the post of Assistant Motor Vehicles Inspector, appeared for the written test on 30.04.2015. According to them, shortly, the KPSC is expected to require the petitioners to produce the experience certificate to short list the candidates. The petitioners have completed B.Tech degree in Mechanical/Automobile Engineering and thereafter, worked in a government recognized, reputed "A" grade automobile workshop, namely, M/s Neelakandan Automobile Mechanical Engineering, Kozhikode. The employer issued Exts.P7, P8 & P9

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experience certificates. The petitioners point out that as per Ext.P10 general conditions, the experience certificate has to be attested by the enforcement officer as per the Act or Rule, under which the establishment is registered. The petitioners submitted experience certificates for attestation before the 1st respondent, who is the enforcement officer under the Minimum Wage Act. He, in turn, inspected the establishment on 19.06.2015; and the workers deposed before him that the petitioners had been working in the establishment as regular mechanics. The employer also produced the muster roll and wage register, containing the names of the petitioners. But, as the registers were not regularly countersigned by the ALO, the 1st respondent refused to accept the same. Vide Exts.P11, P12 & P13 dated 25.06.2015, the 1st respondent refused to attest the certificates saying that the proprietor of the workshop could not produce the records relating to the employment of the petitioners in the workshop. The petitioners point out that as per

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notification, SRO No.635/1997, the 1st respondent is appointed as the officer for the purpose of S.19 of the Minimum Wages Act to exercise all powers under Section 19(2) of the Act; and it is the obligation of the ALO to regularly visit the work place, verify the registers maintained by the employers, ensure conducive atmosphere for work for labourers and ensure proper payment of wages. For the dereliction of the duty of the then ALO, neither the employer nor the employee is at fault; it is alleged. Aggrieved by Exts.P11, P12 & P13, the petitioners have come up before this Court.

3. A statement has been filed by the 1st respondent.

4. Heard the learned counsel for the petitioners and the learned senior Government Pleader.

5. The learned counsel for the petitioners invited my attention to Ext.P5 wages register and Ext.P6 muster roll, which show that the petitioners had actually worked under the 2nd respondent. According to the learned

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counsel for the petitioners, the latches and negligence of the Labour Officer to cross-check the wage register and muster roll is not because of the fault of the employer or employee; and the petitioners cannot be found fault with the same. It was also pointed out that the finding in Exts.P11, P12 and P13 that the establishment is registered under the Shops and Commercial Establishments Act only in 2014; and during the period, in which the petitioners worked in the establishment, it is not registered under the above Act is against the general conditions. The learned counsel invited my attention to para 21 of the General Conditions, which provides that work experience in registered private sector undertakings is also counted as experience. Registered private sector undertaking means small scale industrial units registered with the industrial development commissioner. The 2nd respondent establishment is registered with the industries department and as such, the finding that for want of registration under the Shops

and Commercial Establishments Act, the certificates cannot be attested is untenable; according to the learned counsel for the petitioners.

6. The learned counsel for the petitioner also invited my attention to WP(C) No.7587/2011, wherein it was held that the Assistant Labour Officer shall conduct an enquiry with the employer and the establishment and ascertain whether the petitioner had actually worked in the workshop during the period and it can also be based on the information collected by the oral enquiry with the employer as well as the employees of the workshop or persons nearby and if it is found on such enquiry that the petitioner had in fact worked in the said workshop during that period, the Assistant Labour Officer shall attest the experience certificate.

7. In the case on hand, the 1st respondent has stated that his enquiry revealed that the petitioners were employees of the said workshop, but, the employer failed to produce any document showing that the petitioners

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were employed by him. It is for this reason, the attestation was denied. As the 1st respondent is bound to attest the experience certificates on the basis of the information gathered by him in his personnel enquiry in the work place and surroundings, this Court is of the definite view that the petitioners are entitled to get the relief as prayed for.

In the result, the writ petition is allowed.

Exts.P11, P12 & P13 are quashed. The 1st respondent is directed to attest Exts.P7, P8 & P9 experience certificates within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-