

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 25825 of 2010 (C)

PETITIONER(S):

**ABHINAND.A.A., PROPRIETOR,
M/S.ARIMBOOR TRADERS, KARSHAKA NAGAR, KODANNUR P.O.
THRISSUR.**

BY ADV. SRI.M.PASHOK KUMAR

RESPONDENT(S):

- 1. THE REGIONAL JOINT LABOUR COMMISSIONER,
CIVIL STATION, KAKKANAD, ERNAKULAM - 682 030**
- 2. THE DISTRICT LABOUR OFFICER,
THRISSUR - 680 001**
- 3. P.V.RAJAN, S/O.VELAYUDHAN,
PADIVATTOM VEEDU, VENGINISSERY, PARALAM P.O.
THRISSUR DISTRICT - 680 575**

**R,R3 BY ADV. SRI.P.RAMAKRISHNAN
R BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1	COPY OF THE LETTER DATED 24.4.08.
EXT.P2	COPY OF THE COMPLAINT DATED 6.8.08.
EXT.P3	COPY OF THE NOTICE DATED 23.5.08.
EXT.P4	COPY OF THE LETTER DATED 6.6.08.
EXT.P5	COPY OF THE REPLY DATED 6.6.08.
EXT.P6	COPY OF THE 2ND PETITION FILED BY THE 3RD RESPONDENT.
EXT.P7	COPY OF THE OBJECTION DATD 31.7.08.
EXT.P8	COP OF THE ORDER DATED 24.12.08.
EXT.P9	COPY OF THE ORDER DATED 01.01.2010.

RESPONDENTS EXHIBITS: **NIL**

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.25825 of 2010 - C

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Dated this the 31st day of March, 2015

J U D G M E N T

The petitioner, running an establishment, is aggrieved by Ext.P9 order passed by the appellate authority, Kerala Headload Workers Act, 1978 (for brevity, 'the KHW Act'), reversing the order at Ext.P8. The 3rd respondent herein raised a dispute before the Assistant Labour Officer under Section 21 of the KHW Act contending that, he had been employed regularly as a loading and unloading worker in the petitioner's establishment and that he was denied employment.

2. Conciliation proceedings were initiated and on failure, the same was referred to the District Labour Officer. On the undertaking of the petitioner that, he is willing to take back the 3rd respondent in employment, the District Labour Officer passed Ext.P8 order. The petitioner did not challenge Ext.P8 order. Even now, the petitioner

submits that, the petitioner was ready to take the 3rd respondent back in employment, but, he never approached the petitioner. The specific contention taken up is that, the 3rd respondent has abandoned his employment with the petitioner.

3. The 3rd respondent however, aggrieved with Ext.P8 filed an appeal before the appellate authority, in which there was a direction to pay salary for six months and bonus for six years. It is to be primarily noticed that, there is no jurisdiction conferred on the authorities under the KHW Act since, the 3rd respondent does not have a case that, the 3rd respondent is an attached worker under the petitioner, having obtained registration under Rule 26A of the Kerala Headload Workers Rules, 1981.

4. In any event, the question of jurisdiction may not arise insofar as Ext.P8 order is concerned, since, the petitioner has acquiesced to the said jurisdiction and has also undertaken to take back the worker into employment. However, the contention now raised is as to the

abandonment of employment by the 3rd respondent. The appellate authority could not have issued any order for payment of wages or bonus, since the 3rd respondent is not covered under the KHW Act. Any claim for denial of employment or other benefits would have to be agitated before the appropriate Forum under the Industrial Disputes Act, 1947 or the Kerala Shops and Commercial Establishments Act, 1960.

5. The modification made in Ext.P9 by the appellate authority under the Act is without jurisdiction. In such circumstance, Ext.P9 would stand set aside. The 3rd respondent would be left open to his remedies to challenge the alleged denial of employment.

The writ petition would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge