

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 37342 of 2009 (K)

PETITIONER :

1. TOMY DOMINIC, THURUTHEL HOUSE,
UDUMBANNOOR P.O., THODUPUZHA.

**BY ADVS.SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA**

RESPONDENT(S):

1. REGIONAL JOINT LABOUR COMMISSIONER,
ERNAKULAM.
2. DISTRICT LABOUR OFFICER,
IDUKKI , THODUPUZHA.
3. JOB DEVASSIA, KARAMANNIL,
UDUMBANNOOR P.O., KIZHAKKUMPADAM,
THODUPUZHA.

**R1 AND R2 BY ADV. GOVERNMENT PLEADER SRI.T.J.MICHAEL
R3 BY ADV. SRI.A.C.DEVASIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 37342 of 2009 (K)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 : TRUE COPY OF APPLICATION SUBMITTED BY THE 3RD RESPONDENT
BEFORE THE 2ND RESPONDENT.**
- EXT.P2 : TRUE COPY OF ORDER DATED 23.4.08 OF THE 2ND RESPONDENT.**
- EXT.P3 : TRUE COPY OF ORDER DATED 22.10.08 OF THE 1ST RESPONDENT.**
- EXT.P4 : TRUE COPY OF ORDER DATED 29.11.08 PASSED BY THE 2ND
RESPONDENT.**
- EXT.P5 : TRUE COPY OF MEMORANDUM OF APPEAL FILED BY THE 3RD
RESPONDENT.**
- EXT.P6 : TRUE COPY OF ORDER DATED 2.6.09 OF THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS : **NIL**

/TRUE COPY/

PA TO JUDGE

VS

K.VINOD CHANDRAN, J

W.P.(C) No.37342 of 2009

Dated this the 20th day of January, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P6 order of the appellate authority under the Kerala Coconut Palmyra and Arecanut Tree Climbers Welfare Scheme - 1980. The petitioner in fact is not affected by Ext.P6, since it only deals with exgratia financial assistance to an employee as defined under the scheme. On such employee suffering an employment injury or meeting with a fatal accident, the provisions of the scheme lays down a procedure for grant of exgratia financial assistance, Paragraph 4 is the grant of financial assistance and Paragraph 5 is the procedure for verification of the application. Paragraph 5 doesn't indicate a judicial proceeding or a quasi-judicial proceeding. What is indicated in paragraph 4 and 5 of the aforesaid scheme is only a fact finding machinery as to whether the employee who has suffered the injury, or has been fatally injured, has been so injured in an accident arising out of and in the course of employment.

2. The facts relating to the aforesaid writ petition are that, the third respondent herein suffered a fall which was said to be in the course of employment in the petitioner's property. Ext.P1 application was filed under the scheme before the District Labour Officer, which was rejected by Ext.P2. An appeal filed before the Regional Labour Commissioner was allowed by Ext.P3 order of remand. Again District Labour Officer considered the claim and rejected it by Ext.P4. The appellate authority on a further appeal allowed the claim as per Ext.P6.

3. The petitioner is aggrieved in so far as the findings that the employment injury occurred while in the employment of the petitioner would affect the determination of an employees compensation claim filed before the appropriate authority under the Employees Compensation Act, 1923.

4. As was noticed above, there is no adjudication prescribed under the scheme. The employer is not mulcted with any liability as per the scheme, nor is

there a definition of employer in the scheme. The authority has to only consider as to whether the injury or death occurred out of an accident in the course of an employment.

5. There is no scheme by which the employer-employee relationship has to be found, and not even a notice is contemplated against the employer. No participation of the employer is also contemplated by this scheme. The authority under the scheme has in the instant case taken evidence and it is clear that the petitioner was also examined. However the findings rendered in Ext.P6 would not stand against the petitioner, in so far as the employers compensation claim is considered. The grant of financial assistance as per the scheme need not be interfered with since the assistance is given by the Government, and the same is said to have been paid. However the petitioner cannot be held down to the findings in the impugned order, since necessarily the authorities under the scheme could not decide upon the employer-employee relationship between parties.

The writ petition is disposed of, making it clear that the findings in Ext.P6 shall not be binding on the authority under the Employees Compensation Act.

Sd/-
K.VINOD CHANDRAN
JUDGE

/TRUE COPY/

PA TO JUDGE

VS