

Rajeev Vs. the Director of Industries and Commerce

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Court : Kerala

Decided On : Oct-29-2013

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Rajeev

Respondent : The Director of Industries and Commerce

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 29TH DAY OF OCTOBER 2013 7TH KARTHIKA, 1935 WP(C).No. 11160 of 2013 (T)

----- PETITIONER(S): ----- 1. RAJEEV, AGED 39 YEARS S/O. LATE GANGADHARAN, RESIDING AT NELLIVILA VEEDU, KUZHIYAM THEKKU, CHANDANATHOPE P.O., KOLLAM.

2. CLETUS, AGED 46 YEARS, S/O. LATE LAWRENCE RESIDING AT KOCHUVILA VADAKKATHIL, VELLIMON WEST P.O., KUNDARA, KOLLAM. BY ADV. SRI.JOHNSON GOMEZ RESPONDENT(S): ----- 1. THE DIRECTOR OF INDUSTRIES AND COMMERCE AND REGISTRAR OF INDUSTRIAL CO-OPERATIVE SOCIETIES, VIKAS BHAVAN, THIRUVANANTHAPURAM-695 033.

2. THE PERINAD CASHEW WORKERS INDUSTRIAL CO-OPERATIVE SOCIETY LTD.NO. S IND(Q)NO.349, CHEMMAKKAD P.O., PIN-691 601,

KOLLAM, REPRESENTED BY ITS ADMINISTRATOR, THE DISTRICT MANAGER, DISTRICT INDUSTRIAL CENTRE, ASRAMOM, KOLLAM.

3. THE KERALA STATE CASHEW WORKERS APEX INDUSTRIAL CO-OPERATIVE SOCIETY LTD., HAVING ITS REGISTERED OFFICE AT MUNDAKKAL KOLLAM-691 001 REPRESENTED BY ITS MANAGING DIRECTOR.

4. THE MANAGING DIRECTOR THE KERALA STATE CASHEW WORKERS APEX INDUSTRIAL CO-OPERATIVE SOCIETY LTD. HAVING ITS REGISTERED OFFICE AT MUNDAKKAL KOLLAM-691 001.

5. THE MANAGER, THE PERINAD CASHEW WORKERS INDUSTRIAL CO-OPERATIVE SOCIETY LTD.NO.S IND(Q)NO.349 CHEMMAKKAD P.O., KOLLAM-691 601. BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR BY GOVERNMENT PLEADER SRI.P.M.SAMEER THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-10-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 11160 of 2013 (T)

----- APPENDIX PETITIONER(S)' EXHIBITS
----- P1 : COPY OF THE REGISTERED BY LAWS OF THE 3D RESPONDENT CO- OPERATIVE SOCIETY. P2 : COPY OF THE DTD.20.11.2010 ISSUED BY THE 5H RESPONDENT TO THE PETITIONERS. P3 : COPY OF THE TRANSFER

ORDER

DTD.4.8.2012 ISSUED BY THE 5H RESPONDENT TO THE 1T PETITIONER. P4 : COPY OF THE TRANSFER

ORDER

DTD.4.8.2012 ISSUED BY THE 5H RESPONDENT TO THE 2D PETITIONER. P5 : COPY OF THE PROCEEDINGS NO.HC/C2/30128/93 DTD.16.10.1993 ISSUED BY THE 1T RESPONDENT. P6 : COPY OF THE REPRESENTATION DTD.6.8.2012 SUBMITTED BY THE PETITIONERS BEFORE THE 1T RESPONDENT. P7 : COPY OF THE

JUDGMENT

DTD.9.11.2012 IN WPC NO.18722/2012 PASSED BY THIS HON'BLE COURT P8 : COPY OF THE MINUTES OF THE HEARING DTD.17.1.2013 ISSUED BY THE1T RESPONDENT. P9 : COPY OF THE LIST OF DOCUMENTS FILED BY THE COUNSEL FOR THE PETITIONER. P10: COPY OF THE

ORDER

NO.H.C/C3/15549/12 DTD.13.3.2013 ISSUED BY THE1T RESPONDENT. P11: COPY OF THE DECISION OF THE BOARD OF DIRECTOR OF CAPEX NO.38 DTD.23.12.1985 ISSUED BY THE3D RESPONDENT. //true copy// P.A.To Judge Mrcs K.VINOD CHANDRAN, J - - - - - W.P.(C).No. 11160 of 2013 - - - - - Dated this the 29th day of October, 2013 - - - - -

JUDGMENT

The petitioners are admittedly employees of the 2nd respondent/Society who have now been transferred to the Filling Unit of the 3rd respondent Society at Kollam itself.

2. The short contention raised by the petitioners is that respondents 2 and 3 are independent Societies though the 3rd respondent is the Apex Society of the 2nd respondent/Society. The Societies being two separate legal entities, the employees are not interchangeable nor can an employee of one Society be transferred to the other. The 2nd respondent/Society admittedly is under the management of an Administrator. While the petitioners were continuing as Vitapacker and Twinker, by a memo dated 20.11.2010, produced as Ext.P2, they were transferred from the Filling Unit of the 2nd respondent to the Filling Unit of the 3rd respondent. The petitioners contended that they were being shifted at the dictates of the Managing Director of the 3rd respondent/Society as is evident from the letter referred to in Ext.P2. The petitioners hence made WP(C).11160/13 2 representation before the concerned authorities and no action was taken to transfer them. However, again by Exts.P3 and P4, they were asked to report before the Managing Director of the 3rd respondent.

3. The petitioners rely on Ext.P5, an order of the 1st respondent in the case of another employee of a Primary Society wherein a similar situation had come to the

fore and the Managing Director of the CAPEX was held to be not having jurisdiction to transfer employees between the Primary Cashew workers Industrial Co-operative Societies under the Apex Society. The petitioners approached the 1st respondent by Ext.P6 and obtained a direction from this Court evidenced by Ext.P7 wherein the representation was directed to be considered.

4. Before the 1st respondent, the 3rd respondent contended that they have administrative and financial control over the Primary Cashew Workers Co-operative Societies working under the Apex Society. It was also contended that the salary was paid by the Apex Society and that the salary is fixed by the Industrial WP(C).11160/13 3 Related Committee. In such circumstances, a contention was raised that all the employees of the Primary Societies were treated as employees of the CAPEX and that they are liable to be transferred amongst the primary Societies as also to the Apex Society. By Ext.P8, the 1st respondent noticed the said contentions and directed the Apex Society to produce relevant records to prove their contentions. Subsequently, Ext.P10 order was passed which is assailed in this writ petition.

5. Ext.P10 does not at all inspire confidence since in page 2 of the said order, the 1st respondent states unequivocally that some documents were produced by the Apex Society and hearing was last conducted on 31.01.2013. However, the documents referred to were dated later i.e., 05.02.2013. In fact, Ext.P10 order reiterates the submission of the apex Society as was recorded in Ext.P8 and merely comes to a finding that the administrative control of the Primary Society is in fact vested with the Apex Society. The documents which evidence the same have not been referred to and neither are the bye-laws of the Apex Society or the Primary Society seen perused before coming to such conclusion. Ext.P10 hence, cannot be sustained WP(C).11160/13 4 for reasons of total non application of mind. Ext.P10 is liable to be set aside.

6. In the circumstances, there shall be a direction to the 1st respondent to reconsider the representation filed by the petitioners and come to a decision after going through the bye-laws of the Societies and also the documents which would evidence administrative control of the Primary Society by the Apex Society.

Necessarily, the question of transferability of the petitioners from the Primary Society to the Apex Society also would have to be considered in the light of Ext.P5 decision taken by an Officer occupying the 1st respondent's office. Reasons also have to be recorded in case, the present incumbent in the office of the 1st respondent, now, comes to a different finding from Ext.P5. For the purpose of reconsideration of the representation, Ext.P10 is set aside and the 1st respondent is directed to reconsider the same after affording an opportunity of hearing to both the petitioners and the Apex Society as also the Primary Society. The petitioners shall appear before the 1st respondent on 11.11.2013 and the matter shall be concluded within two months from the said WP(C).11160/13 5 date. The petitioners, if they have not already joined the Filling Unit of the 3rd respondent, shall not be transferred, till a decision is taken as aforesaid. Writ petition is disposed of as above. No costs. Sd/- K.VINOD CHANDRAN, Judge mrcs

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