

Abdul Rasheed vs State of Kerala,

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Court : Kerala

Decided On : Sep-23-2022

Judge : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr.Justice C. Jayachandran

Appeal No. : OP(FT)/1/2020

Appellant : Abdul Rasheed

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 23RD DAY OF SEPTEMBER 2022 / 1ST ASWINA, 1944 OP(FT) NO. 1 OF 2020 AGAINST THE ORDER in I.A.98/2019 & 99/2019 IN O.A. 31/2011 OF FOREST TRIBUNAL, KOZHIKODE DATED 28.10.2019 PETITIONER: ABDUL RASHEED AGED 32 YEARS S/O.MOIDU.K.N., KARIVETTINJALIL HOUSE, MALA.P.O., KAKKATTIRI, PALAKKAD DISTRICT, REPRESENTED BY POWER OF ATTORNEY HOLDER K.N.MOIDU, AGED 62 YEARS, S/O.THAREEKUTTY @ MANU HAJI, KARIVETTINJALIL HOUSE, MALA.P.O., KAKKATTIRI, PALAKKAD

DISTRICT. BY ADV K.P.BALAGOPAL RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY (FOREST AND WILDLIFE), SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 THE CUSTODIAN OF VESTED FORESTS, ARANYA BHAVAN, FOREST COMPLEX, OLAVAKKODE.P.O., PALAKKAD-678002. OTHER PRESENT: SRI.NAGARAJ NARAYANAN, SPECIAL GP (FOREST) THIS OP (FOREST TRIBUNAL) HAVING BEEN FINALLY HEARD ON 23.09.2022, ALONG WITH OP(FT).2/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: - 2 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 23RD DAY OF SEPTEMBER 2022 / 1ST ASWINA, 1944 OP(FT) NO. 2 OF 2020 AGAINST THE ORDER IN I.A. NO. 95/2019 AND 96/2019 IN OA NO PETITIONER: SHAMSIYA AGED 30 YEARS W/O.ABDUL RASHEED, KARIVETTINJALIL HOUSE, MALA.P.O., KAKKATTIRI, PALAKKAD, REPRESENTED BY POWER OF ATTORNEY HOLDER K.N.MOIDU, AGED 62 YEARS, S/O.THAREEKUTTY @ MANU HAJI, KARIVETTINJALIL HOUSE, MALA.P.O., KAKKATTIRI, PALAKKAD DISTRICT. BY ADV K.P.BALAGOPAL RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY (FOREST AND WILDLIFE), SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 THE CUSTODIAN OF VESTED FORESTS, ARANYA BHAVAN, FOREST COMPLEX, OLAVAKKODE.P.O., PALAKKAD-678002. BY ADV SHRI.NAGARAJ NARAYANAN, SPL. G.P. (FOREST) THIS OP (FOREST TRIBUNAL) HAVING BEEN FINALLY HEARD ON 23.09.2022, ALONG WITH OP(FT).1/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: - 3 - K. Vinod Chandran & Jayachandran.C, JJ.

----- O.P(FT) No. 1 & 2 of 2020

----- Dated, this 23rd September,

2022.

JUDGMENT

K.Vinod Chandran, J.

The petitioners in the above original petitions are husband and wife and the subject matter is restoration of the respective O.A's, dismissed by the Tribunal for default. There was also delay of 649 days in filing the petition for restoration, both of which stood dismissed by the learned Tribunal. The contentions are similar, in so far as, the husband and wife were abroad and the husband not being able to get leave to prosecute the O.A, and file application for restoration. The learned Tribunal after due consideration rejected the applications on the ground of no sufficient cause having been shown to condone the delay, no substantiation having been made with respect to the grounds urged and the divergent stand taken by the power holder, who was examined as PW 1, before the Tribunal.

2. Both the O.As stood dismissed for default, on 17.8.2017 for

reason of the learned counsel appearing for the applicants having submitted no instructions, especially since the applicants having - 4 - not turned up, even after issuance of a registered notice. PW 1 is the father of the petitioner in O.A. 1 of 2020 and the father-in-law of the petitioner in O.A. 2 of 2020. According to PW 1, immediately on dismissal of the O.A. on 17.8.2017, the fact was intimated to his son and daughter. However a power of attorney was executed only in the year 2019, at the foreign state after which the O.A. was filed. While the petitioner in O.P. 2 of 2020, in the affidavit accompanying the petitions, stated that she was unable to come to India for reason of her husband having not been granted leave; before Court, PW 1 deposed that she herself was a part time employee who could not get leave. There was nothing produced to show the employment of either of the petitioners nor was the ground of refusal of leave by the employer, substantiated. As far as the petitioner in O.P. 1 of 2020, he admits that he had come to India in between, but contends that he was not able to come to his native place. While the said petitioner asserts that he could not get leave, he does not have any explanation as to how he came to India while he was regularly working abroad. As

specifically noticed by the Tribunal, there is also no explanation as to why a power of attorney was not executed earlier and the applications filed within a permissible period of time. We are in full agreement with the orders of the - 5 - Tribunal and we reject the original petitions. The parties are left to suffer their costs. Sd/- K.Vinod Chandran, Judge Sd/ Jayachandran.C, sks/- Judge - 6 - APPENDIX OF OP(FT) 1/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE I.A.NO.98/2019 IN O.A.NO.31/2011 FILED BEFORE THE TRIBUNAL BELOW TO CONDONE THE DELAY. EXHIBIT P2 TRUE COPY OF THE I.A.NO.99/2011 IN

O.A.NO.31/2011 FILED BY THE PETITIONER TO RESTORE THE ABOVE ORIGINAL APPLICATION DISMISSED FOR DEFAULT ON 17.8.2017.

EXHIBIT P3 TRUE COPY OF THE COMMON ORDER DATED 28.10.2019 IN I.A.NO.98/2019 AND I.A.NO.99/2019 IN O.A.NO.31/2011 OF THE FOREST TRIBUNAL. - 7 - APPENDIX OF OP(FT) 2/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE I.A.NO.95/2019 IN O.A.NO.19/2011 FILED BY THE PETITIONER/APPLICANT TO CONDONE THE DELY. EXHIBIT P2 TRUE COPY OF THE I.A.NO.96/2019 IN

O.A.NO.19/2011 FILED FOR RESTORATION OF THE ORIGINAL APPLICATION O.A.NO.19/2011 BEFORE THE FOREST TRIBUNAL. EXHIBIT P3 TRUE COPY OF THE COMMON ORDER DATED 28.10.2019 IN I.A.NO.95/2011 IN O.A.NO.19/2011 AND I.A.NO.96/2019 IN O.A.NO.19/2011 OF THE FOREST TRIBUNAL, KOZHIKODE.

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