

Dasharath Kumar, vs Suresh,

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Court : Kerala

Decided On : Jul-04-2022

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/737/2022

Appellant : Dasharath Kumar,

Respondent : Suresh,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL MONDAY, THE 4TH DAY OF JULY 2022 / 13TH ASHADHA, 1944 WP(C) NO. 737 OF 2022 PETITIONERS: 1 DASHARATH KUMAR, AGED 23 YEARS S/O.UPENDRA RAM, ATK ENTERPRISES, 2 AJAY KUMAR MAHTO, AGED 28 YEARS S/O.DINESH MAHTO, ATK ENTERPRISES, 37/3829-A, EDAPPALLY, COCHIN-682034. 3 ATK ENTERPRISES, REPRESENTED HEREIN BY ITS MANAGER NOUSHAD, S/O. YUSUF, AGED 35 YEARS, RESIDING AT MADEENA MANZIL, NEW MAHI, KANNUR-673311. BY ADV S.SUJIN RESPONDENTS:

1 SURESH, S/O. PRABHAKARAN, AGED 45 YEARS, KOOTHAPILLY HOUSE, EDAPPALLY P.O., ERNAKULAM-682024. 2 THE ASSISTANT LABOUR OFFICER, ERNAKULAM, SECOND CIRCLE, CIVIL STATION, 4TH FLOOR, KAKKANAD, ERNAKULAM-682030. 3 THE DISTRICT LABOUR OFFICER, CIVIL STATION, KAKKANAD, ERNAKULAM-682030. 4 THE CHAIRMAN, KERALA HEAD LOAD WORKERS BOARD, ERNAKULAM DISTRICT COMMITTEE, KUMMENCHERRY BUILDING, T.D. ROAD, ERNAKULAM, KOCHI-682035.

BY ADVS. V.P.PRASAD SRI.S.KRISHNA MOORTHY, SC, KHWWB SRI JUSTIN JACOB, SR. GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Order dated 1.12.2021 of the Appellate Authority under the

Kerala Headload Workers Rules, 1981 accepting the plea of the Secretary of the Union, has been assailed on behalf of the affected parties as well as the owner of the establishment. Petitioner No.3 is the Manager of M/s.ATK Enterprises engaged in the sale and distribution of flooring tiles having godowns at Companypady, Aluva and another at Edappally. At Edappally, the establishment is a showroom-cum-godown. Sri.Dashrath Kumar, Ajay Kumar Mahto and Sajith Kumar, Chandradev Paswan, Virendra Kumar and Ram Jatan Paswan have been engaged for loading and unloading of the aforementioned tiles on permanent basis. An application in Form IX for registration and issuance of identity card was submitted to the Registering Authority i.e., the Assistant Labour Officer, 2 nd

Circle, Ernakulam. Vide order dated 6.12.2019 Registration Authority issued the identity cards. In an appeal preferred by the Union, it was urged that there were 53 headload workers in Pool No.44. When the application was submitted, the business has not been established meaning thereby that the workers were not on the rolls of the establishment. For all intents and purposes Registering Authority did not examine as to whether the establishment was in existence while

entertaining the application for registration.

2. Learned counsel appearing on behalf of the petitioners

submitted that the order of the Registering Authority is dated 6.12.2019 and as per Rule 26(c) of the Rules, limitation to file the appeal is 60 days whereas as per the memorandum of appeal preferred by the Union it is beyond six months. Notice of the appeal purported to have sent to all the persons including the Manager of the establishment, but as per the report received by the Appellate Authority summons sent to petitioners 1 and 2 came back with a report 'not known' and an effort would have been made either to serve personally through petitioner No.3 or through other means. But the matter could not have been decided at the back of the petitioners that too, when the order of the registering Authority has been set aside primarily on the ground that petitioners 1 and 2 along with other workers were not on the rolls

or the establishment had not even commenced business. Even there is no advertence to the appeal having been preferred condoning the delay of limitation. Petitioners would be satisfied in case they are given any opportunity to defend the case in accordance with law and urge all the pleas which had been taken in the present Writ Petition subject to any terms and conditions which this Court may deem appropriate.

3. Learned counsel appearing on behalf of the respondents

opposed the aforementioned prayer and submitted that it is not the case of the petitioners that they were never served with the notices. No explanation has come forth as to why and in what manner they did not present despite the fact that the Manager of the establishment has represented and defended the case. They could have said anything better or more than what the establishment represented. The order under challenge is perfectly legal and justified. In the absence of the objection qua limitation the objection at this stage cannot be taken.

4. I have heard the counsel for the parties and appraised the paper book.

5. Submission of an application in the prescribed form and issuance of the registration and identity cards by the Registering Authority as per the order dated 6.12.2019 is not in dispute.

Petitioner Nos.1 and 2 along with the other persons were directed to enter appearance on 7.1.2021, but they did not turn up and the matter was adjourned to next date on 6.2.2021. While issuing notices on 19.1.2021, notices were returned with the endorsement 'not known'. On receipt of such notice, the Appellate Authority ought not to have proceeded petitioner No.1 and other workers exparte and decided the case against them. There should have

been effective steps to serve the affected parties as the establishment would not have been in a position to defend the individual cases of the workers employed and registered with them. The entire thrust of the order had been that the petitioners did not choose to contest the case and also that the establishment had not even commenced the business by referring to the date of the

application. The said fact cannot have been entertained by the Appellate Authority without any report or complete material on record, which would have been countered by the petitioners, had they been given a chance to contest. For the reasons aforementioned, the impugned order Ext.P9 dated 1.12.2021 is set aside. The matter is remitted to the Appellate Authority to decide the appeal preferred by the Union

afresh in accordance with law after giving all the parties an opportunity by issuing notices whereas the parties present in court or directed to appear before the Appellate Authority on 21.8.2022. The petitioners shall be at liberty to raise all objections with regard to the maintainability of the appeal, limitation and all other materials relevant for adjudication of the matter. Let decision be taken within a period of four months from the date of appearance.

Sd/- AMIT RAWAL JUDGE csl APPENDIX OF WP(C) 737/2022 PETITIONERS' EXHIBITS Exhibit P1 TRUE COPIES OF THE CERTIFICATES IN RESPECT OF THE PETITIONER NO.1 ISSUED BY THE 2ND RESPONDENT ASSISTANT LABOUR OFFICER. Exhibit P2 TRUE COPIES OF THE CERTIFICATES IN

RESPECT OF THE PETITIONER NO.2 ISSUED BY THE 2ND RESPONDENT ASSISTANT LABOUR OFFICER. Exhibit P3 TRUE COPY OF THE JUDGMENT DATED 10/02/2021 IN WPC NO.12355/2020. Exhibit P4 TRUE COPY OF THE NOTICE DATED 22/12/2020 ISSUED BY THE 3RD RESPONDENT. Exhibit P5 TRUE COPY OF THE STATEMENT DATED 06/01/2021 FILED BY THE 3RD PETITIONER. Exhibit P6 TRUE COPY OF THE NOTICE DATED 10/03/2021 RECEIVED BY THE 3RD PETITIONER. Exhibit P7 TRUE COPY OF THE COUNTER STATEMENT DATED Exhibit P8 TRUE COPY OF THE MUSTER ROLE OF THE 3RD

PETITIONER ESTABLISHMENT SIGNED AND SEAL AFFIXED BY THE 2ND RESPONDENT ASSISTANT LABOUR OFFICER IN THE MONTH OF OCTOBER, 2020. Exhibit P9 TRUE COPY OF THE PROCEEDINGS DATED 01/12/2021 ISSUED BY THE 3RD RESPONDENT.

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