

Chacko Vs. State of Kerala

Chacko Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/724432

Court : Kerala

Decided On : Jul-30-1992

Reported in : (1993)ILLJ283Ker

Judge : Sreedharan, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2(OO) and 25FF

Appeal No. : O.P. No. 2065/1988

Appellant : Chacko

Respondent : State of Kerala

Advocate for Def. : Pirappancode V. Sreedharan Nair, Adv. and; V.K. Mohammed Youseff, Government Pleader

Advocate for Pet/Ap. : C.K. Sivasankara Panicker, Adv.

Disposition : Petition allowed

Judgement :

Sreedharan, J.

1. Petitioners, two in number, were Abkari contractors. First petitioner bid in auction certain arrack shops during the financial year 1982-83. He had respondents 3 to 24 under his employment during that period. On expiry of his

licence, he ceased to have any connection whatsoever with the shop on March 31, 1983. Respondents 3 to 24 approached Labour Court, Kollam invoking the provisions under Section 33C(2) of the Industrial Disputes Act claiming retrenchment compensation and notice pay. Their petition was entertained as C.P. 7/1985. Labour Court allowed that petition and directed first petitioner herein to pay a sum of Rs. 693/- each to respondents 3 to 24. The total amount payable by the first petitioner comes to Rs. 15,246/-.

2. Second petitioner was the licensee of certain arrack shops during the Abkari year 1983-84. Respondents 3 to 14 were workers under him. On the expiry of the period of licence, second petitioner ceased to have any connection whatsoever with the shops with effect from March 31, 1984. Respondents 3 to 14 raised a contention that they were retrenched from service with effect from April 1, 1984 and that they are entitled to notice pay and retrenchment compensation. Forgetting this claim, they moved the Labour Court, Kollam by filing CP. 6/1985 invoking the provisions of Section 33C(2) of the Industrial Disputes Act. Labour Court allowed the claim and directed second petitioner to pay a sum of Rs. 822/- each to respondents 3 to 14. The total amount payable by the second petitioner comes to Rs. 9,864/-.

3. Labour Court, Kollam disposed of CP. 6/1985 and CP.7/1985 by Ext. P5 common order dated October 19, 1987. This order is under challenge.

4. The main argument advanced by the learned counsel representing the petitioners is that respondents 3 to 24 were attached to the shops. Petitioners 1 and 2 had only obtained licence from the Government to vend arrack in those shops. On the expiry of the licence, they ceased to have any control whatsoever with the shops. Respondents 3 to 24, who were attached to the shops, were engaged by successive licensee. Their services were not terminated by petitioners. Nor were they retrenched by the petitioners, on the expiry of the licences obtained by them. In this view, it is contended that respondents 3 to 24 were not entitled to notice pay or retrenchment compensation. Contrary view taken by the Labour Court is unsustainable.

5. Rule 3 of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 states that the privilege of vending arrack for any period in any retail shop shall be put to public auction by an officer authorised by Government. Only a person who successfully bids in that auction, has got the right to vend arrack in the retail shop. It is conceded before me that auction is held for each Abkari year. It is from April 1, in an year to March 31, of the succeeding year. The successful bidder is getting the privilege to vend arrack in the shop covered by the licence. He is not having the ownership over the shop. On the expiry of the licence, he has to surrender the right. He has to quit the shop. He cannot assign the shop to anyone, so as to confer on him any right to vend arrack. A licensee, who gets the right, can therefore be considered to have the right to vend arrack only for the year for which he bid the shop in auction. On the expiry of the said period, he ceases to have any connection whatsoever with the shop. If such a licensee engages an employee in his shop, that employment can only be for the term of the licence. An employee who is engaged for a term, has to vacate the employment on the expiry of the term. When he vacates the employment, or when his service is terminated on the expiry of the term, that termination will not amount to retrenchment as defined under the Industrial Disputes Act. Section 2(oo)(bb) states that retrenchment does not include termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry.

6. Petitioners were licensees of arrack shops. First petitioner was the licensee for the Abkari year 1982-83. If he had employed respondents 3 to 24 in the arrack shops during 1982-83, that engagement could have been only for the period covered by the licence. Their engagement was co-terminus with the period of licence. On the expiry of the licence on March 31, 1983, when the services of respondents 3 to 24 were terminated, that termination could never result in retrenchment, as defined in the Industrial Disputes Act. Even according to respondents 3 to 24, their services were terminated with effect from April 1, 1983. On April 1, 1983, first petitioner had no connection whatsoever with the arrack shops in which respondents 3 to 24 were engaged. Retrenchment can only be by an employer of the service of the workman. On April 1, 1983, first respondent was not an employer because he had no right whatsoever over the shops in which

respondents 3 to 24 were engaged on April 1, 1983. So, the termination of the services of respondents 3 to 24 cannot result in retrenchment by the first petitioner.

7. Out of respondents 3 to 24, 3 to 14 were engaged by the second petitioner in the arrack shops bid by him for the period from April 1, 1983 to March 31, 1984. This also would establish the fact that respondents 3 to 14 were not thrown out of employment on April 1, 1983 as they contended in C.P. 7/1985. Second petitioner had the licence to vend arrack in certain shops during the Abkari year 1983-84. During that period, respondents 3 to 14 were engaged by him. That engagement could have been only for a fixed period of one year. On the expiry of that fixed period of one year, when the services were terminated, that termination will not result in retrenchment as per Section 2(oo)(bb) of the Industrial Disputes Act. Learned counsel appearing on either side brought to my notice the decision of this Court in Kollam Taluk Abkari Contractors' Association v. Quilon Chethu Thozhilali Union 1983-II-LLJ-369 and the unreported decision in O.P. 6078/1988. In these cases, the conditions of service of workers attached to toddy shops, who were governed by the provisions of the Toddy Workers' Welfare Fund Act, were dealt with. The conditions of service of workers attached to toddy shops are entirely different from those engaged in arrack shops. So, the abovementioned decisions cannot be of any help in deciding the issue raised in this Original Petition.

8. First petitioner was the licensee of arrack shops during the Abkari year 1982-83. Respondents 3 to 24 were engaged by him during that period. Their engagement could have been only for that one year. When their services were terminated on the expiry of that term, that termination has not resulted in retrenchment as defined in the Industrial Disputes Act. Same is the case with respondents 3 to 14, who were engaged by the second petitioner during the Abkari year 1983-84 in conducting business in the arrack shops bid by him for the year. On the expiry of that period of one year when their services were dispensed with, that termination cannot come within the definition 'retrenchment' under the Industrial Disputes Act. Since respondents 3 to 24 were not retrenched as understood in the Industrial Disputes Act, the provisions contained in S. 25FF has no application. Labour Court, Kollam was clearly in error in allowing CP. Nos. 6/1985 and 7/1985 filed

under Section 33C(2) of the Industrial Disputes Act. Therefore, I quash Ext. P5 order.

Original Petition is allowed in the above terms. I make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com