

**Mohanan Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Oct-12-1993

**Reported in :** (1993)IILLJ1041Ker

**Judge :** B.M. Thulasidas, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 2 and 10(1)

**Appeal No. :** O.P. No. 15885/1992

**Appellant :** Mohanan

**Respondent :** State of Kerala

**Advocate for Def. :** E. Thankappan, Govt. Pleader

**Advocate for Pet/Ap. :** Ashok M. Cherian, Adv.

**Disposition :** Petition allowed

**Judgement :**

**B.M. Thulasidas, J.**

1. Heard counsel for the petitioner and the respondents.

2. The relevant facts are not in dispute. The challenge is to Ext. P- 7 passed by the first re-spondent. Petitioner was employed as a daily rated driver in the office of

the fifth respondent during the period from December 19, 1987 till June 28, 1990. He is a workman under Section 2(5) of the Industrial Disputes Act. He had continuous service of more than 240 days during a period of 12 calendar months preceding the date of termination of service and is, therefore, entitled to the benefit of Section 25F of the Industrial Disputes Act. With respect to the termination of his service, there was a conciliation proceeding, which failed and the matter was referred to the first respondent, who passed the impugned order Ext. P-7, where it was observed that-

'Government have examined the matter in detail. Since the Tourism Department does not come under the purview of the I.D. Act, 1947, there is no need to refer the matter for adjudication. Hence the adjudication of the above issue is declined and is recorded under Section 12(5) of the I.D. Act, 1947'.

According to the petitioner, no attempt had been made to examine the contentions he had raised on the legal aspects of the controversy. He was a daily rated employee and was not appointed to any public service within the meaning of the definition in Rule 2(1) read with Rule 1(15) of the Kerala State and Subordinate Services Rules. These aspects are not in serious dispute. Inasmuch as he had not been appointed to a public service or to post in terms of Section 4 of the Kerala Public Services Act, he seems entitled to urge that the provisions of the Industrial Disputes Act are not excluded in his case. The statement to the contrary in the impugned order, in my view, cannot be supported.

3. The Government Pleader argued that every department of the State exercises sovereign functions and, therefore, is outside the definition of 'industry' to make the provisions of the Industrial Disputes Act inapplicable. I am unable to agree with this submission, particularly in the light of the decisions of the Supreme Court reported in *Bangalore Water Supply and Sewerage Board v. Rajappa* (1978-I-LLJ-349) and *Desraj v. State of Punjab* (1988-II-LLJ-149).

It was held in *Umayammal v. State of Kerala*, (1982-I-LLJ-267) that (pp-273-275).

'An establishment can be taken out of the pale of industry only if it exercises inalienable Governmental functions - sovereign functions strictly understood. Even

though sovereign functions of the State cannot be included in industry, if there are industrial units severable from the essential functions and possess an entity of their own, it may be plausible to hold that the employees of those units are workmen and those undertakings are industries. Sovereign functions strictly understood alone qualify for exemption not the other activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j) of the Act. Where a complex of activities some of which qualify for exemption and others not, involved employees of the total undertaking some of whom are not workmen and some departments are not productive of goods and services if isolated even then the predominant nature of the services and the integrated nature of the department will be true test'.

4. By no stretch of imagination can it be said that Tourism Department discharges sovereign functions to qualify for exemption. As the name itself indicates, it is a department meant to promote tourism to which end it has to devise means to attract tourists and ensure their convenience and safety. Basically its activities have commercial and economic features quite apart from what the State does or is expected to do in the discharge of its sovereign functions. In my view, it is an industry as defined under Section 2(j) of the Act. The petitioner is a workman. The instant dispute between him and the Tourism Department could be subject of reference under Section 10 of the Industrial Disputes Act. The decision taken to the contrary in Ext. P-7 is unsustainable.

5. I set aside Ext. P-7 and direct the first respondent to refer the dispute to the Labour Court under Section 10 of the Industrial Disputes Act, within four weeks of receipt of a copy of this. The Original Petition is disposed of as above.