

Augustine Mathai Vs. Appellate Authority

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Court : Kerala

Decided On : Sep-25-1991

Reported in : (1992)IILLJ780Ker

Judge : Padmanabhan, J.

Acts : Kerala Shops and Commercial Establishment Act, 1960 - Sections 2(4), 2(6), 2(8), 2(15) 3, 10 and 18

Appeal No. : O.P. No. 3273/1987

Appellant : Augustine Mathai

Respondent : Appellate Authority

Advocate for Def. : M.I. Joseph, Adv.

Advocate for Pet/Ap. : Mathai M. Paikeday, Adv.

Disposition : Petition dismissed

Judgement :

Padmanabhan, J.

1. Under Section 18 of the Kerala Shops and Commercial Establishments Act, no employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for reasonable cause and without

giving such employee atleast one month's notice or wages in lieu of such notice. This is subject to the proviso that where services are dispensed with on a charge of misconduct supported by satisfactory evidence at an enquiry held for that purpose no such notice is necessary. An appeal lies before the Deputy Labour Commissioner (Authority) under Sub-section (2) in case of contravention. Petitioner claims that he was an employee under the 2nd respondent-Church for the past 27 years and his services were dispensed with in violation of Section 18. He filed an appeal which was dismissed by the first respondent accepting the preliminary objection of the 2nd respondent that the Church does not come within the definition of 'establishment' under the Act Prayer is to quash Ext. P1 order and for a direction to the first respondent to dispose of the appeal afresh on the merits.

2. Petitioner claims that he was an Accountant under the 2nd respondent and he was denied employment from July 27, 1986 without any charge, notice or enquiry. The fact that he was an Accountant is denied. It is said that he was 6nly elected by the meeting of the parishioners to write the accounts of the Church at the direction of the Vicar for five hours a week (two days in a week on the whole). No better claim is established. It is said that ne refused to write the accounts and present the same before the Yogam and hence he was removed as resolved by the Yogam. Even according to the admission of the petitioner his monthly remuneration was only Rs. 100/- besides some special allowances on festival days. Petitioner complained to the District Labour Officer who held conferences which did not succeed. That is how he approached the first respondent by way of appeal which was dismissed under Et. P1.

3. Petitioner admitted that second respondent-Church is not a commercial establishment as defined in the Act. But his case is that the Church is having commercial and profit making activities and he was employed in that activity and therefore he will come within the purview of the Act. Management of certain plantations and institutions belonging to the Church are said to be the commercial activities. The Church admits having plantations and institutions. But there is nothing to show that they are shops or commercial establishments or that petitioner was in any way employed in connection with them. From the admitted facts what emerges is that he was engaged only in the Church, and that too for

writing account relating to the income derived by the Church and its expenses in connection with the Church activities.

4. The relevant provisions are Sub-sections (4), (6), (8) and (15) of Section 2. Section 2(4) defines 'commercial establishment' as (1) a commercial, industrial, trading, banking or insurance establishment, (2) an establishment or administrative service in which the persons employed are mainly engaged in office work, (3) hotel, restaurant, boarding or eating house, a cafe a other refereshment house, (4) a theatre, or any other place of public amusement or entertainments, and (5) such other establishment as declared by notification to be a commercial establishment. This definition will have to be read along with Section 2(8) which says that an 'establishment' means a shop or a commercial establishment. 'Shop' is defined in Section 2(15) as any premises where any trade or business is carried on or where services are rendered 10 customers and includes offices, store rooms etc used in connection with such trade or business. 'Employee' as defined in Section 2(6) is a person who is wholly or principally employed in and in connection with any establishment. A combined reading of all these provisions will make it clear that even though an administrative service in which persons employed are mainly engaged in office work is included within the definition, an element of trade or commerce including service is essential. All administrative services in which persons employed are mainly engaged in office work cannot come within this scope. That is clear from the exemptions contained in Section 3 as well as from Section 10.

5. Various decisions were cited before me. Thought the decision in A. Karunakaran Nair v. Authority under Payment of Wages Act (1972-I-LLJ-350) held that the office of the personal estate of Palace Controller may come within the definition, it said if the activity is connected with religiou functions it is excluded. The decision in Kurairose v. E.S.I. Corporation (1989-I-LLJ-1) considered the question only in relation to the Employees State Insurance Act where the term 'shop' is not defined. T. Devaswom v. Commissioner (1979-I-LLJ-398 at 400) said that the expression 'an establishment in which persons employed are mainly engaged in office work' would necessarily indicate that the definition am apply only if some other facts are established. The purpose of establishment of the institution,

the function it has to discharge etc are relevant factors. Employees in a Church may be discharging duties exclusively connected with the Church. An establishment in which such work is going on cannot be said to be an establishment coming within the purview of the Act. The decisions in *Sasidharan v. Peter & Karunakaran* (1978 KLT 613) and *V. Sasidharan v. Peter & Karunakaran* (AIR)-1984 SC-1700) considered the question of the office of a lawyer where some intellectual pursuit or activity is carried on and said that cannot be a commercial establishment even if staff members are employed. The same view was taken in *Ramanathan v. State of Kerala* (1991(1) KLT 89) in relation to the office of a Chartered Accountant.

6. Chapter I-A of the Act provides for registration of establishments, Chapter II for hours of work, Chapter III for holidays and leave, Chapter IV for wages, Chapter V for employment of children and women, and Chapter VI for health and safety measures. These and other provisions make it clear when taken along with the various definitions and requirements mentioned above, that the Church and its employment of the petitioner cannot come within the purview of the Act in order to treat it as a commercial establishment. The mere remuneration of the petitioner is indicative of the nature and purpose of his employment. If at all the petitioner could make a claim it could only be under the second part of the definition in Section 2(4) which takes in an establishment or administrative service in which the person employed are mainly engaged in office work. Such an employment itself is not established. Further, that part of the definition itself will have to be read along with the other part as well as definitions in Sub-sections (6), (8) and (15) of Section 2 and the principles laid down in the various decisions mentioned above. I am of the view that the first respondent was justified in accepting the preliminary objection that the Church is not a commercial establishment under the Act. The Church and the employment do not satisfy the requirements of the definitions of commercial establishment, establishment, shop or employment. There is no reason for interference.

O.P. is dismissed. No costs.