

ZainuddIn Vs. Dy. Labour Commissioner and ors.

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Court : Kerala

Decided On : Aug-07-1987

Reported in : (1988)ILLJ225Ker

Judge : Sreedharan, J.

Appellant : Zainuddin

Respondent : Dy. Labour Commissioner and ors.

Judgement :

Sreedharan, J.

1. The question involved falls within very small compass. Second Respondent was an employee of the petitioner. His services were terminated by issuance of a notice dated 22nd January 1983. That notice was delivered to the second respondent on the same day itself. He filed an appeal before the first respondent on 13th April 1983. According to the petitioner the appeal filed on 13th April 1983 was out of time and so the first respondent should not have entertained the appeal. In this view the order passed by the first respondent in that appeal, namely Ext. P1, is illegal and has to be quashed.

2. Rule 3 of the Kerala Shops and Commercial Establishments Rules, 1961 provides that an appeal under Section 18 of the Act should be preferred by the employee within 60 days from the date of delivery of the order terminating his services with the employer. It further states that the date of 60 days should be reckoned from the date on which the order is delivered to the employee either personally or by prepaid registered post etc., and the date of delivery should be taken as the date when the letter would have reached the employee in the ordinary course of post. The notice terminating the services of the second respondent was dated 22nd January 1983. It was delivered to the second respondent on the same day. Therefore, it is argued that the period of 60 days must be counted from 22nd January 1983 and that the appeal filed on 13th April 1983 is barred by limitation.

3. It is conceded before me that no order terminating the service of the second respondent, other than the notice dated 22nd January 1983, was served on him. The notice dated 22nd January 1983 is not in evidence. Section 18 of the Shops and Commercial Establishments Act provides that no employer should dispense with the services of an employee without giving him atleast one month's notice or wages in lieu of such notice. The petitioner has no case that the second respondent was paid wages in lieu of one month's notice. The notice served on the second respondent on 22nd January 1983 must be taken as the one month's notice contemplated by Section 18 of the Act. The period of limitation prescribed by Rule 3 mentioned above is riot to be reckoned from the date of that notice. The period is to be reckoned from the order terminating the service of the employee. No order terminating the service of the employee was issued by the petitioner. The period of 60 days mentioned in the Rule cannot be reckoned from the date of the notice envisaged by Section 18. That notice provides for the termination of the service on the expiry of a period of one month. So the service of the second respondent was terminated only on 22nd February 1983 and the period of limitation

under Rule 3 must be reckoned from that date. If so reckoned the appeal filed by the second respondent is within time.

4. If the argument of the learned Counsel for the petitioner that the period of 60 days must be reckoned from 22nd January 1983, that period will take in the period of notice fixed by Section 18 of the Act as well. This cannot be the scheme of the Act and Rules. The period of limitation for the appeal under Section 18 should begin to run only with effect from the date of termination of the employment and not from an earlier date. In this view the appeal before first respondent was well within time.

5. learned Counsel did not canvass the correctness of the decision arrived at by the appellate authority. The decision, based on evidence, passed in compliance with the principles of natural justice, is not open to attack either.

The Original Petition fails. It is accordingly dismissed. No costs.

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