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Court : Kerala

Decided On : Jul-17-2002

Reported in : 1(2003)ACC263

Judge : M. Ramachandran, J.

Appellant : Chellappan

Respondent : Commissioner for Workmen's Compensation and Dy. Labour Commissioner and Ors.

Judgement :

M. Ramachandran, J.

1. Petitioner was the respondent in an application filed by the legal representative of a deceased workman claiming workmen's compensation. Claim was that one Raveendran employed as a mahout under the respondent who had died in the course of his work on 1.1.1993. After examining the contentions of the parties and scanning through the evidence that had been placed, the Commissioner by Ext. P-4 order dated 29.6.2000 held that it was a case where there was death of workman during the course of his employment. A compensation of Rs. 63,920/- with interest was directed as payable. This order is under challenge in this original petition.

2. Petitioner has averred that since there was no substantial question of law to be agitated about the issue (see para 6 of the original petition) and as the order passed was erroneous he had no chance to file an appeal successfully and therefore, he has approached this Court by filing this original petition. It has also been submitted that since it is a condition precedent that the amount ordered to be paid as compensation had to be deposited, it was a condition which effectively negated the right of appeal under Section 30 of the Act. One of the prayers in this original petition is to strike down Section 30 of the Workmen's Compensation Act and to declare the first and third provisos to the above section as unconstitutional, ultra vim and inoperative.

3. Learned Counsel for the petitioner had led me through the order and had also relied on authorities in support of his contentions. It is seen that there were sufficient circumstances to indicate that the deceased was in fact employed as a Mahout under the petitioner herein. It was a legislative policy to provide for an appeal only in cases where a substantial question of law arose. Appeal is a statutory right as distinct from a common law right. In the interest of the working class, and the under-privileged, the Parliament is competent to prescribe conditions for appeal, even though it may be felt as arduous at the view point of the employer here. To invoke the jurisdiction accepting the above ground will be equivalent to a retrograde step in the 21st Century, in respect to an enactment which came to the Statute Book as early as in 1939. The contention is only to be rejected.

4. As regard the illusory remedy of an appeal, which insisted on payment of the decreed amount in full as a pre-condition, Counsel brought to my notice a decision of the Himachal Pradesh High Court reported in Sikkim Ayurvedic (P) Ltd. v. Pyari Tamangni and Ors. 1996 (3) LLJ 844. Council also had referred to the decision reported in Commissioner of Income Tax, Lucknow v. U.P. Forest Corporation : [1998]230ITR945(SC) , pointing out that alternate remedy was not always a reason to hold that jurisdiction under Article 226 could not be invoked.

5. However, I do not think that these decisions are for the petitioner to whom the alternate remedy selected by him is admissible. The Supreme Court had made

such observations in the case cited, in view of the circumstances that the original petition had been filed and was pending for a considerable number of years. Moreover Counsel for the respondents brought to my attention the consistent view taken by this Court in Workmen's Compensation cases and especially, by referring to decision in Narayan Nair v. Union of India 1990 (1) KLT 907.

6. It is found that the case that had been projected by the petitioner about the validity of the section has been repelled. Mr. Justice J.B. Koshy held in categorical terms that proviso to Section 30 is constitutionally valid. The decision of the Himachal Pradesh High Court can have no persuasive value in that context. I respectfully agree with the view taken by this Court. The compensation order was passed in the year 1993 and I do not think the matter requires interference on any score.

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