

Kerala High Court

T.Devakiamma vs Karikkamancode Service ... on 7 April, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WA.No. 209 of 2006()

1. T.DEVAKIAMMA, RESIDING AT KAITHOTTUMULA
... Petitioner

Vs

1. KARIKKAMANCODE SERVICE CO-OPERATIVE
... Respondent

2. STATE OF KERALA, REPRESENTED BY ITS

3. THE JOINT REISTRAR OF CO-OPERATIVE

4. THE LABOUR COURT, KOLLAM.

For Petitioner :SRI.V.CHITAMBARESH (SR.)

For Respondent :SRI.SUMAN CHAKRAVARTHY

The Hon'ble MR. Justice K.BALAKRISHNAN NAIR

The Hon'ble MR. Justice M.L.JOSEPH FRANCIS

Dated :07/04/2009

O R D E R

K. BALAKRISHNAN NAIR & M.L.JOSEPH FRANCIS, JJ.

W.A. No.209 OF 2006

Dated this the 7th day of April, 2009

J U D G M E N T

~~~~~ Balakrishnan Nair, J.

The 3rd respondent in the Original Petition is the appellant. The 1st respondent is the writ petitioner.

2. The brief facts of the case are the following: The appellant was an employee of the 1st respondent Bank. He was dismissed from service on 29.7.1972. In 1989, she filed a Shop Appeal against the said order before the Deputy Labour Commissioner. As per the provisions of Section 18 of the Kerala Shops and Commercial Establishments Act, 1960, the appeal should have been filed within six months. The appellate authority has got the power to condone delay upto six months. That means, in any event, the appeal should have been filed within one year from the date of dismissal. But, it was filed in 1989. The appellate authority even before issuing notice to the 1st respondent condoned the delay. The 1st respondent appeared and contested. The Shop Appeal was allowed by Ext.P9 order. Challenging that order, the Original Petition was filed by the 1st respondent. The learned Single Judge found that the Shop Appeal filed after one year was not maintainable and therefore quashed Ext.P9. Aggrieved by the said judgment of the learned Single Judge, this Writ Appeal is filed.

2. The learned counsel for the appellant submitted that the bank has not challenged the order of the shop appellate authority to condone the delay in filing the appeal. Secondly, it is submitted that all the criminal cases filed against her by the bank ended only by 1989. She was acquitted of all offences. Only thereafter, she could have filed the appeal. Therefore, the appellate authority rightly entertained the appeal, it is submitted.

3. The delay in filing the appeal was condoned before issuing notice to the 1st respondent or filing written statement by it. It appears to be an order passed at the time of presentation of the appeal. If the 1st respondent is aggrieved by that order, it need challenge it, if only, the final order in the appeal goes against it. When Ext.P9 final order was passed against it, the 1st respondent has challenged the order condoning delay also. For challenging that order, the Bank need not approach this Court separately. So, the 1st contention fails. The 2nd contention is also equally untenable. When the statute says that the appeal should be filed within six months and if there is further delay the appellate authority can condone the delay only up to six months, any appeal filed thereafter is not maintainable. The fact that some criminal cases were pending against the appellant is not a valid ground to get over the bar of limitation under the statute.

In the result, the Writ Appeal fails and it is dismissed.

(K.BALAKRISHNAN NAIR, JUDGE) (M.L.JOSEPH FRANCIS, JUDGE) ps