

Kerala High Court

The State Farms Corporation Of ... vs P.D.Mathai on 7 August, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WA.No. 1021 of 2008()

1. THE STATE FARMS CORPORATION OF INDIA
... Petitioner

Vs

1. P.D.MATHAI, PUTHENPURACKAL HOUSE,
... Respondent

2. THE CONTROLLING AUTHORITY UNDER THE

3. THE APPELLATE AUTHORITY UNDER THE

For Petitioner :SRI.P.V.LOHITHAKSHAN

For Respondent :SRI.R.SURENDRAN

The Hon'ble the Chief Justice MR.S.R.BANNURMATH

The Hon'ble MR. Justice KURIAN JOSEPH

Dated :07/08/2009

O R D E R

S.R.BANNURMATH, C.J. &
KURIAN JOSEPH, J.

W.A.No.1021 of 2008

Dated this the 7th day of August, 2009

JUDGMENT

Kurian Joseph,J.

Appellant is the petitioner in the writ petition. The essential issue pertains to the question as to whether the appellant/employer is entitled to withhold amounts payable under the Payment of Gratuity Act, 1972. The learned single Judge held that the issue is wholly covered against the

appellant by atleast three decisions of this court including the Bench decision in Mathew v. Plantation Corporation of Kerala Ltd. (2000 (3) KLT 107). Though learned counsel for the appellant-management made a vehement attempt to persuade this court to take a different view pursuant to the decision taken by the High Court of Delhi in State Farm Corporation of India Ltd. v. Regional Commissioner & Another, (2007 (1) LLJ 763), we find it difficult to be W.A.No.1021 of 2008 persuaded. The High Court of Kerala has taken a consistent view. We also find that the issue is otherwise broadly covered by the decision of the Supreme Court in D.S.Nakara v. Union of India (AIR 1983 SC 130). Therefore, the appeal fails and it is accordingly dismissed.

2. Learned counsel for the appellant/petitioner submits that the dismissal of the appeal may not stand in the way of the appellant taking recourse to their remedy before appropriate forum and in which case the time taken by the appellant/petitioner before this court in bona fide prosecuting the writ petition and the writ appeal may be excluded. If any such course of action is open to the appellant/writ petitioner before any forum under law, it is open to the appellant/petitioner to approach that forum and the permission of this court is not necessary and needless to say that the judgments of this court will not stand in the way of the appellant/petitioner taking recourse to such action. We make it clear that in the event of the W.A.No.1021 of 2008 appellant/writ petitioner approaching the said forum, the time taken by the petitioner in prosecuting the writ petition and the writ appeal will be taken note of in considering the period of limitation.

S.R.BANNURMATH, Chief Justice KURIAN JOSEPH, Judge ahg.

BANNURMATH, C.J. & KURIAN JOSEPH,J.

W.A.No.1021 of 2008

JUDGMENT 7th August, 2009