



2024:KER:73321

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 4TH DAY OF OCTOBER 2024 / 12TH ASWINA, 1946

WP (C) NO. 8414 OF 2023

PETITIONER:

C. R. SUDHAN,
AGED 57 YEARS,
S/O RAMAN,
CHARTHAI HOUSE,
KULATHUR,
NELLAI. P. O,
THRISSUR DISTRICT,
PIN - 680305

BY ADVS.
SRI. V. M. KRISHNAKUMAR
SRI. P. S. SIDHARTHAN

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LABOUR,
SECRETARIAT,
THIRUVANANTHAPURAM,
PIN - 695001
- 2 TODDY WORKERS WELFARE FUND BOARD,
REPRESENTED BY CHIEF EXECUTIVE OFFICER,
ULLUR GARDEN PAROTTUKONAM,
THIRUVANANTHAPURAM DIST.,
PIN - 695044



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3 DISTRICT WELFARE FUND INSPECTOR,
OFFICE OF THE TODDY WORKERS WELFARE FUND BOARD,
POOTHOLE, THRISSUR,
PIN - 680667

BY ADVS.
SRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL
SMT.SABEENA P. ISMAIL, GOVERNMENT PLEADER
SRI.RENIL ANTO KANDAMKULATHY, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 18.07.2024, THE COURT ON 04.10.2024 DELIVERED
THE FOLLOWING:



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CR

N. NAGARESH, J.

.....
W.P.(C) No.8414 of 2023
.....

Dated this the 4th day of October, 2024

J U D G M E N T

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The petitioner, who worked as a Toddy Tapper, seeks to declare that Clause 33A of the Toddy Workers Welfare Fund Scheme is ultravires of the Kerala Toddy Workers Welfare Fund Act and the Rules and void ab initio in so far as it denies re-entry to the Welfare Fund, to the Toddy Shop Workers like the petitioner. The petitioner also seeks to command the respondents to grant membership to the Welfare Fund to the petitioner from 2004 onwards within such time as may be fixed by this Court.



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2. The petitioner states that he was working as Toddy Tapper in Toddy Shops in Irinjalakkuda Range in Thrissur District from 1984 onwards. The petitioner was enrolled in the Kerala Toddy Workers Welfare Fund as Toddy Tapper. Subscriptions to the Welfare Fund were paid upto 2004. In the year 2004, the petitioner met with an accident and was not able to do the work of todody tapping, which involved climbing coconut trees. He therefore discontinued membership in the Welfare Fund and obtained benefits thereunder.

3. The petitioner states that he joined Toddy Shop No.177 in Irinjalakkuda Range as Toddy Shop Worker from 01.04.2004. From 01.04.2004 onwards, monthly contribution at the rate of 8% by the employee and 8% by the employer and another 10% by the employer, totalling 25% of monthly wages was remitted to the Welfare Fund.

4. However, the petitioner was not granted membership in the Welfare Fund on the ground that the 1st respondent-Board had taken a decision that employees retired



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from service and who obtained benefits from Welfare Fund cannot get readmission to the Fund. The petitioner thereupon filed W.P.(C) No.34224/2008. This Court dismissed the writ petition as per Ext.P5 judgment holding that it is a policy decision of the 1st respondent-Board and no new registration can be granted to a member who has already received the Welfare Fund benefits. Though the petitioner filed Writ Appeal No.188/2015 against Ext.P5 judgment, the Writ Appeal was also dismissed.

5. Subsequently, the 1st respondent-Board issued Ext.P6 Circular dated 15.07.2019 whereby the Board decided to grant fresh membership to Toddy Tappers who had earlier went out of the Fund obtaining all the benefits. The petitioner therefore submitted a representation to the 1st respondent to readmit the petitioner to the Scheme with effect from 2004-2005 when he started his second term of employment as Toddy Shop Worker.



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6. The petitioner states that as per amended Clause 33A of the Welfare Fund Scheme, the re-entry in Welfare Fund is permitted only to Toddy Tappers who had earlier exited the Scheme after getting benefits. Re-entry is denied to Toddy Shop Workers like the petitioner. The petitioner has been continuing as Toddy Shop Worker for the past more than 18 years and his Welfare Fund contributions were paid upto the year 2016.

7. The petitioner argued that the term 'employee' shall include any person who is employed for wages in connection with tapping, manufacture, transport, storage or sale of toddy. Providing re-entry only to Toddy Tappers is violative of Article 14.

8. The counsel for the petitioner further argued that in view of Section 3 of the Right of Persons with Disability Act, 2015, the Government is to ensure that persons with disability enjoy right of equality with others. No person with disability shall be discriminated on the ground of disability.



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Ext.P8 is therefore liable to be quashed in so far as it restricts re-entry to the Toddy Tappers only.

9. The 1st respondent filed a statement. The 1st respondent justified the special treatment extended to Toddy Tappers. A Toddy Tapper is expected to tap approximately 10 coconut trees three times a day and hence should be in full health. Young generation is turning away from the toddy tapping work.

10. The Board of Directors of the Welfare Fund Board noticed that voluntarily retired Toddy Tappers who recover after treatment are rendered unemployed and suffer financial hardship. The Board therefore took a lenient view and decided to allow re-entry of voluntarily retired Toddy Tappers to the Scheme on producing Medical Certificate. Ext.P8 is therefore liable to be quashed.

11. I have heard the learned counsel for the petitioner, the learned Additional Advocate General appearing for respondents 1 and 3 and the learned Standing Counsel



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representing the 2nd respondent-Toddy Workers Welfare Fund Board.

12. The petitioner worked as a Toddy Tapper from the year 1984 to 2004. Due to an accident and consequential disability, the petitioner stopped toddy tapping and obtained Welfare Fund benefits in the year 2004. On his recovery, the petitioner was employed as Toddy Shop Worker on and from 01.04.2004. 25% of the wages was paid towards Welfare Fund subscription till the year 2016.

13. The petitioner earlier approached this Court filing W.P.(C) No.34224/2008 aggrieved by the non-registration under the Welfare Fund Scheme on his appointment as Toddy Shop Worker. This Court dismissed the writ petition as per Ext.P5 judgment. Writ Appeal No.188/2015 filed by the petitioner was also dismissed. However, subsequently, the Chief Welfare Fund Inspector issued Ext.P6 Circular No.381 dated 15.07.2019. By Ext.P6 Circular, the Board decided that the Toddy Tappers should be permitted re-entry in Welfare



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Fund Scheme, without realising the pension amount received by them.

14. In exercise of the powers conferred by sub-section (1) of Section 5 of the Kerala Toddy Workers Welfare Fund Act, 1969, the Government of Kerala amended the Kerala Toddy Workers Welfare Fund Scheme, 1969. In the Scheme, after Paragraph 33, the following paragraph was inserted.

33A. Re-entry: - Toddy tappers who retired before superannuation due to prolonged illness on production of Medical Certificate may be allowed re-entry on regaining physical soundness and on production of Fitness Certificate. The maximum age limit for re-entry shall be 55 years and re-entry may be allowed only once in service period.

Paragraph 33A does not state whether re-entry of Toddy Tappers in the Scheme should be as Toddy Tappers or not. As per the explanatory note, the insertion of Clause 33A was made since as at present Toddy Tappers are scarce in the Toddy Tapping Sector and the Government has allowed the request of the Welfare Fund Board to allow re-entry of experienced Toddy Tappers who had retired before superannuation due to prolonged illness on regaining physical soundness.



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15. The Kerala Toddy Workers Welfare Fund Scheme does not permit re-entry of Toddy Workers after their retirement from service. The Government found that voluntarily retired Toddy Tappers due to health reasons who recover after treatment are rendered unemployed and are in financial hardship. The decision was taken based on a more important reason that there is scarcity of Toddy Tappers in the State. Toddy tapping is a hazardous activity, when compared to other activities in this sector, such as transport, storage and sale of toddy. The young generation is turning away from the industry in view of the hazardous nature of the work. This has led to scarcity of experienced Toddy Tappers and has created a crisis in the toddy industry.

16. In such circumstances, the Government decided to permit re-entry of Toddy Tappers into the Welfare Fund Scheme after their retirement. Paragraph 33A was inserted in the Scheme, in the year 2021. Paragraph 33A provided that Toddy Tappers who retired before



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superannuation due to prolonged illness may be allowed re-entry on regaining physical soundness and on production of Fitness Certificate. The maximum age limit for re-entry was fixed as 55 years. It was further stipulated that re-entry should be allowed only once in service period.

17. The special treatment extended to Toddy Tappers by amending the Kerala Toddy Workers Welfare Fund Scheme is due to the peculiar situation existing in the toddy sector. The scarcity of experienced and skilled Toddy Tappers which led to a crisis in the industry is the major reason for bringing amendment to the Scheme permitting re-entry of Toddy Tappers in the Scheme. Taking into consideration the afore fact, it cannot be said that the special treatment extended to Toddy Tappers who are doing a hazardous job is discriminatory vis-a-vis other workers in the toddy sector. The special treatment cannot be held as violative of Article 14 of the Constitution or of the provisions of the Rights of Persons with Disabilities Act, 2015. The Kerala Toddy Workers Welfare



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Fund (Amendment) Scheme, 2021 and Ext.P6 Circular No.381 dated 15.07.2019 are legally sustainable. The Toddy Workers cannot claim parity with Toddy Tappers.

18. However, the facts of the present case poses a question of principles of estoppel. After the injury sustained by him in an accident, the petitioner was re-engaged as Toddy Worker on and from 01.04.2004. From 01.04.2004 onwards, the petitioner has been paying Welfare Fund contributions continuously till the year 2016. The 2nd respondent-Board accepted the Welfare Fund contributions which amounted to 25% of monthly wages of the petitioner. Subscriptions were accepted by the Board without any objection. In such circumstances, whether the Board can turn around and state that the petitioner cannot be re-admitted into the Scheme.

19. In ***Manuelsons Hotels Private Limited v. State of Kerala and others*** [(2016) 6 SCC 766], as regards the doctrine of promissory estoppel, the Hon'ble Apex Court held that promissory estoppel is a doctrine whose foundation is



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that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party.

20. The principles behind doctrine of estoppel have been well put in ***The Commonwealth of Australia v. Verwayen*** [(1990) 170 CLR 394] wherein it was held as follows:-

(1) While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to



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their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

(2) The central principle of the doctrine is that the law will not permit an unconscionable, more accurately, unconscientious departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purpose of the litigation.

(3) Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.



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(4) The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The case indicates four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party : (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption; (c) has exercised against the other party rights which would exist only if the assumptions were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

21. In the case of the petitioner, he was forced to retire from service as Toddy Tapper in the year 2004 due to an



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injury resulting from an accident. The petitioner was, however, subsequently reengaged as Toddy worker on and from 01.04.2004. On and from 01.04.2004, the petitioner has been remitting monthly contribution/subscription to the Welfare Fund. The amount of remittance was about 25% of monthly wages receivable by the petitioner. The 2nd respondent continued to receive the contribution/subscription up to the year 2016. After accepting Welfare Fund contributions to the extent of 25% of the monthly salary of the petitioner for 12 long years, the 2nd respondent cannot turn around and state that the petitioner cannot be readmitted in Welfare Fund.

22. It is to be noted that the petitioner was a Toddy Tapper. His retirement earlier was due to an accident. On re-engagement as Toddy worker, the petitioner remitted Welfare Fund contributions which were accepted by the 2nd respondent without any murmur. By the conduct of accepting Welfare Fund contributions remitted on behalf of the petitioner for 12 years, the 2nd respondent has induced the assumption of



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re-entry of the petitioner in the Welfare Fund by implied representation. The 2nd respondent refrained from correcting the petitioner for 12 long years when it was the duty of the 2nd respondent to do so. In such circumstances, it would be illegal, harsh and inequitable to deny to the petitioner the benefit of Welfare Fund Scheme for the period during which Welfare Fund contributions were made by the petitioner and were accepted by the 2nd respondent. The petitioner is therefore entitled to relief in this writ petition.

The writ petition is therefore disposed of directing the respondents to treat the petitioner as a member to the Welfare Fund for the period from 01.04.2004 till Welfare Fund contributions/subscriptions were accepted by respondents 2 and 3. The petitioner will be entitled to get enhanced Welfare Fund benefits taking into account the aforesaid period also. The petitioner will be entitled to all consequential reliefs.

Sd/-

N. NAGARESH, JUDGE

aks/02.10.2024



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APPENDIX OF WP (C) 8414/2023PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE STATEMENT ISSUED BY THE DISTRICT INSPECTOR THRISSUR OF KERALA TODDY WORKERS WELFARE FUND BOARD FOR THE YEAR 2004-2005
- Exhibit P2 TRUE COPY OF THE STATEMENT ISSUED BY THE DISTRICT INSPECTOR THRISSUR OF KERALA TODDY WORKERS WELFARE FUND BOARD FOR THE YEAR 2005-06
- Exhibit P3 TRUE COPY OF THE STATEMENT ISSUED BY THE DISTRICT INSPECTOR THRISSUR OF KERALA TODDY WORKERS WELFARE FUND BOARD FOR THE YEAR 2006-07
- Exhibit P4 TRUE COPY OF THE STATEMENT ISSUED BY THE DISTRICT INSPECTOR THRISSUR OF KERALA TODDY WORKERS WELFARE FUND BOARD FOR THE YEAR 2008- 2009
- Exhibit P5 TRUE COPY OF THE JUDGMENT IN WP(C) .NO.34224/2008 DATED 21.11.2014
- Exhibit P6 TRUE COPY OF THE CIRCULAR NO.381 OF 1ST RESPONDENT DATED 15.07.2019
- Exhibit P7 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 25.10.2022
- Exhibit P8 TRUE COPY OF THE CIRCULAR NO.C1/1381/CIR/2020 CIRCULAR NO.396/2020 DATED NOVEMBER 2020.
- Exhibit P9 A TRUE COPY OF THE G.O (P) NO. 14/2021/LBRD DATED 22.01.2021 PUBLISHED IN THE KERALA GAZETTE EXTRAORDINARY.



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RESPONDENTS' EXHIBITS:

Exhibit R1(a)

TRUE COPY OF G.O. (P) NO. 14/2021/LBRD,
SRO NO. 115/2021 DATED, 22.01.2021.