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KERALA HIGH COURT ON TERMINATION OF EMPLOYEE

A. Introduction

Kerala High Court ('HC'), in *Kerala Medical Service Corporation case*,¹ held that termination of an employee, while he is not on fixed-term employment, on account of non-performance amounted to retrenchment under the Industrial Disputes Act, 1947 ('ID Act') and the employee was entitled to retrenchment benefits.

B. Brief Facts

1. Santosh T S ('Santosh') was appointed by Kerala Medical Service Corporation ('KMSC') on a contract basis for one year in 2013.
2. He was later employed with KMSC as a fixed-time employee from 2015. However, post expiry of the fixed-term contract on 30th March 2016, his employment continued.
3. Santosh was terminated in September 2016. He claimed retrenchment benefits under the ID Act for the period between 2013 and 2016 and approached the Labour Court, Kozhikode ('LC').
4. Santosh claimed that as per his contract of employment, he can only be terminated for insubordination, misconduct, wilful negligence or if he is incapable of discharging his duty up to the desired levels assigned.
5. KMSC claimed that he was terminated as it did not renew the employment contract and therefore it is beyond the scope of retrenchment.²
6. LC held that since Santosh was terminated for not meeting performance standards, his termination amounted to retrenchment.
7. Aggrieved by this, KMSC approached the HC.

C. Judgment & Reasoning of HC

HC dismissed KSMC's petition upholding the LC's order on the following grounds:

- a. It distinguished the periods of employment contract employment and fixed-term employment. It observed that, at the time of termination of his employment, there was not existing contract between the parties governing the employment.

¹*Kerala Medical Services Corp. Ltd. and Others vs. Santosh T.S., Kozhikode and another.* OP(LC) No.6 of 2021.

² Section 2(oo) of the ID Act.

- b. Santosh was terminated due to not meeting performance standards without any notice or notice pay. Also, there was no underlying employment contract governing his employment. This amounted to retrenchment.

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