
(2016) 12 KL CK 0042
In the High Court Of Kerala
Case No : WP(C).No. 37884 of 2016 (I)

A. Basheer

APPELLANT

Vs

The District Labour Officer, Palakkad

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 CLR 782

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri. V.J. James, Sri. K.A. Hazan, Smt. M.M. Fathima Jaleena, Advocates, for the Respondent No. 3; Sri. S. Gopinathan, Sr. Govt. Pleader, for the Respondent Nos. 1 to 2; Sri. T.A. Shaji, Senior Advocate, Smt. Namitha Jyothish, Sri. V. Vincent Didacose and

Final Decision : Dismissed

Judgement

A. Muhamed Mustaque, J. - The petitioner is an unattached worker in Chathanloor, Palakkad District. He approached this Court challenging registration given to the respondents 4 to 7 under the establishment of 3rd respondent. Respondents 4 to 7 applied for registration under the 3rd respondent under Rule 26A of the Kerala Headload Workers Rules. This was rejected by Assistant Labour Officer, as per Ext.P1 dated 18.07.2016. Thereafter, an appeal was preferred by the respondents 4 to 7 before the District Labour Officer. The appeal was allowed. It is challenging this Order, the petitioner has filed this writ petition.

2. The petitioner raised 2 contentions. One is that, identity of respondents 4 to 7 is questionable. Secondly, it is contended that the unattached worker in the area got the primacy for engagement as it is a scheme covered area.

3. On the other hand, the learned counsel for the party respondents points out to the identity card issued to each of the respondents 4 to 7. It is submitted that the identity card has been issued after verifying the identity of each person. It is further submitted that unattached worker in the scheme area has no primacy for

employment and every permanent worker working under establishment has the right to get registered in terms of Rule 26A of the Kerala Headload Workers Rules.

4. In regard to the first controversy, this Court is of the view that the registering authority having satisfied with the identity of workers, it cannot be questioned by a third party. In regard to the second question, in fact, the issue is covered against the petitioner in the light of a Division Bench judgment of this Court in *Gangadharan, C.P. and another v. Abdul Nasir and others* [I.L.R.2016 (4) Kerala 702]. In paragraph 9 of the above, it was held as follows:

"9. Going by the scheme of the statute and also by virtue of the binding precedents, it is always open for the Employer to make appropriate arrangements by engaging workers of his own to do the loading and unloading operations as well, thus getting it done by the attached workers, but it requires registration of such attached workers in terms of Rule 26A of the Rules. It is quite open for anybody to have his own freedom to do the work, trade or business which is a fundamental right under Article 19(1) (g) of the Constitution of India. If such person/Employer seeks to engage sufficient number of workers to meet the requirements of his establishment on a permanent basis, it cannot be objected to from any corner, as it is the vested right of the Employer to engage sufficient number of employees of his choice. But, by virtue of the provisions for regulating loading and unloading operations in an area, the State Government has passed an enactment and has formulated relevant rules in exercise of the rule making power. Since the area in question has been notified as a scheme-covered area, such engagement of loading/unloading workers by the Employer has necessarily to be in tune with the regulations and it is accordingly, that registration of such workers is contemplated under Rule 26A of the Rules. It was in conformity with the said rules, that applications were made by the permanent workers/attached workers of the first writ petitioner vide Exts.P-4, P-5 and P-6 before the registering authority, which however came to be rejected by the Asst.Labour Officer for the reason that it would adversely affect the rights of the existing registered workers in the area and further that the first writ petitioner/Employer had not maintained proper records, in terms of the statute. We find that the law declared by the different single Benches of this Court as per the rulings reported in 2010 (4) K.L.T.783 (*Rajeev's case*), 2015 (1) K.L.T.750 (*Majeed's case*), 2015 (5) K.H.C.275 (*Alfred Thomas v. State of Kerala and others*) and 2015 (1) K.L.T.314 (*Muhammed Shafeek's case*) are correctly decided in relation to the rights and liberties of the parties concerned, to the extent the issue involved in the present case is concerned. The sum and substance is that, it is very much obligatory for the registering authority to give registration to the attached workers, in terms of Rule 26A of the Rules, so as to enable the Employer and the attached workers to carry out the retirements of the establishment to the desired extent, which cannot be watered down or thwarted in any manner."

5. In the light of the above judgment, this Court is of the view that the writ

petition is liable to be dismissed. Accordingly, it is dismissed. The petitioner also seeks for a direction to the Deputy Labour Commissioner to consider Ext.P7. However, the learned counsel for the party respondents points out that this has been considered and already been rejected. Even if that application is pending, in the light of Division Bench judgment of this Court, there is no point in directing the Deputy Labour Commissioner to consider