

(2013) 05 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 28175 of 2008 (D)

A.N. Ramesh

APPELLANT

Vs

The Assistant Labour Officer (First Circle), Chembukavu, The
District Labour Officer, Thrissur, The Kerala Head Load
Workers Welfare Board and State of Kerala

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Kerala Headload Workers Rules, 1981 — Rule 26A, 26A(2)

Citation : (2013) 4 KHC 484 : (2013) 4 KLJ 509 : (2013) 4 KLT 524

Hon'ble Judges : C.K. Abdul Rahim, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; K.T. Lilly, Government Pleader for R4, Sri. Koshy George, SC, KHLWWB, Sri. A.N. Rajan Babu, SC, KHWB for R3 and Sri. Renil Anto Kandamkulathy, SC, for the Respondent

Final Decision : Allowed

Judgement

C.K. Abdul Rahim, J.—Denial of registration under Rule 26A of the Kerala Headload Workers Rules, 1981 is under challenge in this writ petition. The petitioner claims to be a Headload Worker employed under two establishments engaged in fish trading, situated in "Shakthan Thampuran Fish Market", Trichur. His application for registration was rejected by the 1st respondent through Exhibit P1, stating the reason that the petitioner is doing such Headload works unauthorisedly, without consent of the local committee of the Kerala Headload Workers Welfare Board. The petitioner had approached the appellate authority, the 2nd respondent herein, in an appeal filed under Rule 26C. But the appeal was also rejected through Exhibit P3, finding that the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (hereinafter "the scheme" for short) is in functional operation in the area in question and the establishments in question come within the area of pool No. 12A. It is found that the petitioner was working without registration in an unauthorised manner. In Exhibit P3 it is further mentioned that, even though the petitioner is entitled to

be appointed as a permanent worker under any particular employer, such employer cannot appoint him as a worker in the pool. Since the petitioner is working in an area where the scheme is implemented under pool No. 12A, his employment is against provisions of the Rule and the scheme and therefore he cannot be granted registration legalising such unauthorised work, is the findings. The petitioner is challenging Exhibits P1 and P3 in this writ petition. Rule 26A contemplates registration of Headload Workers. Any Headload Worker can apply for registration by submitting application in Form No. IX with as many additional copies as there are employers or contractors from whom he claims work. It is evident that a Headload Worker can seek registration under Rule 26A if he is working only under one employer or under more than one employer. The procedure prescribed under Sub Rule (2) & (3) indicates that, the Registering Authority should issue notice to the employers as well as to the Chairman of the local committee of the Kerala Headload Workers Board, inviting objections if any in granting such registration. After considering objections if any received and after giving opportunity of personal hearing, the registering authority should either register the name of the Headload Worker or reject the application by issuing communication stating reasons. Implementation of the scheme or rather the entitlement for work in any area where the scheme had commenced functional operation, are not matters relevant for consideration under Rule 26A. So also, question whether the Headload Worker had violated any provisions in the scheme is not a matter which need be considered for deciding the question of registration.

2. Registration under provisions of the Scheme is contemplated under Clause (6) of the Scheme. Under Clause (6) there is a prohibition restraining any Headload Worker, who is not a registered Headload Worker, from working in any area to which the scheme applies, from the date of commencement of its functional operation. That means, when the functional operation of the scheme is commenced in any area, no Headload Worker attached to any employer is entitled to work, unless he gets registration under Rule 26A. Sub Clause (2) of Clause (6) stipulates that, from the commencement of functional operation of the scheme no Headload Worker who is permanently employed by an employer shall be allowed to the work in an area to which the scheme applies, unless he gets a further registration under the scheme. Effect of Clause 6(2) is also that, any person who is not having a registration under Rule 26A cannot work in an area to which the scheme applies.

3. Question arises as to whether any person can apply for registration under Rule 26A as a Headload Worker permanently appointed under any establishment situated within an area where the scheme had commenced functional operation. Going by provisions in the Act, Rules or the Scheme, there is no restriction against any Headload Worker seeking permanent employment under an employer in an establishment situated within the area of operation of the scheme. There is also no restriction imposed on any such employer engaging a permanent Headload Worker, attached to such establishment. No provision in the

Act, Rules or scheme prohibits an employer/establishment from permanently engaging or appointing a Headload Worker exclusively for the works in such establishment, even if such establishment is situated within the area of operation of the scheme or even if he was engaging workers from the pool.

4. In the decision of this court in *Rajeev, V. Vs. District Labour Officer and Others*, it is held that for obtaining registration under Rule 26A it is not necessary that the persons seeking registration should be a Headload Worker already working under an employer, who seeks to employ him as a permanent Headload Worker. Therefore the reason for denial of registration on the basis of commencement of functional operation of the scheme cannot be sustained.

5. In the case at hand the registration is denied merely because of the reason that the petitioner was working in two establishments without getting registration unauthorisedly. But the authorities have failed to take note of the aspect that the employers under whom the petitioner had claimed work are entitled to engage him on a permanent basis, despite functional operation of the scheme in the area. The authorities ought to have considered the application on the basis of procedure contemplated under Rule 26A(2) and (3). The appellate authority had also not considered the above aspects. Under the above mentioned circumstances, I am of the view that the impugned orders cannot be sustained. The matter requires reconsideration by the registering authority, the 1st respondent herein. Accordingly, the writ petition is allowed and Exhibits P1 and P3 are hereby quashed. The 1st respondent is directed to consider the application for registration submitted by the petitioner afresh, taking note of the legal position settled through various decisions and also taking note of the observations contained herein above. The application shall be processed in accordance with the procedure contemplated under Rule 26A, after affording reasonable opportunity to the employer concerned as well as to the Chairman of the local committee of the Welfare Fund Board.

A fresh decision in this regard shall be taken at the earliest possible, at any rate within a period of 2 months from the date of receipt of a copy of this judgment.