

(2022) 11 KL CK 0259
In the High Court Of Kerala
Case No : Writ Petition (C) No. 37341 Of 2022
Biju K.B.Vs Assistant Labour Officer

Date of Decision : 22-11-2022

Acts Referred:

Kerala Head Load Workers Rules, 1981 — Rule 26A

Citation : (2022) 11 KL CK 0259

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : C.S.Ajith Prakash, T.K.Devarajan, M.B.Soori, Babu M., Haaris Moosa, Gouri Kailash, Jimmy George, K.S.Arun Kumar

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. The above writ petition is filed with following prayers :

"(i) To issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent/the Assistant Labour Officer Circle-1 to consider Exhibit P15 representation and also afford an opportunity of hearing, while considering the 26A card application submitted by party respondents herein or any other applicant for 26A card, working in Agricultural Urban Wholesale Market, in the interest of justice.

(ii) To declare that the petitioner being pool leader is aggrieved person and therefore, entitled to be heard during the consideration of 26A card application submitted by workers working in Agricultural Urban Wholesale Market, Nettoor.

(iii) To issue such other writ or order or direction as this Hon'ble Court may be deem fit and proper in the facts and circumstances of the case or as may be prayed from time to time.

(iv) To issue such other appropriate order or directions dispensing with the filing of English Translation of the vernacular documents produced along with the writ petition."

2. The petitioner is the pool leader of pool No.10 Nettoor pool, holding 6A card under the Kerala Head Load Workers Act, Rules and Scheme 1983. It is the case of the petitioner that the petitioner represents 117 workers and they elected him as pool leader. The pool is located in Nettoor area. In Nettoor area, an Agricultural Urban Wholesale Market (AUW Market) is functioning where there is intense loading and unloading activities are occurring. It is the case of the petitioner that the area in question is exempted from the Provisions of Head Load Workers Act and Rules by a notification issued under Kerala Loading and Unloading (Regulation of Wages and Restriction of Unlawful Practices) Act, 2002. The exemption notification issued on 15.5.2003 however, the said Act was repealed later by the Kerala Headload Workers (Amendment) Act, 2008. Thereafter, it is the case of the petitioner that this Court by Ext.P4 judgment declared that pool workers are to be engaged in view of the lifting of the exemption. Thereafter, when the pool workers attempt to carry out the loading and unloading work in AUW market, a group of head load workers from a neighbouring pool also claimed work, which resulted in series of litigation. In the meanwhile, it is submitted that, the stall owners in AUW market in order to defeat the claim of the pool workers, arranged certain migrant workers styling them as Head Load Workers and submitted applications under Rule 26A of the Kerala Head Load Workers Rules, 1981 (for short "the Rules, 1981") before the 1st respondent and ALO is proceeding to consider application on 23.11.2022. The petitioner submitted Ext.P15 representation to hear the petitioner also, while deciding the application.

3. The grievance of the petitioner is that the 1st respondent will proceed with the application filed under Sec. 26A of the Rules, 1981 without hearing him. The petitioner relied the judgment of this Court in Shereef v.Muhammad Shafeek [2017 (2) KHC 873] and also Ext.P11 interim order in which it is stated that the petitioner has got a right of hearing.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for respondent Nos. 2 and 4. I also heard the learned Government Pleader who appeared for the 1st respondent. The way in which this writ petition is going to be disposed of, no notice is necessary to respondent Nos. 4 to 10. If they are aggrieved, they are free to file a review petition.

5. After hearing both sides, I think there can be a direction to the 1st respondent to consider Ext. P15 representation on the day on which Rule 26A of the Rules, 1981 application is going to be considered. An opportunity of hearing should be given to the petitioner and other affected parties.

Therefore, this writ petition is disposed of with following directions:

1) There will be a direction to the 1st respondent to consider Ext.P15 representation at the time when Rule 26A application of the respondent Nos. 4 to 10 is considered.

2) The petitioner is free to produce the additional documents and also free to

raise all the contentions raised in this writ petition before the 1st respondent. An opportunity of hearing also should be given to the petitioner and other affected parties.

3) The Government Pleader will inform the 1st respondent about the contents of this judgment today itself.

Issue copy today itself.