

(2013) 11 KL CK 0073

In the High Court Of Kerala

Case No : WP (C) . No"s. 15367 and 25727 of 2009 (M) and 5903 and 26448 of 2011

Head Load and General Workers Union

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-11-2013

Acts Referred:

Citation : (2013) 11 KL CK 0073

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : M.P. Prakash, for the Appellant; P.M. Saneer, Sr. Government Pleader for R1 to R3, Sri. Koshy George, S.C., for R4, Sri. Asok M. Cherian, for R5, R7 to R16, R18 to R23, for the Respondent

Final Decision : Disposed Off

Judgement

K. Vinod Chandran, J.—Essentially the dispute raised in all the writ petitions are with respect to the issuance of 6A cards under the Kerala Head Load Workers (Regulation of Employment and Welfare) Scheme, 1983. Only a registered head load worker who has been issued with a card under scheme 6A can carry on the work of a head load worker in a scheme notified area. The present dispute relates to the area Asamannoor Panchayat near Perumpavoor. The rival claimants are the CITU, INTUC and HMS. The members of the said Unions applied for registration under Rule 26A of the Kerala Head Load Workers Rules, 1981 since only a person registered under the Rules could apply under the scheme when it is notified. It is also not in dispute that the scheme was notified in the area on 1.10.2008. While the CITU members were granted registration under Rule 26A as also under Scheme 6A in the year 2008 itself, the same was denied to the members of the INTUC and HMS unions. The applications filed by the members of the two unions, which are the petitioners in Writ Petition No. 5903/2011 was returned as per Ext. P14 which was challenged in the said writ petition.

2. The members of the two unions which were declined registration under the

Rules and the Scheme had unsuccessfully challenged the registration given to the members of the CITU union before the District Labour Officer. The rejection of the appeal by the District Labour Officer, was challenged in W.P. (C) No. 15367/2009.

3. The persons who had been earlier denied registration, i.e. members of the INTUC and HMS unions were granted registration under Rule 26A on 13.4.2009. The CITU union filed an appeal against the grant under Rule 26A, which the members of the rival union alleged as having been filed without the affected parties in the party array. The writ petition filed on the said allegation is W.P. (C) 25727/2009, wherein there is also a stay of the proceedings before the appellate authority.

4. W.P. (C) 26448/2011 is with respect to a solitary instance of cutting of rubber trees which again led to disputes between the rival claimants, as to who is to carry on the said work. At that point of time, only the members of the CITU union were having validly issued scheme 6A cards and they were allowed to carry on the work, subject; however, to final orders to be passed by the DLO, who was to decide on the disbursement of the remuneration of such work. The DLO eventually held in favour of the members who had valid 6A cards and the said order is challenged in W.P. (C)26448/2011.

5. As was noticed above, the core of the dispute boils down to; who are entitled to be issued with scheme 6A cards in the area. It is also to be noticed that considerable time has elapsed after the filing of the writ petitions and the situation at present would necessarily require a re-look, into the entire issue, by the Board. As of now, it is admitted that only the members of the CITU are issued with 6A cards and there are existing 19 members in the pool designated to the area. It is also submitted by the learned Government Pleader that there are two pools available in the area having numbers 178 and 179. The Kerala Head Load Workers Welfare Board or the appropriate authority under that, being the Convener of the District Committee, has to look into the facts and circumstances in existence at the present point of time as also the availability of the work and decide the issue afresh on the question of addition of members from the two rival unions of INTUC and HMS unions. To facilitate the same, Ext. P14 produced in W.P. (C) 5903/2011 is set aside. The issue shall be considered afresh after affording opportunity to all the interested parties by the Kerala Head Load Workers Welfare Board or the District Committee, Ernakulam who authorised by the Board to consider the dispute. The representatives of the respective unions shall appear before the District Committee of the Board on 18.11.2013. The matter shall be considered within a period of two months from the said date. To facilitate proper consideration of the same, necessarily orders have to be passed in the other writ petitions also at least to ensure that a finality to the disputes would be reached on the decision to be taken now by the Board.

6. W.P. (C) 25727/2009 is filed by one of the members of the union alleging that the appeal filed by the CITU against the issuance of 26A cards to the members of

the INTUC and HMS unions are without the affected parties in the party array. In the context of this Court having directed the Board to reconsider the issue of 6A cards the appeal need not be proceeded with at all. The challenge in WP(C)26448/2011, is only with respect to a solitary incident where rubber trees were cut and removed, it is clear that the work was carried out by the members of the CITU, which had valid 6A cards issued at that point of time. Necessarily remuneration would have to be paid to the workers who carried out the work. Writ petition 26448/2011 hence stand dismissed on that count alone.

7. It is made clear that the orders which are assailed in the writ petitions will not in any manner affect the consideration of the issue by this Board, directed as per this judgment. The contentions of all the parties are left open and the Board shall make a comprehensive speaking order on all the contentions raised. W.P. (C)15367/2009 is filed by the INTUC union challenging issuance of 26A cards to the members of the CITU. In the context of the challenge against the issuance of 26A cards to the members of the INTUC being confirmed by this Court, the issuance of 26A to the CITU union also will stand confirmed. Hence the issuance of Rule 26A cards to the members of all the unions has been confirmed and issuance of Scheme 6A cards would be looked into on an assessment of the area determined as scheme area and the work available thereon. Needless to say that the registration under Scheme 6 A shall be granted only to persons who are found to be having no other employment.

The writ petitions are disposed of as above, leaving the parties to suffer their respective costs.