

(2010) 11 KL CK 0114
In the High Court Of Kerala
Case No : W.A. No. 1661 of 2010

Madya Videshamadya Vyavasaya Thozhilali, R. Sisukumar, R. Girish and P.C. Santhosh APPELLANT

Vs

State of Kerala and Kerala State Beverages RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 11 KL CK 0114

Hon'ble Judges : P.R. Ramachandra Menon, J;Jasti Chelameswar, J

Bench : Division Bench

Advocate : KRB Kaimal, for the Appellant; Elvin Peter P.J., SC, Beverages Corpn., for the Respondent

Judgement

Ramachandra Menon, J.—This appeal has been preferred by a Trade Union and some workers who are stated as engaged on "daily wages" under the 2nd Respondent, being aggrieved of the verdict passed by the learned Single Judge declining interference in the matter.

2. The writ petition was filed with the following prayers:

- i) issue a writ of certiorari calling for the records leading to Exhibit.P10 and quash the same;
- ii) issue a writ of mandamus or any other appropriate writ, or direction declaring that the abkari workers on daily wages are entitled to get the same scale of pay as in the case of the other abkari workers working in the 2nd Respondent corporation;
- iii) issue a writ of mandamus or any other writ or order, direction directing the Respondents to sanction and pay the similar scale of pay to abkari workers on daily wages as in the case of the other abkari workers working in the 2nd Respondent Corporation forthwith.

3. The learned Single Judge observed that, the Petitioner workers, who were admittedly engaged on "daily wage basis" cannot be treated on par with the regular abkari workers employed by the 2nd Respondent and hence rejection of the claim for parity of benefits with regard to the salary and service condition did not call for any interference.

4. Aggrieved by the above verdict passed jointly in the above writ petition and also in W.P.(C) No. 20868 of 2010 preferred by another Trade Union and some workers, some other workers who were admittedly members of 1st Respondent Trade Union, approached this Court, seeking "leave" to prefer an appeal. When the matter came up for consideration, it was dealt with in detail and as per order dated 20.08.2010, in IA No. 640 of 2010, this Court observed that the remedy of the persons concerned was to cause an "Industrial Dispute" to be raised and to be pursued accordingly. Leave was rejected and the position of law was made clear, observing that the discretionary jurisdiction under Article 226 of the Constitution is not liable to be invoked in such matters, where proper remedy is provided under the Industrial Disputes Act, 1947.

5. Sri.K.R.B. Kaimal, learned Senior Counsel appearing for the Appellants submits that in view of the law declared by this Court, the Appellants would like to pursue the remedy under the Industrial Disputes Act and that, the only grievance is with regard to the observations made by the learned Single Judge in the concluding paragraph of the impugned judgment. A positive declaration has been made therein that, so long as the Petitioners in the writ petition do not belong to the "regular category" of employees and admittedly are engaged only on "daily wages", the Petitioners cannot claim equality with the regular employees of the Corporation, even if they are engaged in the category of Abkari workers. The learned Senior counsel submits that the right and liberties of the workers and the Union might be left open, so as to be dealt with by the appropriate Court/Tribunal under the Industrial Disputes Act.

6. After hearing, we find it fit and proper to relegate the Appellants" to pursue the remedy under the Industrial Disputes Act. It is made clear that, if any such dispute is raised, the same shall be dealt with and adjudicated in accordance with law, untrammelled by the observations made by the learned Single Judge in the impugned judgment.

The Writ Appeal is disposed of as above.