

(2015) 04 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition(C). Nos. 27747 of 2009-K and 33249 of 2009-A

O.P. Abdul Rasheed

APPELLANT

Vs

The Chairman, Kerala Headload Workers Welfare Board and
Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Headload Workers Act, 1978 — Section 18, 2(h), 2(i), 2(i)(ii), 21

Citation : (2015) 04 KL CK 0013

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : T.P. Pradeep, for the Appellant; Koshy George, SC and C.A. Majeed, SC, Advocates for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioners in the writ petitions are respectively the headload worker and the Union.

2. W.P.(C). No. 27747 of 2009 is filed by the worker seeking implementation of Exhibit P1 order of the Regional Joint Labour Commissioner [for brevity "RJLC"] passed under Section 21(6) of the Kerala Headload Workers Act, 1978 [for brevity "the Act"]. The RJLC directed the worker to be taken back in employment in Pool No. 2C of Valancherry, an area covered under the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 [for brevity "Scheme"].

3. The Union, in W.P.(C). No. 33249 of 2009, challenges the said order of the RJLC as also the order passed by the District Labour Officer [for brevity "DLO"] under Section 21 of the Act.

4. I have heard the learned counsel for the worker and the Union as also the learned Standing Counsel appearing for the Board.

5. The learned counsel for the Board places the issue in the proper perspective.

The petitioner-headload worker was registered and allotted to the pool on 01.03.1997. He remained absent from 13.07.2005 unauthorisedly and was issued with a show cause notice, which was not responded to. A subsequent show cause notice dated 27.10.2005 was replied to by communication dated 11.11.2005. Taking a lenient view, the petitioner was reinstated despite the unauthorised absence, on 12.11.2005. A second incident of unauthorised absence occurred from 02.07.2006 onwards. A show cause notice was issued on 16.09.2006, which again was not responded to. A subsequent show cause notice issued on 08.11.2006 was replied to, by communication dated 27.11.2006. The explanation submitted was that the marriage of the worker's daughter and the death of his brother disabled him from being present for work. By Exhibit P12, in W.P.(C). No. 33249 of 2009, the Chairman, under Para 24A of the Scheme, found that the explanation is not satisfactory and removed the worker from the rolls of the Committee.

6. Subsequently, the worker raised a dispute before the DLO under Section 21 of the Act, on 10.12.2007 and also filed a representation before the Board on 04.02.2008. Proceedings were taken by the DLO and the conciliation having failed, the dispute was considered and decided on merits by Exhibit P6 in W.P. (C). No. 33249 of 2009. By Exhibit P6, the DLO found that the proceedings taken by the Chairman cannot be one under Para 24A of the Scheme and there is no appeal provided from the order under Para 24A. Even the proceeding under Para 24A could be deemed to be a misconduct under Chapter IX of the Scheme and since the procedural formalities having not been complied with, the order of the Chairman was found to be bad. An appeal was filed by the Board against the said order before the RJLC. The RJLC did not look into the specific issue of whether the order under Para 24A could be deemed to be a proceeding under Chapter IX. However, the RJLC found that the order of the Chairman is not proper, since it did not contain any reasons. Hence, the order of the DLO was affirmed; but on a different reasoning.

7. The learned counsel for the worker submits that the Board having not challenged the order of the RJLC, it has become final and the same has to be implemented. The learned Standing Counsel for the Board, however, submits that even during the pendency of the writ petition the worker was offered work in another pool and he had not turned up for the same. The learned counsel for the Union submits that against the order under Para 24A of the Scheme, there is an appeal provided under Para 36 and that having not been availed, the order of the Chairman acquires finality.

8. Admittedly in this writ petition there was an interim order directing participation in the very same pool in which the worker was employed; before removal from rolls under Para 24A of the Scheme. The Union would contend that despite the interim order, the worker has not turned up. The worker, however, refutes such a contention on the ground that it was the Union who refused the worker to participate in the pool. Immediately it is to be noticed that no

contempt petition has been filed by the worker on that count. The Board obviously offered the worker, inclusion in another pool, which he declined.

9. Conflicting contentions remaining to be so, one of the questions to be considered is whether the Union has locus standi and whether the Union's contention that the worker having not filed an appeal under Chapter IX of the Scheme against Exhibit P12 order produced in W.P.(C). No. 33249 of 2009, stands against the worker. There cannot be a dispute raised against an order under Para 24A of the Scheme, is the contention of the Union. As to the locus standi of the Union, the learned counsel for the worker would place before this Court a decision of a learned Single Judge reported in Chummattu Thozhilali Union Vs. Kerala Headload Workers Welfare Board, .

10. Chummattu Thozhilali Union Vs. Kerala Headload Workers Welfare Board, refers to a case where registration had been granted to two workers under Rule 26A of the Kerala Headload Workers Rules, 1981 [for brevity "the Rules"] and an Identity Card issued under Para 6A. The registration under Para 6A having been made validly by the Convenor, inviting applications from those registered under Rule 26A; the Union does not have locus standi to file an appeal under Para 6E of the Scheme, is the contention. Herein, the issue is not with respect to a registration but a removal effected under Para 24A. The Union challenge the dispute raised under Section 21 to be without jurisdiction. Further herein, the Board had filed an appeal to the RJLC, which is challenged herein under Article 226 of the Constitution, by the Union. Hence, the issue of locus standi raised, has to be found in favour of the Union.

11. The next contention raised by the Union is that, the proceeding under Section 21 of the Act is not maintainable. The said contention is raised on a misapprehension that Para 24A proceedings are appealable under Chapter IX of the Scheme. This Court is of the opinion that proceedings under Para 24A and Chapter IX are independent. It is evident that, as per the definition of "employer" under Section 2(i)(ii) of the Act, as extracted hereunder, the Committee appointed under Section 18 would be the employer of the headload worker, attached to a pool constituted under the Committee:

"2(i) "employer means"--

(i) xxx xxx xxx

(ii) in relation to a headload worker who is not employed by any employer or contractor, the Committee appointed under Section 18.

Explanation.- For the purpose of this sub-clause, a "headload worker" means a person who is registered under the Scheme and paid wages by the Committee either through employer or contractor.

(iii) xxx xxx xxx".

12. Para 24A of the Scheme confers power on the Chairman to remove the

worker from the rolls and cancel his registration on occurrence of unauthorised absence. Chapter IX of the Scheme deals with a totally different situation, where specific misconducts are listed out and punishment too specified. The appeal provided under Para 36 of the Scheme is against the cancellation of registration of a worker as specified in sub-clause (c) of Para 35. Hence, it cannot be said that an order under Para 24A would be appealable under Para 36 of the Scheme. An order passed under Para 24A by the Chairman of the Committee removing the worker from the rolls of the Committee and cancelling his registration has to be deemed to be an order of the employer. Hence, such order would give rise to a dispute, which could be agitated under Section 21 of the Act. Considerable support can be garnered for the above proposition from the Explanation to Section 2(h) of the Act, which defines "dispute" as extracted hereunder:

"2(h) "dispute" means any dispute or difference between employers and employers or between employers and headload workers or between headload workers and headload workers, which is connected with the employment or non-employment or the terms of employment or the conditions of employment, of any headload workers.

Explanation: Where any employer discharges, dismisses, retrenches or otherwise terminates the services of, or denies employment of an individual headload worker, any dispute or difference between that headload worker and his employer connected with, or arising out of, such discharge, dismissal, retrenchment, termination or denial of employment shall be deemed to be a dispute notwithstanding that no other headload worker or any union of headload workers is a party to the dispute".

13. Going by the definition under Section 2(i) and 2(h) as also the Explanation, the present dispute is one of denial of employment made by the Committee, which is the "employer" of the worker, and the justifiability of the same is perfectly possible of adjudication, as a "dispute", under Section 21 of the Act. The contention of the Union in that respect is, hence, negated.

14. The DLO, though perfectly justified in treating the issue as a dispute under Section 21; however went on a totally wrong premise in considering the issue and clearly misconstrued the provisions of the Scheme. The DLO found that even for orders under Para 24A of the Scheme, Chapter IX of the Scheme is applicable. On the ground of procedural irregularity as prescribed under Chapter IX; the order under Para 24A was set aside. The RJLC, however, confirmed the order on a different reasoning; finding that there is no reason stated by the Chairman for cancelling the registration on the ground of unauthorised absence. The RJLC merely relied on the paper report, indicating the death of the brother of the worker and also the marriage of the daughter to find that there is reasonable explanation. The RJLC also found that the status of a headload worker and his illiteracy would not commend a dismissal on the ground of unauthorised absence. That would be rendering otiose the provisions of Para 24A of the Scheme.

15. This Court cannot countenance such finding, since a registered worker, who was issued with an Identity Card as per the Scheme, has to necessarily comply with the regulations contained in the Scheme, when he absents himself from duty. The specific question considered by the Chairman of the Committee, the employer, was unauthorised absence. Admittedly, the worker had not informed the Committee his absence on the ground of two incidents; death of his brother and the marriage of his daughter. In such circumstance, what would be relevant for consideration is, whether the reason stated by the worker would be sufficient to condone the unauthorised absence from 02.07.2006 to 27.11.2006, i.e., a period of more than four months. There is no reference to the dates on which the death or the marriage occurred. It is also to be noticed that the authority would have to consider whether even if the absence was justified whether it was proper for the worker to have unauthorisedly absented himself. The RJLC failed to consider the issue as to whether the worker had any valid grounds to have "unauthorisedly" absented himself. Whether there was any explanation for his having not informed the Committee of his absence, would be the relevant issue.

For all the above reasons, Exhibits P6 and P7 orders in W.P.(C). No. 33249 of 2009 are set aside. The matter is remanded back to the DLO for fresh consideration. The parties shall appear before the DLO on 28.04.2015, pursuant to which the DLO shall take evidence, if necessary, and shall consider the matter afresh, in accordance with law and in accordance with the observations made herein above. The DLO shall finalise the proceedings within a period of three months from the date of appearance of parties. W.P.(C). No. 33249 of 2009 is disposed of as above. W.P.(C). No. 27747 of 2009 would also stand disposed of on the above terms. Parties are left to suffer their costs in the respective writ petitions.