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**(2002) 04 KL CK 0038**

**High Court Of Kerala**

**Case No:** W.A. No. 1175 of 1996

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| Karunakara Kurup | | APPELLANT |
| | Vs | |
| State of Kerala | | RESPONDENT |

**Date of Decision:** April 4, 2002

**Acts Referred:**

- Kerala Headload Workers Act, 1978 - Section 4
- Kerala Headload Workers Rules, 1981 - Rule 26A, 26A(1)

**Hon'ble Judges:** M.R. Hariharan Nair, J

**Bench:** Single Bench

**Advocate:** P. Balagangadhara Menon, for the Appellant; M. Ratna Singh, General, for the Respondent

**Judgement**

M.R. Hariharan Nair, J.
Heard all parties.

2. This Writ Appeal has been placed before me pursuant to the order of the Hon''ble Chief Justice passed on 3.4.2002 for consideration. That order, in turn, was passed pursuant to a detailed judicial order passed on 19.3.2002 by a Full Bench of which the Hon''ble Chief Justice was one of the parties.

3. A perusal of the said judicial order shows that based on the difference of opinion between the learned Judges of the Division Bench which heard W.A. No. 1175/96, the matter had been referred to the said Full Bench for consideration. The Full Bench, however, did not find it necessary to consider the case. It declined to answer the reference and directed the Registry to place records before the Hon''ble Chief Justice for reference to a third Judge in view of Section 23 of the Travancore-Cochin High Court Act which provides that in case of disagreement between the two Judges of the Division Bench, the Chief Justice can refer it to a third Judge for opinion.

4. In view of the turn of events as aforementioned, it so happens that there is no specific question referred to me for decision. I have therefore to cull out from differing judgments of the two learned Judges of the Division Bench as to what exactly is the point of difference on which the opinion of a third Judge is required before proceeding to answer the same.

5. It is unnecessary to state the facts of the case because it is already described twice in the deferring judgments. Suffice it to say that I proceed on the facts as narrated in paras 1 and 2 of the two judgments delivered by the Hon''ble Judges constituting the Division Bench. For the sake of convenience the authors will hereinafter be referred to as Senior Judge and Junior Judge respectively.

6. I find, on a perusal of para-6 of the judgment of the Senior Judge that the view expressed by the learned single Judge in the impugned judgment in O.P. No. 12524/95 viz., that the direction in earlier O.P. No. 13026/93 stood in the way of maintainability of Ext. P2 was found incorrect by the Senior Judge and it was found that the direction that consideration of the disputed question should be by "appropriate authorities otherwise than in accordance with the provisions contained under the Kerala Headload Workers (Regulations of Employment and Welfare) Scheme, 1983" did not preclude the workers from agitating whatever rights they have under the Headload Workers Act (if they have any suqh rights) before the authorities under the Headload Workers Act.

7. In para-2 of the dissenting judgment of the Junior Judge, the aforesaid aspect was gone into arid it was held that the learned single Judge, in the impugned judgment, proceeded on the assumption that the direction in the earlier judgment in O.P. No. 13026/95 was to approach authorities otherwise than under the Headload Workers Act which was an error; that there was no such direction and the direction was only to approach the authorities except under the Headload Workers (Regulation of Employment and Welfare) Scheme 1983.

8. Ext. P2 is an order passed by the District Labour Officer who is the conciliation Officer appointed u/s 21(4) of the Act which section reads as follows:-

21(4). If a settlement of the dispute or any of the matters in dispute is not arrived at, the Concillation Officer shall take a decision on the dispute or, as the case may be, on the matters in respect of which no settlement has been arrived at and shall send a report of the dispute with a copy of his decision to the appellate authority."

9. Irrespective of whether the Scheme is extended to an area or not, he will hence have jurisdiction to decide the matter provided what is raised is a ''dispute''.

10. Section 2(h) of the Act defines "dispute" as follows:-

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;".

The claim regarding right to work raised by the members of the appellants'' Union is clearly a dispute and it is unconnected with the question whether the Scheme is applicable to the area or not. There is thus unanimity between the two learned Judges on the fact that Ext. P2 was passed by a competent authority. In other words, on the fact that the District Labour Officer was competent to decide the dispute notwithstanding the manner in which the authority was named in the judgment in O.P. No. 13026/93, there is no controversy between the learned Judges.

11. The difference, as evident from paras-9 to 11 of the judgment of the Senior Judge, and paras-6 to 8 of the judgment of the Junior Judge appears to be only on the merits of Ext. P2 findings, i.e.., on the question whether "any preferential right is conferred on an employee viz., the headload worker under the Act de hors the scheme to claim employment as a matter of right" and on the further finding that "irrespective of the fact Whether the headload worker is permanent employee under the employer or not under the Scheme he can be employed by the employer, and the headload worker has no right to enforce under the Act." In view of this position, I presume that the points on which opinion is required from me are the following:

(1) Whether the headload workers involved in the present case had a right to be enforced under the Act as against the claim of the employers that they have permanent workmen to do the work?

(2) Whether Ext. P2 order deserves interference?

12. Point No. 1:- The Kerala Headload Workers Act, 1978 (Act 20/1980) came into force throughout the State of Kerala on 20.5.1981. Rule 26A contemplates registration of headload workers under the Act. Apart from this, Section 13 of the Act provides for one more Schemes to be formulated by the Government for any employment or group of employments in one or more area or areas specified in the Notification.

13. During hearing, G.O.(Rt.) No.372/97/LBR dated 4.2.1997 issued by the Government was placed before me according to which a Committee for the area including the limits of Mavelikara Municipal area has been constituted. Even earlier the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 had been extended to the said limits as early as on 17.7.1992. This is clear from the explanatory Note in the

G.O. and was done through SRO 889/92 & 890/92 (G.O. (Rt.) 1772 & 1773/92/LBR dated 17.7.92). Chapter II of the said Scheme provides for registration of Headload Workers for the purpose of the Scheme and is in addition to the registration contemplated in Rule 26A. It was stated during hearing that the members of the Appellant Union have already obtained registration under the relevant Scheme and under Rule 26A as can be seen from Annexure II to CMP No. 1824/02. ClauseVI of the Scheme provides as follows:-

"6. Procedure for regulation of employment of Headload Workers on Scheme areas.-

(1) No headload worker who is not a registered Headload Worker under the provision of the Kerala Headload Workers Rules shall be allowed or required to work in any area to which the scheme applies from the date of commencement of the functional operation of Scheme in the area.

(2) From the date of commencement of the functional operation of the scheme many area, no headload worker who as not permanently employed by an employer or contractor shall be allowed or required to work in any area to which the scheme applies unless he is granted a further registration under the provisions of this scheme."

14. The alleged permanent employees of the respondents 3 to 5 cannot hence work as headload workers in the area without appropriate registration under Rule 26A. Section 26 read with Rule 27 also obliges the said respondents to maintain in Form No. V, a register of employment showing the names and other details of their headload workers. Neither any such register nor any Registration Certificate of the employee concerned under Rule 26A could be produced by the respondents 3 to5 to show that their case that they have permanent headload workers is genuine. Their case they are not bound to engage the appellant''s members as they have their own permanent headload workers therefore fails. In view of Clause VI of the Scheme aforementioned the alleged permanent workmen, in the circumstances are disentitled to work as headload workers and the appellant can hence insist that its members should be engaged in the establishments of the respondents 3 to 5.

15. Though many decisions were cited in the two judgments of the Senior Judge and Junior Judge only one among them is of the Full Bench and that is of Raghavan v. Superintendent of Police (1998 (2) KIT 732), paras. 15, 16, 18,19 therein contain categoric findings which go against the contention of the respondents.

16. A perusal of the judgment impugned in the case shows that the learned single Judge had proceeded on the assumption that the Scheme had not been extended to the Mavelikara Municipality. Since the Scheme has actually been extended and registration had been effected, the workers certainly have a right which could be enforced under the Act and the Scheme.

17. The learned sing''le Judge has opined that there is nothing in the Headload Workers Act which compels an employer to engage a headload worker when he is in a position to

get the work done by his own permanent worker. True, but Clause VI of the Scheme has also to be read along with it. There is no cogent evidence adduced to show that respondents 3 to 5 have permanent headload workers engaged by them. Neither their registrations nor the Register maintained by the employer is forthcoming. That apart, the entire consideration in the impugned judgment proceeded on the assumption that the authority under the Headload Workers Act had no jurisdiction to pass such an order in view of the interpretation given to the judgment in O.P. No. 13026/93 in the matter of the forum for adjudication. As already mentioned, both the Hon''ble Judges who heard the Writ Appeal are unanimous that the said interpretation is incorrect and that the authority which passed Ext. P2 had the jurisdiction.

18. It is seen from Ext. P2 that the alleged permanent workers had not filed any application under Rule 26A(1) seeking registration under the Act. I have already referred to the fact that irrespective of whether the Scheme was applicable to the area of work or not registration under Rule 26A was essential. No person can therefore claim himself to be a permanent headload worker of the respondents 3 to 5 as alleged. In view of Clause 11 of the Scheme no headload worker could be employed or paid except in accordance therewith. The respondents 3 to 5 have therefore no right to insist that notwithstanding the Scheme they shall get the headload work done through persons who are not registered as headload workers. It is in this background that claim of the members of the appellant''s Union has to be approached. A perusal of Ext. P2 order shows that the Conciliation Officer has approached the relevant aspect from the right perspective and based on previous history relating to settlement of bonus etc., and found that the named workers of the appellant''s - Union are entitled to get the headload work in the establishments of respondents 3 to 5. I find no justification to reverse those findings.

19. The maintainability of the Original Petition is also doubtful. Challenge to Ext. P2 order was made by the respondents 3 to 5 before the Appellate Authority constituted u/s 4. It was after trying the remedy of appeal that the present Original Petition was filed. It is stated that the statutory appeal was withdrawn. Whatever that be, an effective remedy provided under the Act by way of appeal was available and before exhausting that remedy, the remedy of judicial review was not available to respondents 3 to 5.

In these circumstances, I am in respectful agreement with the views of the learned Junior Judge. Ext. P2 deserves no interference by way of judicial review.

The opinion as above will be placed before the Division Bench for passing appropriate further orders.