

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WA.No. 1953 of 2015 () IN WP(C).25825/2010

AGAINST THE JUDGMENT IN WP(C) 25825/2010 of HIGH COURT OF KERALA DATED
31-03-2015

APPELLANT/(3RD RESPONDENT):

P.V.RAJAN
S/O.VELAYUDHAN, PADIVATTOM VEEDU, VENGINISSERY,
PARALAM P.O, THRISSUR - 680 578.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS/(PETITIONER & RESPONDENTS 1 & 2):

1. ABHINAND.A.A
PROPRIETOR, ARIMBOOR TRADERS, KARSHAKA NAGAR,
KODANNUR P.O, THRISSUR 680 563
2. THE REGIONAL JOINT LABOUR COMMISSIONER,
CIVIL STATION,KAKKANAD, ERNAKULAM 682 030
3. THE DISTRICT LABOUR OFFICER, THRISSUR, PIN 680 001

R1 BY ADVS. SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

W.A. No.1953 of 2015

Dated this the 16th day of November, 2015

JUDGMENT

Surendra Mohan,J.

The appellant who was the 3rd respondent before the learned Single Judge challenges the judgment dated 31.3.2015 by which, Ext.P9 proceedings of the 1st respondent has been set aside. The case of the appellant was that, there was denial of employment to him by the 1st respondent. His case was that, he was an attached Head Load Worker of the 1st respondent establishment. In view of the dispute raised, the Assistant Labour Officer had tried to effect a settlement of the dispute in exercise of the powers under Section 21 of the Kerala Head Load Workers Act, 1978 (hereinafter referred to as “the Act” for short). The conciliation proceedings ended in failure. The 2nd respondent therefore, considered the question, noted that

the 1st respondent was ready to provide employment to the appellant and therefore, passed an order directing payment of Rs.160/- per day as his wages and holding that, he was a Head load worker of the establishment. The said order, Ext.P8 in the Original Petition was challenged by the appellant before the 1st respondent. As per Ext.P9, the 1st respondent directed the appellant to be paid 50% of the wages payable to him for the period that he had remained out of employment. It was the said order that was under challenge in the Writ Petition before the learned Single Judge.

2. After considering the contentions of the respective parties, the learned Single Judge found that, since the petitioner was not a Head Load Worker who was registered under the provisions of Rule 26A of the Kerala Head Load Workers Rules, 1981, the authorities under the said Act had no jurisdiction to decide the dispute. It has also been found that, the proper remedy of the appellant was to take

recourse to the provisions of the Industrial Disputes Act, 1947 or the Kerala Shops and Commercial Establishments Act, 1960. The said remedies available to the appellant have been left open.

3. According to Sri.P. Ramakrishnan who appears for the appellant, the learned Single Judge seriously erred in finding that the authorities under the Act had no jurisdiction in the matter for the sole reason that, the petitioner was not a registered Head Load Worker. No such restriction could be placed, considering the definition of Head Load Worker in the Act. Therefore, according to the learned counsel, the judgment under appeal requires to be interfered with and set aside.

4. Adv.Sri.M.P.Ashok Kumar appears for the 1st respondent employer. According to the counsel, this is a case in which the employer has been continuously willing to provide employment to the workman, the appellant. Therefore, there has not been any denial of employment.

Our attention is drawn to Ext.P5 letter of the appellant to submit that, the workman had voluntarily left the service of the 1st respondent. It is also pointed out by the learned counsel that, the relief granted by the 1st respondent in Ext.P9 was not supported by any evidence. For the said reasons also, the said proceedings were unsustainable.

5. Heard. We notice that, the case of the 1st respondent employer all along has been that, he was willing to employ the appellant herein. He still maintains the said stand. The appellant is admittedly a person who is not a registered worker under the Kerala Head Load Workers Rules. There is nothing on record to show that the appellant had been denied employment as alleged. On the contrary, the stand of the 1st respondent even before us is that, he is willing to employ the appellant, provided he reports for work. Therefore, it is for the appellant to report for work, if he is desirous of continuing the employment of the 1st respondent. Learned Single Judge has left open the

claims of the appellant to be agitated in appropriate proceedings under the Industrial Disputes Act, 1947 or the Kerala Shops and Commercial Establishments Act, 1960, whichever enactment is applicable. We find that, Ext.P9 order was passed, without any material to support the relief that had been granted. Therefore, we do not find anything wrong with the judgment of the learned Single Judge setting aside the same.

For the above reasons, this Writ Appeal is dismissed. We make it clear that, it shall be open to the appellant to accept the offer made by the 1st respondent and to report for work, if he is interested in continuing the employment under the 1st respondent.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
17.11.2015