

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 12845 of 2008 (D)

PETITIONER(S):

THURAMUGHA THOZHILALI UNION,
INTUC, REG.NO.118/57 BEYPORE PORT, KOZHIKODE
REPRESENTED BY ITS JOINT SECRETARY, SATHEESH KUMAR
S/O.RAJAN, AGED 32 YEARS.

BY ADV. SRI.K.M.FIROZ

RESPONDENT(S):

1. A.M.BAVA, S/O.ABDURAHIMAN,
ANGALAKATH MUKKIL, NAYARKULAM POST, BEYPORE
CALICUT-15.

2. THE PORT OFFICER, BEYPORE PORT,
CALICUT-15.

3. THE CONVENOR, THURAMUGHA THOZHILALI
UNION, STU, BEYPORE PORT
POST BEYPORE, CALICUT.

4. THE CONVENOR, KAYATTURAKKU THOZHILALI
UNION, CITU, BEYPORE PORT
POST BEYPORE, CALICUT.

5. THE ASSISTANT LABOUR OFFICER,
FEROKE, CALICUT.

6. THE DISTRICT LABOUR OFFICER,
KOZHIKODE.

7. THE APPELLATE AUTHORITY UNDER THE
KERALA HEADLOAD WORKERS ACT, THE REGIONAL
JOINT LABOUR COMMISSIONER, NORTH ZONE
KOZHIKODE-673 020.

BY ADV. SRI.A.RANJITH NARAYANAN

BY ADV. SRI.SREEJITH CHEROTE

BY GOVERNMENT PLEADER SRI. MANOJ KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

EXHIBITS

- P1- TRUE COPY OF THE LETTER DATED 26.5.2006 SENT TO THE DISTRICT LABOUR OFFICER
- P2- TRUE COPY OF THE DECISIONS OF THE MEETING CONVENED ON 27.9.06 SIGNED BY THE PORT OFFICER
- P3- TRUE COPY OF THE LETTER DATED 7.11.06
- P4- TRUE COPY OF THE 3-8APPLICATION DATED 2.12.06 ISSUED BY THE PETITIONER TO THE DISTRICT LABOUR OFFICER
- P5- TRUE COPY OF THE ORDER DATED 5.12.06
- P6- TRUE COPY F THE APPEAL MEMORANDUM DATED 15.1.07
- P7- TRUE COPY OF THE STATEMENT FILED BY THE PORT OFFICER, DATED 28.3.07 BEFORE THE APPELLATE AUTHORITY
- P8- TRUE COPY OF THE STATEMENT FILED BY R1 AGAINST THE AVERMENTS IN THE ABOVE APPEAL
- P9- TRUE COPY OF THE ARGUMENT NOTE FILED BY THE PETITIONER DATED 29.9.07
- P10- TRUE COPY OF THE NON-SPEAKING ORDER DISMISSING THE APPEAL ON 2.11.07 PASSED BY THE APPELLATE AUTHORITY

//True Copy//

P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 12845 of 2008

Dated 18th March, 2015

JUDGMENT

The petitioner is a Union aggrieved with Ext.P5 order of the District Labour Officer as confirmed in Ext.P10 appeal. The petitioner is aggrieved with the said orders insofar as the 1st respondent has been granted $\frac{1}{2}\%$ of the work load allotted to the petitioner/Union. The petitioner/Union submits that, in fact a settlement was entered into before the Port Officer as per Ext.P2 and there can be no deviation from the settlement.

2. The complaint was originally filed before the Labour Officer by three workmen, two of whom withdrew the same as per Ext.P2. Hence, there was no point in further effecting conciliation, is the contention. The petitioner/Union and the 1st respondent is bound

by Ext.P2, is the compelling argument.

3. At the outset, it has to be noticed that the Port Officer, who is the 2nd respondent herein, is only in the role of employer under the Kerala Head Load Workers Act (for short 'the Act'). The employer definitely has power to enter into the settlement with the Unions. However, in the present case, it is not a direct employer/employee relationship and workers are supplied by the Head Load Workers Board. Going by the provisions of the Act and the Rules framed thereunder, for conciliation of disputes, the authorized Officer is the District Labour Officer under Section 21 of the Act and any directions made by the said Officer can be impugned in appeal.

4. Ext.P2 dated 27.09.2006, is definitely a settlement in which the 1st respondent also was

a party. However, even later to that, there was a dispute raised before the District Labour Officer which was adjudicated upon, under Section 21 of the Act, by Ext.P5. It is the admitted position that 60% of the work in the area, under the 4th respondent, is set apart for the CITU Union and 40% for the INTUC and STU Unions. Out of the said 40%, only $\frac{1}{2}$ % have been allotted by Ext.P5. Going by the work allotment, there is nothing wrong since the 1st respondent is one of 40, who is entitled to work in the area. However, there is a further direction that the amounts would be paid by the CITU in Ext.P5. That is not proper. Definitely, if the 1st respondent seeks his continuance in the employment as an INTUC worker, he would have to be a member of the said Union and also would have to take his emoluments from the Convener of the said Union.

5. In the above circumstances, Ext.P5 to the extent it directs payment by the CITU, is set aside. The Port Officer, who is the 2nd respondent herein, shall ensure that Ext.P5 is complied with in all other respects. The amounts shall be paid to the Convenor of the INTUC, for payment to the 1st respondent. It is also made clear that the 1st respondent's continuance in the petitioner/Union is mandatory for his being continued in the work. With the above observations and modification, Ext.P5 is upheld.

The writ petition is disposed of. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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