

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 19800 of 2015 (Y)

PETITIONER :

**ALFRED THOMAS,
AGED 26 YEARS, S/O.M.K.THOMAS, A1 TRAVELS,
ROOM NO.XI/446, CSI MINI SHOPPING COMPLEX,
NEAR MUTHOOT GROUP, BAKER JUNCTION, KOTTAYAM.**

BY ADV. SRI.A.AHZAR

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF LABOUR,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. DISTRICT LABOUR OFFICER,
LABOUR OFFICE, KOTTAYAM -686 001.**
- 3. ASSISTANT LABOUR OFFICER,
LABOUR OFFICE, SECOND CIRCLE, VELAPPILLY LINE,
KOTTAYAM - 686 001.**
- 4. DEPUTY LABOUR OFFICER,
LABOUR OFFICE, COLLECTORATE, KOTTAYAM -686 001.**

BY SR GOVERNMENT PLEADER SMT. K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON 12-10-2015 DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 19800 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE JUDGMENT IN WPC.24030/2014 DATED 18.9.2014 BY THIS HON'BLE COURT.**
- P2 - TRUE COPY OF THE ORDER DATED 16.9.2014 BY THE 3RD RESPONDENT.**
- P3 - TRUE COPY OF THE ORDER DATED 31.12.2014 BY THE 2ND RESPONDENT.**
- P4 - TRUE COPY OF THE JUDGMENT IN WPC.NO.14386/2014 DATED 12.06.2014 BY THIS HON'BLE COURT.**
- P5 - TRUE COPY OF THE REGISTER OF EMPLOYMENT AND WAGES BY THE PETITIONER.**
- P5(A) - TRUE COPY OF THE REGISTER OF EMPLOYMENT AND WAGES BY THE PETITIONER.**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

'CR'

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19800 of 2015

Dated this the 12th day of October, 2015

J U D G M E N T

The petitioner is aggrieved by the denial of registration of himself and other employees under Rule 26 (a) of the Kerala Head Load Workers Rules (for short, “the Rules”) as per Ext.P2 order and Ext.P3 appeal.

2. The petitioner alleges that he is running a parcel service, which is a branch of A1 Travels, Coimbatore. The said speed parcel service is functioning at A1 Travels, Room No.XI/446, CSI Mini Shopping Complex, Near Muthoot Group, Bakery Junction, Kottayam District. He has applied for registration of himself as well as other employees under Rule 26(a) of the Rules, which was denied as per Ext.P2 order. Ext.P3 appeal was also rejected. According to the petitioner, in the establishment of the petitioner, daily loading and unloading is necessary and if the registration

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is not granted immediately, the same would lead to untold hardship, irreparable injury and misery. Hence, this writ petition.

3. In the statement filed by the 2nd respondent, it is stated as follows;

The petitioner has registered his name as an employer before the District Committee and has got registration as Reg.No.1008/12. The petitioner's father was running the establishment for more than 2 decades and since that period, the head load workers of the area are doing the loading and unloading work for the establishment. The 3rd respondent, who is the registering authority, has conducted necessary enquiries upon the applications submitted by Sri.Alfred Thomas, Fareed Shalk, Sakkel S.K, Rubeeul S.K. and Larif Sheik and found that they are not working as head load workers in the establishment. Hence, the applications were rejected vide Ext.P2 order. In the appeal, the petitioner was heard by the 2nd respondent. The petitioner stated that he was facing much difficulties due to misconduct and indiscipline of the pool workers and hence, his own workers shall be got registered. The petitioner has produced copies of the

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register of employment and wages containing names and amount of wages in respect of 4 employees viz. Fareed Shaik, Sakkeel S.K., Rabeeul S.K. and Larif Sheik. The 2nd respondent pointed out that the Kerala Head Load Workers (Regulation of Employment and Welfare) Scheme, 1983 stipulates ample provisions under para 10, 11, 33, 34 & 35 to redress any grievance on the part of the employer being caused by the misconduct or indiscipline of the registered head load worker. According to the 2nd respondent, the petitioner has not taken any statutory remedial measures, but, striving to get rid of the registered head load workers. Hence, according to the 2nd respondent, the appeal was rejected in good faith. The scheme was implemented at Kottayam with effect from 10.09.1990. As per para 11 of the scheme, it is stated that after coming into force of this scheme for an area, no head load worker shall be employed or paid wages except in accordance with the provisions of the scheme. Hence, the 2nd respondent has taken the stand that the head load workers registered under the scheme have got a right for employment and to earn wages in accordance with the provisions of the scheme.

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4. Arguments have been heard.

5. The petitioner has submitted an application for registration of himself as well as other employees under Rule 26(a) of the Rules. As the same was not considered, he approached this Court with WP(C) No.24030/2014, which was disposed of by Ext.P1 judgment directing the respondents to consider the application within a time frame. Thereafter, the application was rejected by the 3rd respondent as per Ext.P2 stating that the petitioner is the owner and others are not working in the said establishment. Against that, the petitioner filed an appeal before the 2nd respondent, which also was dismissed as per Ext.P3. The petitioner relies on Ext.P4 judgment passed by this Court in WP(C) No.14386/2014, by which, this Court granted police protection for loading and unloading in the petitioner's establishment. The petitioner also relies on Exts.P5 & P5(a), which are the true copies of the pages of register of employment and wages maintained by the petitioner, which would reveal

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that the employees by name, Fhareed Shaik, Sakkeel S.K., Rubbul S.K. and Larif Shaik, are working in the petitioner's establishment.

6. This Court in **Ramesh A.N. v. Assistant Labour Officer (First Circle), Thrissur & Others** [2013 (4) KHC 484] has observed that there is no restriction against any head load worker seeking permanent employment under an employer in an establishment situated within the area of operation of Head Load Workers (Regulation of Employment and Welfare) Scheme. In **Rajeev V. v. District Labour Officer, Kakkanad & Others** [2010 (4) KHC 757], this Court observed that for obtaining registration, what is required is a good physic and when an employer is prepared to engage a person as a head load worker, it is not necessary that he should have already been working under the employer or he should have previous experience as a head load worker. Again in **Majeed v. District Labour Officer** [2015 (1) KLT 750], this Court

observed that even in the notified areas, the right of an employer to employ his own head load workers cannot be discarded. It is evident from Ext.P5 series that the employer had confirmed the employment of a few workers; and therefore, there is no legal impediment in granting registration under Rule 26(a) of the Rules.

In the result, the writ petition is allowed. Exts.P2 & P3 are quashed. Respondents are directed to consider the petitioner's application in the light of what has been stated above and to grant registration under Rule 26(a) of the Rules within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-