

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 34359 of 2008 (S)

PETITIONER(S) :-

KOLLAM JILLA KALLU CHETHU MADYA VYAVASAYA
THOZHILALI UNION (REGD) REPRESENTED BY ITS
GENERAL SECRETARY N.BHADRAN PILLAI, SHAN TOURIST HOME
NALLEZATHU MUKKU, CHAVARA.P.O, KOLLAM.

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.R.GIREESH VARMA

RESPONDENT(S) :-

1. THE STATE OF KERALA REPRESENTED
SECRETARY TO GOVERNMENT OF KERALA, REPRESENTED BY CHIEF
SECRETARY TO GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM.
2. KERALA ABKARI WORKERS WELFARE FUND BOARD
THIRUVANANTHAPURAM, REPRESENTED BY ITS CHIEF
WELFARE FUND INSPECTOR.
3. KERALA STATE BEVERAGES CORPORATION LTD,
THIRUVANANTHAPURAM, SASTHAKRIPA OFFICE COMPLEX
SASTHAMANGALAM, THIRUVANANTHAPURAM 695010
REPRESENTED BY ITS MANAGING DIRECTOR.
4. ABHILASH.P, PENGANAMoola VEEDU,S.R.K.NAGAR PO,
PALAPPURAM OTTAPPALAM, PALAKKAD DIST.
5. BIJU.J, BIJU BHAVANAM, THEKKEKARA
KISHAKKU, PALLIPPAT PO, HARIPAD 690512.

R4 BY ADV. SRI.KOSHY GEORGE
R5 BY ADV. SRI.ASOK M.CHERIAN
R1 BY SR. GOVERNMENT PLEADER SRI.P.I.DAVIS
R3 BY ADV. SRI.C.S.AJITH PRAKASH, SC, BEVERAGES CORP
BY SRI.ROY CHACKO
BY SRI.M.K.CHANDRA MOHANDAS,SC, K.ABKARI WW
BY SRI.ELVIN PETER.P.J, SC,BEVERAGES CORPN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Petitioner's Exhibits :-

Ext.P1 :- True copy of registration certificate dated 27.5.2004 issued by the Registrar of Trade Unions (Kerala State) to the petitioner.

Ext.P2 :- True copy of GO(Rt.)No.81/2002/Td dated 20th February, 2002.

Ext.P3 :- True copy of judgment dated 3.3.2004 in OP No.13261/2003 of this Honourable Court.

Ext.P4 :- True copy of letter dated 17.3.2008 of the 1st respondent to the petitioner.

Ext.P5 :- True copy of letter dated 10.4.2008 of the 3rd respondent to the petitioner.

Ext.P6 :- True copy of the G.O(Rt) dated 2.3.2006.

Ext.P7 :- True copy of letter dated 22.7.2008 of the 3rd respondent to the petitioner.

Ext.P8 :- True copy of letter dated 3.10.2008 of the 1st respondent to the petitioner.

Ext.P9 :- True copy of statement of facts in Complaint No.602/2008 filed by 3rd respondent before Honourable Lok Ayukta.

Ext.P10 :- True copy G.O (Rt)No.567/2004/TD dated 7/8/2004.

Ext.P11 :- True copy order dated 10.3.2006 of the 3rd respondent appointing the 4th respondent as Abkari Worker on daily wages.

Ext.P12 :- True copy of order dated 10.3.2006 of the 3rd respondent appointing the 5th respondent as Abkari Worker on daily wages.

Respondent's Exhibits :-

Ext.R5(a) :- True copy of death certificate of Sri.N. Janardhanan.

Ext.R5(b) :- True copy of the Relationship Certificate issued by the Tahsildar which shows that my father was an Abkari Worker.

Ext.R5(b)1 :- English translation of Ext.R5(b).

//True Copy//

P.A. to Judge

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.34359 of 2008

Dated this the 13th day of January 2015

J U D G M E N T

Shaffique, J.

The petitioner is a registered trade Union who has approached this Court, in the form of Public Interest Litigation, seeking the following reliefs :-

- “i) Call for the records leading to Ext.P6 and P10 GOs and Ext.P11 and P12 and similar appointment orders issued by the 3rd respondent as illegal, arbitrary and unreasonable and in violation of the directions contained in Ext.P3 judgment of this Honourable Court.
- ii) issue a writ of mandamus or any other writ order or direction directing the respondents 1 to 3 to implement Ext.P3 and give appointment to displaced arrack workers in shops of the 3rd respondent in accordance with the directions contained in Ext.P2 and P3 without any delay forth with; and
- iii) pass such further orders as this Honourable Court may be pleased to pass on the facts and circumstances of the case.”

2. The petitioner claims to be a Union of Toddy workers and erstwhile Arrack workers in Kollam District. By virtue of a policy decision taken by the Government there was a ban of arrack with effect from 1.4.1996. It is observed that about 12,500 Abkari workers lost their employment. As the

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Government had a policy to rehabilitate such Abkari workers, it issued an order dated 20.2.2002. It was decided that since re-employment of the workers were not possible the Government offered to give compensation at the rate of ₹30,000/- to each of such workers and other benefits. It was also decided that 25% of all daily wages employment vacancies arising in the Kerala State Beverages Corporation will stand reserved to be filled up by Abkari workers registered with the Kerala Abkari Workers Welfare Fund Board and whose services were terminated on account of arrack ban with effect from 1.4.1996.

3. Since there was a complaint that the Government Order dated 20.2.2002 was not being implemented, an original petition came to be filed as O.P.No.13261 of 2003 and by judgment dated 3.3.2004, the learned Single Judge of this Court observed that from the list prepared by the Abkari Workers Welfare Fund Board, the Assistant Commissioner concerned shall forward the list to the Beverages Corporation or such other licensees for deployment of the displaced workers from the seniority list so prepared. According to the

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petitioner, this judgment has become final as the learned Single Judge was directing implementation of circular dated 20.2.2002.

4. Subsequently, Ext.P10 Government Order dated 7.8.2004 was issued, by which, the Government modified the order dated 20.2.2002 indicating that 25% of all daily wage employment vacancies arising in the Kerala State Beverages Corporation should be earmarked for the dependent sons of arrack workers who had perished consequent on the loss of employment due to the ban of arrack in the State. A list of eligible abkari workers prepared on the basis of such guidelines was to be made available to the Beverages Corporation by the Chief Welfare Fund Inspector of the Kerala Abkari Workers Welfare Fund Board in order to fill up the vacancies.

5. Pursuant to the said Government Order, Exts.P11 and P12 had been issued in favour of respondent Nos.4 and 5. The complaint is that the very scheme of the matter of rehabilitation has been jeopardised on account of Ext.P10 and undeserved persons had been given employment by way of

Exts.P11 and P12.

6. A counter affidavit has been filed by the first respondent inter alia stating that this Court based on the Government Order dated 20.2.2002 has issued direction in O.P.No.13261 of 2003. Later, by judgment in W.P.(C) No.21971 of 2006 and connected cases it was held that the persons employed on daily wages have to be replaced with regular employment through Kerala Public Service Commission and till that time persons registered with Employment Exchange may be considered for appointment to various posts. It is further stated that when an amendment was brought to the Kerala Abkari Shop Disposal Rules in terms of Rule 4(2), the same was struck down by the Hon'ble Supreme Court as per judgment in **Kerala Samsthana Chethu Thozhilali Union v. State of Kerala** [2006 (2) KLT 270 (SC)]. It is further stated that a list has been prepared on the basis of Ext.P10 which was in accordance with the procedure prescribed and there is no malafides in preparation of the said list and appointments were made in terms of Ext.P10.

7. Learned Standing Counsel appearing on behalf of the 3rd respondent Beverages Corporation would submit that individual writ petitions have been filed by various persons claiming employment on the basis of Government Orders before this Court, which are pending consideration.

8. Learned counsel appearing for respondent Nos.4 and 5 submits that their appointments had been made based on the Government Order issued at Ext.P10, which cannot be challenged by the petitioner Union, especially being a service matter.

9. Having regard to the fact that the Government had framed policies, they are entitled to make changes from time to time. The petitioner cannot insist that the Government should confine themselves to a particular policy. It is settled law that policy can be changed by the Government and it is in pursuance of such powers vested with the Government that Ext.P10 has been issued. If at all any particular individual has any complaint regarding the fact that they are not considered though being a displaced arrack worker or his legal heir as the case may be, it is open for them to approach the Government

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for appropriate relief. In so far as the similar matters are pending before the learned Single Judge is concerned, wherein claims had been made, we do not think that we will be justified in passing any orders in the public interest litigation matter.

In that view of the matter, reserving the right of individual stake holders to approach the Government or the Court as the case may be, this Writ Petition is closed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE