

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 23<sup>RD</sup> DAY OF SEPTEMBER 2021 / 1ST ASWINA, 1943

WP (C) NO. 27087 OF 2020

PETITIONERS:

- 1 MANZOOR E.  
PROPRIETOR, K.E.K.CASHEW, V/404B,  
MANGAD P.O., KILIKOLLOOR,  
KOLLAM.
  - 2 NAZARUDEEN,  
SHAJI NIVAS, MUNDAKKAL,  
KOLLAM.
  - 3 NAUSHAR,  
KARUVELIL PURAYIDAM, ERAVIPURAM P.O.,  
KOLLAM.
  - 4 FIROZ KHAN,  
SHAJI NIVAS, MUNDAKKAL,  
KOLLAM.
- BY ADV T.R.RAJAN

RESPONDENTS:

- 1 DISTRICT LABOUR OFFICER  
THIRUVANANTHAPURAM, PIN-695036.
- 2 ASSISTANT LABOUR OFFICER,  
IIND CIRCLE, KOLLAM, PIN-691013.
- 3 THE CHAIRMAN,  
HEADLOAD WORKERS' WELFARE BOARD,  
DISTRICT COMMITTEE, USHAS BUILDINGS,  
CHAMMAKKADA, KOLLAM, PIN-691001.

BY ADV.SABEENA P.ISMAIL, GOVERNMENT PLEADER  
SRI.SIJU KAMALASANAN

THIS WRIT PETITION (CIVIL) HAVING COME BEEN FINALLY  
HEARD ON 13.09.2021, THE COURT ON 23.09.2021 DELIVERED THE  
FOLLOWING:

**“C.R.”**

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.27087 of 2020**  
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Dated this the 23<sup>rd</sup> day of September, 2021

**JUDGMENT**

Petitioners are challenging the rejection of applications of petitioners 2 to 4 for registration as headload workers. First petitioner is the employer in whose establishment petitioners 2 to 4 claim to have worked as headload workers. By Ext.P5 order, the second respondent rejected Ext.P2, Ext.P3 and Ext.P4 applications filed by petitioners 2 to 4 to be registered as headload workers. The appeal filed against the order of rejection was dismissed by Ext.P9. Apart from seeking to quash the impugned orders, petitioners have also sought for a direction to register petitioners 2 to 4 as headload workers and for issuance of identity cards to them.

2. First petitioner is the proprietor of a cashew packing unit at Kollam. The said establishment claimed to have employed permanent workers to carry out all work, including loading and unloading operations. Petitioners contend that when strangers started obstructing the work of loading and unloading in the first petitioner's establishment, a writ petition was filed as W.P.(C) No. 41262 of 2017 and an interim order of police protection was obtained on 21.12.2017. Thereafter, with effect from 01.01.2018, the area where the first petitioner's establishment was situated was brought under the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (for short 'the Scheme') and hence by judgment dated 06.03.2018, this Court refused to continue the police protection and disposed of the writ petition after reserving the liberty of the petitioners to seek registration of their own workers under Rule 26A of the Kerala Headload Workers Rules, 1981 (for short 'the Rules').

3. Subsequently, petitioners 2 to 4 applied for registration as headload workers as per Ext.P2, Ext.P3 and Ext.P4. By Ext.P5

order, their applications were rejected by the second respondent after observing that the workers are carrying out the work of sorting and packing and that they cannot be registered as headload workers. It was also observed that since the first petitioner did not have permanent headload workers, he can utilize the services of the registered headload workers of the area.

4. The appeal preferred by the petitioners was initially rejected. However, by judgment dated 13.11.2019 in W.P.(C) No.23315 of 2019, this Court set aside the order of the Appellate Authority and directed the District Labour Officer to reconsider and pass fresh orders on the appeal preferred by the petitioners. It was thereafter, that Ext.P9 order was issued by the first respondent dismissing the appeal. It is observed in Ext.P9 that, petitioners who sought registration are not employed as headload workers as per the enquiry, and hence they cannot be registered as headload workers. It is also stated that the establishment was lying closed for the last five months.

5. A counter affidavit has been filed by the first respondent

stating that the establishment comes within the Scheme area and also that the area has permanent headload workers, who are registered under Rule 26A of the Rules, while petitioners 2 to 4 are not headload workers having any registration or identity cards. It is reiterated that the establishment of the first petitioner is situated in a pool area where there are sufficient numbers of registered headload workers and that there was no need for issuance of further identity cards. It is also stated that petitioners 2 to 4 are the employees of the first petitioner, and no one other than registered headload workers can be permitted to do headload work in a prescribed area.

6. In the statement filed by the third respondent it was stated that, there was no irregularity or illegality in the orders impugned and that petitioners 2 to 4 were not principally employed for headload works in the establishment of the first petitioner and hence they will not come within the purview of the Kerala Headload Workers Act, 1978 (for short 'the Act').

7. A reply affidavit has been filed by the first petitioner refuting the contentions raised in the counter affidavit. First petitioners has

also produced Ext.P10 certificate of registration issued under the Kerala Shops and Commercial Establishments Act, 1960 pointing out that petitioners have 11 registered workers engaged for different works in his establishment.

8. I have heard Adv. T.R.Rajan, the learned counsel for the petitioners, Adv.Sabeena P.Ismail, the learned Government Pleader and Adv.Siju Kamalasanan, the learned Standing Counsel for the third respondent.

9. The application of petitioners 2 to 4 for registration as headload workers and for consequent issuance of identity cards as per rule 26A(1) of the Rules were rejected by the second respondent stating that, on enquiry the said applicants were not headload workers since the employer did not have any headload worker of his own. It was further stated that, if the employer wanted to engage headload workers, he can do so from the workers available in the pool of the area. The Appellate Authority, on the other hand, by merely reiterating the order of the Assistant Labour Officer, affirmed the rejection of the applications, stating that as per the definition of

Headload Workers under the Act, there were no headload workers in the first petitioner's establishment.

10. It is admitted that immediately before the Scheme was made applicable to the area where the first petitioner's establishment is situated, the first petitioner had filed W.P.(C) No. 41262 of 2017 and had obtained an interim order of police protection for carrying out the loading and unloading works in his establishment using his own workmen. The said writ petition was disposed of by Ext.P1 judgment directing that in view of the applicability of the Scheme to the area with effect from 01.01.2018, police protection cannot be granted and the remedy for the petitioners would be to obtain registration of their own workers under Rule 26A of the Rules.

11. The reason for rejecting the application of petitioners 2 to 4 for registration as headload workers is stated as when the second respondent inspected the employer's establishment on 06.09.2018 he could not find any headload worker, as contemplated under the Act and that petitioners 2 to 4 were employed for other works in the packing section. The said reason defies logic and is irrational. To be



a headload worker as contemplated under the Act, one must be a registered headload worker. A worker is not treated as a headload worker unless he is registered under the Act. After the scheme is made applicable to the area from 01-01-2018, first petitioner cannot engage any person for headload work, other than registered headload worker. Thus on the date of inspection, i.e., on 06.09.2018, there could never have been any workman of the petitioner engaged for doing the work of loading and unloading in the establishment of the petitioner. The reason stated by the respondents to reject the application for registration of petitioners 2 to 4 as headload workers in the first petitioner's establishment is to say the least puerile. The respondents' reasoning to reject the application - that one should have done headload work in the establishment to be a headload worker, would also lead to an anomalous situation, where, no new persons could never be registered as a headload worker in a scheme covered area. The Act does not contemplate such an interpretation, and if adopted, it would render the Act redundant and unworkable. If such an interpretation is adopted, it will create a situation where the existing registered

headload workers alone would be able to continue the work of loading and unloading, to the exclusion of all those new entrants to work. The inclination or willingness to do headload work along with consent of the employer to employ the person as a headload worker, will satisfy the requirements of the Act and Scheme to obtain registration as a headload worker.

12. In this context, it may be relevant to refer to the judgment in **Rajeev v. District Labour Officer** (2010 (4) KLT 783) where this Court in similar lines had observed that *"If for working as a headload worker in a scheme covered area, registration under R.26A is mandatory, it defies logic as to how for registration under R.26A, respondents 1 and 2 can insist that applicants who apply for registration under R.26A should be already headload workers working under the employer as proved by registers maintained as per Rules. For example take the case of a young man who comes of age and decides to pursue headload work as an avocation and means of livelihood for himself and his family. He finds an employer, but the employer tells him that he cannot employ him as a headload worker unless he gets a registration under R.26A, which the employer is bound to insist upon in view of Cl.6 of the Scheme. He files*

*an application under R.26A. Can he be denied registration on the ground that he is not already a headload worker working under the said employer? I do not have to think twice to give a big 'NO' as an answer because that is the only logical answer. If registration is denied to such an individual that would be a violation of his fundamental right under Art. 19(1)(g) of Constitution of India, which guarantees to every citizen of India the right to practice any profession, or to carry on any occupation, trade or business. No legislation can deny that fundamental right to a citizen. If there is a legislation denying such a right to any citizen that would be unconstitutional and liable to be struck down as such or read down to make it constitutional. Therefore, if R.26A pre-supposes employment as a headload worker under an employer, for being eligible for registration under R.26A, that Rule would be unconstitutional in so far as it would violate the fundamental right of a citizen to engage himself in and carry on the profession of a headload worker, since under Cl.6 of the Scheme without registration under R.26A, he cannot engage himself in headload work. Consequently, R.26A has to be construed and read down so as to make it constitutional. It is true that in Form No.IX, which is the form prescribed for submitting application for registration under R.26A, name and address of the employer under whom the headload worker is working*

*and the date of commencement of work under the employer are to be given. But under Cl.6 of the scheme, no headload worker who is not a registered headload worker under the provisions 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 the scheme in that area. If without registration nobody can work as a headload worker, I fail to understand how a person who wants to start work as a headload worker for the first time can be insisted on to prove that he was already working under the employer as a condition for entertaining an application for registration. Therefore I am of opinion that R.26A and the Form IX should be so construed and read down that for getting registration, what is required is a good physic and, an employer who is prepared to engage the applicant as a headload worker and it is not necessary that he should have already been working under the employer under whom he seeks registration as headload worker for becoming eligible for such registration.”*

13. In another similar situation this Court had in **Muhammed Kunju and Others v. District Labour Officer and Others** (W.P.(C) No.2959 of 2018) held that “*Coming to the appellate order, the reasons stated by the appellate authority are that there is no evidence to show that*

*the establishment exists and that the workers have been appointed by the employer to carry on the loading and unloading works in the establishment by issuing appointment orders. As noted above, petitioners 2 to 8 are seeking registration under Rule 26A of the Rules for the purpose of carrying out the loading and unloading works in the establishment of the first petitioner. As such, if they are granted the registration sought by them, they cannot work elsewhere, but only in the establishment of the first petitioner. When applications for registration are preferred for working as attached headload workers, the scope of the enquiry by the competent authority is only to see as to whether they are eligible in terms of the provisions of the Act and the Rules to be engaged as headload workers. The issue as to whether the establishment is functioning after obtaining all the requisite licences and permissions is not a matter for the authorities under the Headload Workers Act to consider while granting or declining registration under Rule 26A of the Rules. Likewise, it is also not the look out of the authorities under the Headload Workers Act to see whether appointment orders are issued by the employer to the employee, when the employer categorically asserts that he has engaged the employee, and employee does not dispute the said fact. In the said view of the matter, according to me, the order passed by*

*the appellate authority is also unsustainable. In the absence of any finding by the authorities below that the petitioners 2 to 8 are not eligible to be registered as headload workers in accordance with the Act and the Rules, according to me, they are entitled to the registration sought by them ”*

14. It may not be out of place in this context to refer to a Division Bench judgement of this Court in **Gangadharan v. Abdul Nasir** (2016 (4) KLT 592). The said decision, was considering the question whether the existing registered unattached workers in the area are entitled to be heard when an application for registration for other workers in the area are being considered. It was observed that the applicant for registration as headload worker has a constitutional right to life which cannot be denied merely for the reason that somebody else, who has already got a berth may have to adjust a bit more with the available infrastructure. It was further observed that nobody could contend that those who became fortuitous to have obtained registration earlier could alone continue as such, denying similar rights to the others.

15. Thus, while considering an application for registration as a

headload worker under Rule 26A of the Rules, the registering officers' look out is not whether the applicant was a headload worker or not, prior to such registration. As held in **Rajeev v. District Labour Officer** (2010 (4) KLT 783), the said provision has already been read down to mean that the look out for the registering officer must be only as to whether the applicant has the physique to be employed as a headload worker and also as to whether the employer is prepared to engage the applicant as headload worker. There is no requirement under law that the applicant must have been working under the employer as a headload worker for becoming eligible for such registration.

16. The present case can be viewed through another perspective also. The first petitioner asserts that he had engaged petitioners 2 to 4 as headload workers. Petitioners 2 to 4 also assert that they were engaged as headload workers under the first petitioner. What more is required to justify the claim of petitioners 2 to 4, especially in the absence of any contrary evidence? The said statements are sufficient to allow the applications filed by petitioners

2 to 4 to be registered as headload workers, attached to the first petitioner.

17. In view of the above, I find that Ext.P5 and Ext.P9 orders are contrary to law and are liable to be set aside. Accordingly, petitioners are also entitled to the direction, commanding the second respondent to register petitioners 2 to 4 as headload workers under the first petitioner in a time-bound manner.

18. Hence, I set aside Ext.P5 and Ext.P9 orders and direct the second respondent to register petitioners 2 to 4 as headload workers under the first petitioner and issue identity cards to them within thirty days from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

vps



APPENDIX OF WP(C) 27087/2020

PETITIONER'S/S' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 6.3.2018 OF THIS HONOURABLE COURT IN WRIT PETITION (C) NO.41262/2017.
- EXHIBIT P2 TRUE COPY OF THE APPLICATION DATED 15.6.2018 SUBMITTED BY THE 3<sup>rd</sup> PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE APPLICATION DATED 15.6.2018 SUBMITTED BY THE 4<sup>th</sup> PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE APPLICATION DATED 15.6.2018 SUBMITTED BY THE 2<sup>nd</sup> RESPONDENT BEFORE THE 2ND RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE ORDER NO.483/18 DATED 15.9.2018 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE APPEAL MEMORANDUM DATED 8.10.2018 SUBMITTED BY THE 2ND TO 4TH PETITIONERS BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE ORDER NO.G-4420/18 DATED 26.4.2019 ISSUED BY THE DEPUTY LABOUR OFFICER, KOLLAM.
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 13.11.2019 OF THIS HONOURABLE COURT IN WRIT PETITION (C) NO.23315 OF 2019.
- EXHIBIT P9 TRUE COPY OF THE ORDER NO.G(2)12302/19 DATED 20.2.2020 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P10 TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE ASSISTANT

LABOUR OFFICER, 2ND CIRCLE, KOLLAM

Exhibit P10(a)

TRUE COPY OF THE ENGLISH TRANSLATION OF  
EXHIBIT P10

Exhibit P11

TRUE COPY OF THE JUDGMENT DATED 9/3/2018  
PF THIS HONOURABLE COURT IN WRIT  
PETITION (C) NO-2959 OF 2018