Chamber of Commerce Vs. State of Kerala

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Court : Kerala

Decided On : Mar-19-2010

Reported in : 2010(2)KLT421

Judge : K. Surendra Mohan, J.

Acts : Kerala Headload Workers Rules, 1981 - Rules 17 and 27

Appeal No. : W.P.(C) No. 4955 of 2010

Appellant : Chamber of Commerce

Respondent : State of Kerala

Advocate for Def. : Koshy George, Adv. and;Government Pleader

Advocate for Pet/Ap. : George Poonthottam, Adv.

Disposition : Petition dismissed

Judgement :

K. Surendra Mohan, J.

1. The petitioner is an Association of Traders formed with the object of protecting the interests of the industrial and trading community, within the Kunnamkulam Municipal limits. The petitioner has filed this Writ Petition challenging the authority of the second respondent Board in demanding charges for the supply of labour

card and receipts which are to be maintained by the employers under Rule 27 of the Headload Workers Rules. According to the petitioner, the labour card and receipts were all along being printed and supplied by the respondent Board free of cost. The contention of the petitioner is that the amounts collected by the Board in addition to the contribution paid by the employers, which is 27% of the wages paid to the employees is intended to meet the expenses of the Board which includes the expenses for printing and supplying the receipts, labour card etc. also. Therefore, according to the petitioner, the Board has no authority whatsoever to collect separately, the charges for supplying the labour cards, receipts etc. to the employers. As per Ext.P1 circular issued by the second respondent, from 1.1.2010 onwards, the employer has to pay Rs. 23/- for the work card book and Rs. 5/- for the receipt book which are issued by the second respondent to the employers. According to the petitioner, the circular is illegal, unjustified and absolutely without justification. Since the demand made in Ext.P1 is over and above the statutory levy paid by the employer, the petitioner contends that the amount is not liable to be paid. The demand for such amount is not authorised by the scheme also.

2. According to Mr. Koshy George, the counsel for the second respondent Board, the amount that is demanded as per Ext.P1 circular is only the expenses for getting the labour card and receipts printed. Since the labour card and receipts are to be maintained by the employers, the expenses for printing the said records are to be met by the employers. According to the counsel, there is no provision to supply the said records free of cost, to the employers and charges are being levied by all the District Committees for getting the said records printed. There has been no challenge against the levy of such charges from any quarter till date. Since only the expenses for supplying the labour cards and receipts have been charged, it is submitted that there are no grounds to interfere with Ext.P2 and that the same is perfectly valid. It is further pointed out that as per Rule 27 of the Headload Workers Rules, it is for the employer to maintain the said records. There is no compulsion that they should be obtained from the second respondent Board. If the employers were not willing to pay the charges for printing the said records, they could get them printed at their own cost. It is therefore pointed out that the Writ Petition is absolutely without merits and liable to be dismissed.

3. I have heard Sri. George Poonthottam who appears for the petitioner and Mr. Koshy George who appears for the second respondent Board. The first respondent is represented by the learned Government Pleader.

4. Rule 17 of the Kerala Headload Workers Rules, 1981 (hereinafter referred to as the 'rules' for short), reads, as follows:

17. Constitution of the Fund:

1) A fund shall be created called the 'Headload Workers General Fund'.

2) The fund shall vest in the Board and shall be administered by it. The fund shall be operated by the Chief Executive according to the directions of the Board and shall be utilised only for the purposes provided for in the Act, Rules and Schemes formulated from time to time.

The above provision contemplates the creation of the Headload Workers General Fund. However, the same 'shall be utilised only for the purposes provided for in the Act, Rules and Schemes formulated from time to time'. The use of the words 'shall' and 'only for the purpose' clearly conveys the legislative intention that the provision is mandatory in nature. Therefore, the fund cannot be utilized for any purpose for which there is no provision in the Act, Rules or the Scheme. Consequently, unless there is some provision in the Act, Rules or Scheme, the expenses for the printing and supply of the registers and receipt books cannot be borne by the Board. The maintenance of registers and records are stipulated by Rule 27 of the Rules.

Rule 27 of the Rules reads as follows:

27. Maintenance of Registers and Records by Employers:

1) Every employer shall maintain a Register of Employment and Wages in Form No. V.

2) Every employer shall supply to every headload worker wage in Form No. VI on every Saturday, containing particulars for the week ending on that day.

3) The Registers and records maintained under these rules shall be made available and produced or caused to be produced for inspection at all reasonable hours by an Inspector.

4) The registers and records required to be maintained under these rules shall be kept at the work-spot or in the office of the employer and the entries therein relating to each day shall be made on the same day.

5) The employer shall obtain the signature or thumb impression of every headload worker in the Register of Employment and Wages and on the wage card at the time of the disbursement of wages.

The above rule mandates that every employer has to maintain a register of employment and wages in Form No. V. It is the further duty of the employer to supply to every Headload worker the wage in Form No. VI on every Saturday, containing particulars of the week ending on that day. As per Sub-rule 3, the registers and records so maintained are to be made available for the scrutiny of an Inspector as and when required. The records are directed to be maintained and kept at the work spot or in the office of the employer and the entries for each day are directed to be made in those registers on the same day itself.

5. Para. 29 of the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (hereinafter referred to as the 'Scheme' for short) reads as follows:

29. The Committee shall collect a levy, for the administration of the Scheme and the matters related thereto, from the employers and the headload workers respectively at the rate of 25% and 10% of the wages actually payable by the employer to the registered headload worker.

As per the above provision of the scheme, an amount equivalent to 25% of the wages is collected from the employer and 10% from the Headload worker 'for the administration of the scheme and matters related thereto'. The amounts collected as above are to be utilised for the administration of the scheme and matters that are related to or incidental to the administration of the scheme. The expressions referred to above pre-supposes that the amounts collected are to be utilised for meeting the expenses 'for the administration of the scheme' and 'the matters related thereto'. The related matters are also relatable only to the matters that are incidental to the administration of the scheme. This is clear from the expression 'matters related thereto' used in the said provision.

6. The work card, receipts and registers are to be maintained under Rule 27 of the Rules. The heading of the rule says, 'Maintenance of registers and records by employers'. It is clear form the heading as well as the provision that the liability to maintain the registers is on the employers. It cannot be contended that the Board should bear the expenses for printing the registers and other records that the employer is bound to maintain. As noted above, since the levy in paragraph-29 of the scheme is mandated to be utilised only for the administration of the scheme and for meeting other related expenses, the said amount cannot be utilised for printing and supplying registers and other records to the employers, free of cost. Since the registers and records are to be maintained by the employers, the expenses for the maintenance of the said records also have to be met by the employers.

7. In view of the above, the contention of the petitioner that Ext.P1 circular is without jurisdiction cannot be sustained. Since the charges collected are only to meet the expenses for printing the registers and receipts, the Board is entitled to recover the said charges. It is further submitted that there is no compulsion on the employers to purchase the registers and receipts from the Board. The employers who do not want to pay the charges are free to get the registers and other records printed at their own cost if they so choose. Therefore, there is also no compulsion on the petitioner and other employers to pay the amounts demanded. Consequently, it has to be found that there is no compulsory levy of any charges from the employers.

8. In view of the fact that the registers and receipt books are to be maintained by the employer, the Board has no duty to even supply them. Therefore, the petitioner has no right to insist that the said records should be supplied to the employers free of cost.

For the foregoing reasons, the Writ Petition fails and is accordingly dismissed. No costs.