

(2000) 03 KL CK 0046
In the High Court Of Kerala
Case No : O.P. No. 4242 of 1995

Chacko

APPELLANT

Vs

Vythiri Plantations Ltd.

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Citation : (2000) 86 FLR 389 : (2000) 3 LLJ 1070

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D. Sreedevi, J.—Petitioner was working as an Assistant Tea Maker in the Tea Factory at Thalamala Estate owned by the third respondent. His services were terminated on July 23, 1989. The said termination was challenged in I.D. 34 of 1990 on the file of the Labour Court, Kannur. Later it was established that the petitioner is a workman under the industrial establishment as per the decision in WA No. 605 of 1993. As per the provisions of the Kerala Payment of Subsistence Allowance Act, 1972 the petitioner is entitled to subsistence allowance from the third respondent. He was suspended from service from June 16, 1988 to September 23, 1989. As per the provisions of the Act, he was not awarded subsistence allowance. He was awarded subsistence allowance only in October, 1993 for the period from June 16, 1988 to December 31, 1988 and denied subsistence allowance for the subsequent period from January 1, 1989 to September 23, 1989. Petitioner filed application for the subsistence allowance for the period from January 1, 1989 to April 30, 1989 and another application from May, 1989 to September, 1989. Petitioner's applications were later transferred to the first respondent. The first respondent allowed the applications, under Ext. P1. The first respondent directed the third respondent to pay subsistence allowance within thirty days from the date of receipt of the order. Still, the third respondent refused to make payment till November 25, 1994. Petitioner then filed OP. No. 16328 of 1994 for a writ of mandamus directing the first respondent to take

necessary steps with the second respondent for realisation of Rs. 13,730/- towards subsistence allowance with interest and also to direct the first respondent to take penal action against the fourth respondent and for other reliefs.

2. During the pendency of that O.P., an amount of Rs. 13,730/- was paid by way of cheque on November 25, 1994. Petitioner has now filed this O.P. for a writ of certiorari quashing Ext. P4 order passed by the first respondent and to declare that he is entitled to get interest at the rate of 18% per annum on the subsistence allowance due to him from the third respondent.

3. The third respondent entered appearance through advocate Shri. E.R. Venkiteswaran. It is an admitted fact that the petitioner is entitled to subsistence allowance, it is also proved by the petitioner that the subsistence allowance was not paid in time and the same was paid only after five years from the date on which it had become due. Learned counsel for the petitioner Mr. Philip Mathew invited my attention to the decision in Chennamangalam Nair Samajam Vs. Sarada, . It was a case where an employee of a charitable society was placed under suspension and later she was removed from service. She then filed appeal. That appeal was allowed setting aside the dismissal order. She then claimed wages under the Minimum Wages Act, bonus, subsistence allowance and interest. The Labour Court granted an award for realisation of subsistence allowance with 12% interest. That award was challenged before this Court. This Court held that the award of interest by the Labour Court is legal. The Court held as follows Chennamangalam Nair Samajam Vs. Sarada, at 154:

"20. "As the petitioner has not paid the amount within the stipulated time, first respondent will be entitled to the amount of interest at 12% per annum from the date of expiry of one month from the date of award as ordered by the Labour Court"

The Apex Court also in Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, held as follows at P. 513 of LLJ:

"4. Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year. We uphold this part of the High Court's order".

Since the amount of subsistence allowance was withheld for a period of five years, the petitioner is entitled to get interest. Petitioner claims 18% interest on the amount due. But, I am inclined to grant 12% interest from the date of application.

4. In the result, this O.P. is allowed and a writ of certiorari is issued quashing Ext. P4 order, declaring that the petitioner is entitled to get interest at 12% on

the subsistence allowance due to him from September 20, 1989 onwards from the third respondent. No costs.