
(1991) 10 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 8034 of 1985

Chittur Service Co-operative Bank Ltd. APPELLANT
Vs
State of Kerala and Others RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:

Kerala Payment of Subsistence Allowance Act, 1972 — Section 2

Citation : (1991) 10 KL CK 0008

Hon'ble Judges : M. Jagannadha Rao, C.J; T.L. Viswanatha Iyer, J

Bench : Division Bench

Advocate : V. Chitambaresh, for the Appellant; V. Bhaskara Menon, Government Pleader for Respondents 1 and 2 and K.S. Madhusoodanan and A.X. Varghese, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The Petitioner, which is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969, has filed this original petition challenging the order Ext. P-5 of the second Respondent, the District Labour Officer, Palghat, the competent authority under the Kerala Payment of Subsistence Allowance Act, 1972. Act, 27 of 1973 (the Act) directing payment to the third Respondent of an amount of Rs. 8,800 as subsistence allowance under the said Act for the period 7th February 1984 to 31st January 1985.

2. The third Respondent was borne in the category of Branch Manager, and was the Manager of the branch of the Petitioner Bank at Kacheri Medu. The head office of the Petitioner is elsewhere in Chittoor. On the allegation that the third Respondent and the Assistant Secretary of the Petitioner Bank had defalcated money to the tune of Rs. 5,00,000 the Petitioner kept the third Respondent under suspension by the resolution of its managing committee dated, February 2, 1984, served on the third Respondent on 6th February 1984. The third Respondent was drawing a salary of Rs. 1,022 per month at that time. He applied for payment of subsistence allowance under the Act for the period from

7th February 1984 to 31st January 1985. The application was allowed and the Petitioner was directed to pay the amount of Rs. 8,800 by the proceedings Ext. P-5 dated 24th July 1985. It is this award that is challenged in the original petition.

3. Petitioner's case is primarily a jurisdictional one, namely that the third Respondent was not an "employee" as defined in the Act, and therefore the very application under the Act was not maintainable, rendering the order Ext. P-5, one without jurisdiction. This jurisdictional point had been specifically raised by the Petitioner in its statement of objections Ext. P-3 before the second Respondent. But the latter chose to ignore this objection while passing the order Ext. P-5.

4. Petitioner contends that the third Respondent was not an "employee" as defined in the Act, for the reason that he was employed mainly in a managerial or administrative capacity in the Bank. The duties and responsibilities of the third Respondent are laid down in the subsidiary rules for the branch at Kacheri Medu, a copy of which is marked Ext. P-1. These rules deal with such matters as the location of the Branch, the business to be transacted, therein, the staff pattern and their pay, as also the duties and responsibilities of the officers. Inter alia, it is provided that the Branch Manager will be paid an additional supervision allowance of Rs. 25. His duties and responsibilities are as under:

The Manager shall subject to the control of the President and the Secretary and to such instructions they may issue from time to time, have to the following duties and responsibilities:

1. The Branch Manager will be the person responsible for the proper maintenance of the accounts registers, ledgers and" other records maintained by the Branch.
2. To be the person responsible for the safe custody of cash and other assets of the Branch.
3. To maintain or cause to maintain and keep in proper form all the accounts registers, ledgers and other records required to be maintained in a Bank under the provisions of the Act, Rules and Bye-laws.
4. To receive and disburse money on behalf of the Bank on proper vouchers and receipts.
5. To keep such cash balance in his charge in the branch as the Board of Directors may limit.
6. To receive, deposit and issue temporary receipt and to arrange for the issue of fixed deposit receipts daily signed by the Secretary, President and two of the Directors in lieu of the temporary receipts issued by him.
7. Sanction of gold loan-subject to limit prescribed, passing of cheques, etc.
8. Custody of cash, jewels and all other properties along with Cashier-cum-clerk on a double look system. He shall be personally responsible for the safe custody

of the above properties. The responsibilities to the Accounts of the cash balance, jewels and other assets of the Branch is with the Branch Manager.

9. Lodging and releasing gold loans with the cashier and to certify in the bond that the articles pledged in the bond have been taken into custody.

10. Ensure fertilisers are sold to genuine cultivators according to the scales prescribed and as per their agricultural holding entered in the fertiliser cards issued by the Head Office.

11. To be custodian of records, fertiliser stocks and such other properties of the branch as may be received in the branch and committed to his charge.

12. He shall be responsible for the correctness of the interest calculations, balance under various accounts in the ledger in all reports and returns.

13. He will arrange for inspection and audit by the head office, Central Bank and the Department officials.

14. He shall be bound to produce the records, cash balance, jewels and other assets before the officers of the department and other persons authorised by the Registrar by General or special order for verification, inspection, audit and enquiry etc.

15. To produce an extract of daily transactions to the Head Office in the succeeding day.

16. To submit all reports and returns in time.

17. To tide, supervise and control the staff and report facts of neglect, disobedience etc, to the Secretary for consideration and action. It shall be his duty to see that officers under his control discharge their function and perform their duties as laid down by the bank authorities.

18. To supply all legitimate and needful and reasonable information to the members and constituents of the Bank with the permission of the Secretary.

19. To perform any other duties entrusted to him from time to time by the President or the Secretary.

20. Instance of disobedience or any other misconduct of staff should be immediately reported to the Secretary of the Head Office for necessary action.

21. He is also liable to perform any other duties entrusted to him by the Head Office subsequently.

5. Before proceeding to discuss the question as to whether the third Respondent was an "employee" or not, it will be profitable to extract the definition of "employee" u/s 2(a) of the Act:

Any person employed in or in connection with the work of any establishment to do skilled, semi-skilled or unskilled manual, supervisory, technical, clerical or any

other kind of work for hire or reward, whether the terms of employment be express or implied, but does not include any such person who is employed mainly in a managerial or an administrative capacity or as an outworker, that is to say, a person to whom any articles or materials are given out by or on behalf of the employer to be cleaned, washed, altered, ornamented or repaired by such outworker in any place not under the control and management of the employer.

It will be seen from the above that a person who is employed mainly in a managerial or administrative capacity is not an "employee" for purposes of the Act. The question is whether the third Respondent is one such.

6. The position regarding the Secretary of a Co-operative Society vis-a-vis the Act was considered by a Division Bench of this Court in the decision in Shertallai Taluk Co-operative Land Mortgage Bank Ltd. v. Deputy Labour Commissioner 190 (2) K.L.R. 175. This Court considered the matter with reference to the guidelines contained in the decision of the Supreme Court reported in T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others, where the Supreme Court was dealing with an analogous exclusionary provision in Section 4(1)(a) of the Madras Shops and Establishments Act. The Supreme Court observed that it was difficult to lay down exhaustively all the tests which could be reasonably applied in deciding the question as to, whether a person was employed in a position of management. Several considerations would be relevant in dealing with this problem, The Supreme Court then went on to enumerate some of those relevant considerations namely whether the person had power to operate on the bank account or to make payment to third parties or to enter into agreements with them on behalf of the employer, whether he was entitled to represent the employer to the world at large in regard to the dealings of the employer with strangers, whether he had the authority to supervise the work of the clerks employed in the establishment, did he have control and charge of the correspondence, could he make commitments on behalf of the employer, could he grant leave to members of the staff and hold disciplinary proceedings against them, whether he had powers to appoint members of the staff or punish them, and similar others. After examining the position of the Secretary of Co-operative Society under the provisions of the Co-operative Societies Act and the Rules as also the bye-laws of the Society, with reference to these guidelines, this Court held that the Secretary is employed mainly in a managerial or administrative capacity and therefore not an "employee" under the Act.

7. What is made relevant and what is required to be considered in deciding whether a person is employed in a managerial or administrative capacity is not his designation in the employment, but what exactly are the duties assigned to him by the employer vide the decision of the Supreme Court in Syndicate Bank v. Its Workmen 1966 (II) L.L.J. 194. The designation is not conclusive. Nor the fact that a person though employed in a supervisory capacity, does some manual or clerical work as ancillary or incidentally to his employment. The main features, the pith and substance of the employment are the ones which fall to be

considered.

8. A Branch Manager occupies the highest position among all the employees in the branch and is in complete charge of the affairs of that Branch. The entire responsibility of running the branch properly and efficiently rests on his shoulders. He has got a number of personnel working under him and it is his duty to oversee their work. The working of the Branch and that of the staff therein are all subject to his supervision and control. It is his managerial skill, ability and leadership that plays the vital part in the effective operation of the Branch. The role of the Branch Manager can hardly be called clerical and manual. His duties are mainly managerial, to be in control of the branch and its business, subject of course to supervision and control by the Head Office. But such control by the Head Office has no bearing on the question whether the Branch Manager is employed in a managerial or administrative capacity.

9. There is no dispute about the duties and responsibilities which the Branch Manager, the third Respondent was to perform under the subsidiary rules, Ext. P-1. He was in charge of the Branch. All the employees of the Petitioner working in the Kacheri Medu Branch performed their duties under the supervision and control of the Branch Manager. He was the person responsible for the proper maintenance of the accounts, registers, ledgers and other records of the Branch as also for the safe custody of cash and other assets of the branch. He was to receive and disburse money on behalf of the Bank on proper Vouchers and receipts. He was to receive deposits and issue temporary receipts. He was also to sanction gold loans subject to any limits prescribed. He was personally responsible for the correctness of interest calculations, balance due under various accounts and so on. He was to produce an extract of the daily transactions to the head office on the succeeding day. He was to ensure that fertilisers were sold to genuine cultivators according to scales prescribed. It was his duty to see that the staff under his control discharged their functions and performed their duties as laid down by the Bank. He was to supply legitimate and needful information to the members and constituents. He was also to report instances of disobedience or any other misconduct of staff immediately to the Secretary and the Head Office.

10. These are some of the functions to be performed by the Branch Manager. It is evident from the enumeration of these duties and responsibilities that he was in complete control of the branch, making allotment of the work and also supervising and controlling the working of the branch and its staff. He was entitled to grant gold loans and sell fertilisers which are two of the major activities of the Bank. He was responsible for all these acts of his to the Head Office. He was answerable to them. So far as the branch was concerned, he represented the Bank to the outside world. All these were functions of a managerial, or at any rate, administrative character.

11. The duties and responsibilities which the third Respondent was discharging were heavy and onerous. They were not duties of a mere manual or clerical

nature. The fact that he was answerable to the Secretary or the Head Office or that he was subject to their control and supervision will not make his functions any the less managerial so long as he was in complete charge and control of the branch and answerable for its proper working. A managerial function is that of managing the affairs of an establishment, and so far as the branch was concerned, the entire management thereof vested in the third Respondent. We are therefore the view that the duties and responsibilities assigned to the -third Respondent were mainly those of a managerial or administrative nature and therefore he was not an employee as defined in Section 2(a) of the Act.

12. Counsel for the Appellant relied on the unreported decision in W.A. No. 969 of 1987, which related to the Branch Manager of a Co-operative Society. After referring to the functions of the employee concerned, this Court held that the person concerned, who was a Branch Manager, was not an employee as defined in the Act. Counsel for the third Respondent however placed reliance on the decision of another Division Bench in Writ Appeal No. 590 of 1991 of Bhat, Ag. C.J., and Krishnamoorthy, J. in relation to the Secretary of a Co-operative Society. On the facts, the learned Judges found that the employee in question was not exercising any managerial or administrative functions and therefore fell within the purview of the Act. The decision turned on the peculiar facts of that case and has to be confined as such.

13. We are therefore satisfied that the third Respondent was exercising functions of a managerial or administrative character and therefore he was not an "employee" as defined in the Act. The second Respondent did not therefore have jurisdiction to entertain his application for payment of subsistence allowance under the Act. The order Ext. P-5 passed by the second Respondent directing the Petitioner to make payment of subsistence allowance is therefore liable to be quashed.

14. The Original Petition is allowed. The order Ext. P15 is quashed and the third Respondent's application for subsistence allowance under the Act is dismissed. This will not preclude the third Respondent from enforcing his right, if any, for payment of subsistence allowance under any other provision of law for the time being.