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(1997) 06 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No. 4943 of 1990-L

Dhanalakshmi Bank Ltd. — APPELLANT

Vs

Authority under the Kerala Payment of Subsistence Allowance Act and Others — RESPONDENT

Date of Decision : 12-06-1997

Acts Referred:
Kerala Payment of Subsistence Allowance Act, 1972 — Section 2

Citation : (1997) 2 LLJ 978

Hon'ble Judges : P.A. Mohamed, J

Bench : Single Bench

Advocate : B.S. Krishnan, for the Appellant; P.K. Santhamma, G.P. For Respondent Nos. 1 and 2 and M.B. Shenoy, M.A.T. Pai, for the Respondent

Judgement

P.A. Mohamed, J.—The third Respondent was working as Assistant Manager of Kunnamkulam Branch of the Dhanalakshmi Bank Limited, Trichur the writ petitioner herein. He was suspended from service on January 1, 1985 pending departmental enquiry. Subsequently, he was charge- sheeted for serious misconduct. Ultimately he was dismissed from service of the petitioner-Bank with effect from September 16, 1985. The 3rd Respondent filed a claim petition for subsistence allowance under the provisions of the Kerala Payment of Subsistence Allowance Act, 1972 (for short the ''Act''). Ext.P2 is the copy of the said claim petition. Ultimately, the 1st Respondent, the Authority under the Kerala Payment of Subsistence Allowance Act passed Ext.P8 order directing the petitioner to pay Rs. 12,841/-to the third Respondent towards subsistence allowance payable to him for the period from January 1, 1985 to September 16, 1985. The said order is under challenge in this Original Petition.

2. Ext.P8 order was passed by the 1st Respondent u/s 4 of the Act. After the enquiry it observed that the 3rd Respondent was an ''employee'' under the purview of the Act and therefore he was entitled to file the application for the payment of subsistence allowance.

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3. The learned counsel for the petitioner has raised two contentions before me. The first contention is that in view of the regulation of the Bank governing the payment of subsistence allowance to the officers under suspension, the 3rd Respondent is not entitled to invoke the provisions of the Act. The second contention is that even assuming that the Act will apply, he is not an ''employee'' coming within the definition of the term contained in Section 2(a) of the Act.

4. The petitioner-Bank had framed certain regulations for payment of subsistence allowance for the officers under suspension and such regulation was framed in view of the provisions contained in the award and bipartite settlements for payment of subsistence allowance. Of course, this is an internal regulation framed by the Bank. This will not take away the right available to an employee under the provisions of the statute. The purpose of the Act is to provide for the payment of subsistence allowance to the employees in certain establishments during the period of suspension. The term ''establishment'' has been defined in Clause (c) of Section 2 which means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, but does not include any office or department of any Government or any establishment of any railway, major port, mine or oil field. In view of this definition the banking operation will come within the meaning of the term ''establishment'' Then the question is the regulation framed by the Bank would efface the right available to the petitioner under the Act. The answer is no doubt in the negative that is to say the right available under the Act would override the terms of the internal regulations framed by the Bank. There is no provision in the Act which specifically excludes its operation in the case of establishments where there are internal regulations. In context the counsel for the 3rd Respondent has brought to my notice the decision of this Court in Dhanalakshmi Bank Ltd. v. Jayaprakash 1988 (1) KLT 26 The following observation contained in the said decision is relevant:

"In the absence of any exclusion specifically enacted in the relevant statute, it is not easy to assume that the existence of rules framed by the employer shall exclude the provisions of the Act."

The Kerala Payment of Subsistence Allowance Act is a beneficial legislation. While construing the provisions of such a legislation, if there is any ambiguity, it can only be interpreted in favour of the persons who are entitled to re-ceive the benefits under the Act.

5. The next contention is whether the 3rd Respondent will come within the purview of the term ''employee'' as defined in Clause (a) of Sec-tion 2 of the Act which reads thus:

""Employee" means 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

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is employed mainly in a managerial or an administrative capacity or as an out-worker, 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 re- paired by such out-worker in any place not under the control and management of the employer."

The above provision indicates that a person who is employed mainly in a managerial or ad ministrative capacity is out of the purview of the definition of the term ''employee''. If the other requirements provided in the definition are sat isfied he will be an employee entitled to the benefit available under the Act. In this context the decision of the Supreme Court in Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, is very much rele vant. The Court said at p. 403 :

"Where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of a person."

It is submitted by the petitioner that the 3rd Respondent is an Assistant Manager employed in managerial and administrative capacity. On; the other hand, the third respondent points out that he was never put in service as a Manager of the Bank. However he was put in charge as Assistant Manager and in that capacity he had no powers to sanction leave to subordinates and to enrol new customers to the accounts. His main duties were ledger posting, canvassing of accounts and remitting cash in other banks. He did not sanction any expenses in connection with the entertainment of customers. In short, he was not employed mainly in a managerial or administrative capacity. He was employed to perform the duties mainly of clerical nature. This is his primary and basic duty and he cannot be treated as a person appointed to perform managerial or administrative duties.

6. Of course it is true that whenever the 3rd Respondent was put in charge of the Manager he had attended to the duties of the Manager of which sanctioning of loans to the staff is one of them. It does not mean the Assistant Manager had powers to pass vouchers, open new accounts, to sanction leave to subordinate staff and to expend the amounts for conducting the day to day business of the Bank. While acting in charge of Manager no doubt the third Respondent had to perform certain additional duties which might appear to be his basic duties. This gloss of additional duties will have to be rejected while determining the character and nature of the duties in the process of examining whether a person is an ''employee'' entitled to the benefits under the Act,

7. It is apt to recall the following principle laid down by the Supreme Court in Ananda Bazar Patrika (P) Ltd. Vs. The Workmen, "The principle which should be

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followed to ; deciding the question whether a person is employed in a supervisory capacity or on clerical work is that if a person is mainly doing supervisory work but incidentally or for a fraction of the time also does some clerical work, it would have to be held that he is employed in supervisory capacity, and conversely if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."

This decision was followed by this Court in 1980 KLT(SN) 38 (O.P.No. 2454 of 1979).

8. Ext.P8 order passed by the 1st Respondent is decided within the framework of the principles laid down by this Court as well as the Supreme Court as discussed hereinbefore. Hence it cannot be criticized as illegal or unauthorised. The finding that the third Respondent is an ''employee'' coming within the purview of the Act is well founded. The evidence available in the case has been sufficiently evaluated by the 1st Respondent and I am convinced that the above finding is well within its powers. The contentions of the petitioner are rejected.

9. The counsel for the petitioner submitted that third Respondent had been paid the subsistence allowance by the Bank as per the regulations framed by the Bank. On this point there is some dispute between the parties. The case of the third Respondent is that he has not received any subsistence allowance even at the rate prescribed by the regulation. Therefore while upholding Ext.P8 order I direct the 1st Respondent to decide the question whether any subsistence allowance had been paid by the petitioner to the 3rd Respondent as pleaded by the counsel. If after hearing the petitioner and the third respondent, the 1st Respondent finds that the third respondent had already received the subsistence allowance as per the regulation of the Bank, then it shall direct the Bank only to pay the balance amount as determined under the provisions of the Act. Such determination shall be made by the first respondent expeditiously, at any rate, within a period of two months from the date of receipt of a copy of the judgment. The Original Petition is disposed of as above.

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