
(1988) 06 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 366 of 1985

Karunakaran Nair

APPELLANT

Vs

Dhanalakshmi Bank Ltd.

RESPONDENT

Date of Decision : 23-06-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C, 33C(2), 33C(4)
Kerala Payment of Subsistence Allowance Act, 1972 — Section 4

Citation : (1995) 3 LLJ 1

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : M. Ramachandran and P.V. Abraham, for the Appellant; B.S. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

Kochu Thommen, J.—The question which arises in this case is whether the petitioner is right in contending that the subsistence allowance claimed by him under the Kerala Payment of Subsistence Allowance Act, 1972 is a matter which is within the purview of the Labour Court to decide u/s 33C(2) of the Industrial Disputes Act, 1947. The court held by the impugned order that it had no such power by reason of Section 4 of the Kerala Payment of Subsistence Allowance Act.

2. Section 4 of the Subsistence Allowance Act, in so far as it is material, reads :

"Recovery of money due from an employer. Where any money is due to an employee from an employer under this Act, the employee himself or any other person authorised by him in this behalf or in the case of the death of the employee, his legal representative may, without prejudice to any other mode of recovery, make an application to the Government in such manner as may be prescribed for the recovery of money due to him, and if the Government after giving the employer an opportunity of being heard in such manner as may be prescribed, is satisfied, that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same

manner as an arrear of land revenue....":

Significantly the section provides that the mode of recovery contemplated under that Section and which is on the basis of an application filed by the claimant or his agent or legal representative, is without prejudice to any other mode of recovery. A claimant under this Section can, therefore, directly make an application to the Government. Thereupon, after hearing both sides a certificate can be issued by the Government to the Collector for recovery by recourse to the provisions of the Kerala Revenue Recovery Act, 1968. That is a summary mode of recovery. But that is not the only mode of recovery. An equally efficacious method is provided u/s 33C(4) of the Industrial Disputes Act pursuant to a decision of the Labour Court under Sub-section (2) of Section 33C. Sub-section (4) provides.

"The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-Section (1)".

The decision of the Labour Court under Sub-section (2) of Section 33C(2), and which is enforceable under Sub-section (4) of that Section, is recoverable in the manner provided for under Sub-section (1) of the said Section, i.e. by recourse to the provisions of the Kerala Revenue Recovery Act.

3. The decision of the Labour Court u/s 33C(2), when communicated to the Government, is enforceable as expeditiously as in the case of a decision of the Government u/s 4 of the Subsistence Allowance Act, that is, by recourse to the Kerala Revenue Recovery Act. Section 33C(4) is, therefore, not inconsistent with or contrary to the provisions of Section 4 of the Subsistence Allowance Act.

4. The employee contended before the Labour Court that money was due to him under the Subsistence Allowance Act, Whatever defence there may be to that claim, it is the responsibility of the Labour Court to dispose of the application on the merits after hearing both sides. To have declined to do so was an abdication of statutory power.

5. Ext. P1 is accordingly set aside and the Labour Court is directed to reconsider the application and dispose of the same on the merits within one month from the date of receipt of a copy of this judgment. The Original Petition is disposed of as above. No costs.

Forward a copy of this judgment to the Labour Court for information and necessary action.