
(1992) 02 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 10221 of 1988

Kerala State Co-op. Coir Markg. Fedn.	APPELLANT
Vs	
Labour Court and another.	RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 3, 33, 33(e)(2), 33C, 33C(2)
Kerala Payment Of Subsistence Allowance Act, 1972 — Section 3, 4
Minimum Wages Act, 1948 — Section 15, 30

Citation : (1993) 1 KLJ 974

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

Bench : Single Bench

Advocate : T.C. Mohandas, for the Appellant; T. H. Abdul Aziz, for the Respondent

Final Decision : Dismissed

Judgement

P. A. Mohammed, J.—The Kerala State Co-operative Coir Marketing Federation Limited (hereinafter referred to as "Society") is the writ petitioner. This dispute in this petition relates to the award of Subsistence Allowance to one of its employees by the Labour Court u/s 33C(2) of the Industrial Disputes Act. The facts involved in the case are briefly stated hereunder:

The second respondent (hereinafter called "employee") was the manager of society's depot at Ludhiana. There was an allegation against him that he had misappropriated a sum of Rs. 1,69,022.97 while he was working at Ludhiana. While so, the employee had applied for leave from 12-11-1984 to 12-1-1985 which was sanctioned. He again applied for leave from 12-1-1985 to 13-11-1985 which was refused by the Society. Thereafter he did not report for duty and thus abstained himself from employment. In the meantime investigation was conducted as regards the alleged misappropriation and employee was accordingly placed under suspension with effect from 12-7-1985. A domestic enquiry was conducted and charge of misconduct against the employee was

found proved. The Board of Directors of the Society thereafter adopted a resolution on 12-6-1987 dismissing the employee with effect from 12-7-1985 from the date on which he was placed under suspension. The said order dismissal was communicated to him on 15-7-1987. Thereafter an arbitration case was filed against him u/s 69 and 70 of Kerala Co-operative Societies Act, 1969 in realisation of the above amount which was proved to be misappropriated by him.

On 23-6-1987 the employee filed a petition before the labour court. Quilon u/s 33C(2) of the Industrial Dispute Act, 1947 (hereinafter called "I.D Act") seeking to determine the amount due to him from the Society. A sum of Rs. 8,400/- was claimed towards the arrears of salary for the period from 15-1-1985 to 11-7-1985 and Rs. 29,650/- towards the Subsistence Allowance for the period from 12-7-1985 to 23-6-1987. Controverting the aforesaid claim, society filed Ext. P2 written objection contending that he was not eligible for any Subsistence Allowance as he was dismissed on the very day of his suspension viz. 12-7-1985 as per the resolution of the Board. It was also contended that the application was not filed within the period of one year as specified in Section 4 of the Kerala Payment of Subsistence Allowance Act and that at any rate there was no explanation for the inordinate delay in moving the petition u/s 33C(2) of the I.D Act. Finally, the labour court passed Ext. P3 order allowing the claim as far as Subsistence Allowance was concerned. However the claim for arrears of salary was disallowed. As against the grant of Subsistence Allowance the Society has challenged Ext. P3 order in this Writ Petition.

2. Counsel for the petitioner argues that the second respondent is not a "workman" coming within the purview of the "I.D. Act" and hence his claim u/s 33C(2) of the Act is not maintainable. Admittedly such a contention has not been raised before the Labour Court. However, since it is a question pertaining to the jurisdiction of the Labour Court to entertain the application, it would be proper for this court if it considers whether such question can be entertained at this stage. Subsection (2) of Section 33C of the Act reads thus;

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

The above provision can be invoked only by a workman whose status is not disputed. The court will get jurisdiction to try an application under it when it is clearly stated that he is a "workman". Then only an application under Sub - Section (2) can be entertained. If the employer disputes the status of an applicant, he must raise it at the earliest point of time and get it decided as a preliminary point. The employer cannot raise such question at a later stage because entertainment of the application itself is dependent on deciding such

question as and when the employer appears before court on receipt of the notice. In the absence of such question being raised at that stage it is presumed that the employer has admitted the status of the applicant.

3. It is, no doubt, true that the employee has claimed the benefit under the Kerala Payment of Subsistence Allowance Act, 1972. This is an Act intended to provide for the payment of Subsistence Allowance to the employees in certain establishment during the period of suspension. Before introducing the above Act, there was no such law in the State of Kerala making it obligatory on the part of the employers in industrial or commercial establishment to pay Subsistence Allowance to employees kept under suspension pending enquiry. Sub-rule (6) of Rule 198 of the Kerala Co-operative Societies Rules, 1969, inter alia, provides that an employee under suspension shall be entitled to Subsistence Allowance payable under the Payment of Subsistence Allowance Act, 1972. The suspension not completely absolved the contracting parties from enforcing the terms. It is kept in suspense till the enquiry is completed. But the right to sustain his life during the period of suspension shall not be denied to an employee, "Employee" in the present case has claimed Subsistence Allowance at the rate prescribed in Section 3 of the Subsistence Allowance Act. Section 4 of the said Act prescribes the summary procedure for recovery of the money due to an employee from the employer.

4. Section 4 of the Payment of Subsistence Allowance Act reads thus:

4. Recovery of money due from an employer: - When any money is due to an 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.

Under this provision an employee can make an application to the Government seeking to recover the Subsistence Allowance from the employer if he is under suspension pending enquiry. If the Government, after giving an opportunity of being heard to the employer, is satisfied that the Subsistence Allowance is so due to him, it shall issue a certificate for that amount to the Collector. Such amount shall be recovered by the Collector in the same manner as an arrear of land revenue. This provision contemplates an enquiry where both the employer and the employee can participate.

5. The question that is raised by the petitioner is that since the employee has claimed the benefit as available u/s 3 of the Payment of Subsistence Allowance Act, he should have filed an application for recovery of the Subsistence Allowance u/s 4 of the said Act instead of filing an application u/s 33C(2) of the I.D. Act. In

other words, the point urged is whether an employee who claims subsistence allowance u/s 3 of the Subsistence Allowance Act is entitled to file an application u/s 33C(2) of the I.D. Act seeking to recover it from the employer. This question is no longer *res integra*. Before the Supreme Court in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, a question arose whether the wages under the Payment of Wages Act can be recovered in a proceeding u/s 33C(2) of the I.D. Act. While dealing with the question the Supreme Court held that Wages due under the Payment of Wages Act can be "tackled" under the provisions of Section 33C(2) of the I.D. Act. Applying the principle laid down by the Supreme Court in the above decision, *M.P. Menon. J. held in M/s Vimal Printers v. V.B. Omana* (1983 K & I.C. 270) thus:

Section 30 of the Minimum Wages Act is similar to Section 15 of the payment of Wages Act and it should therefore follow that claims arising under the former Act would also be tackled u/s 33C(2) of the Industrial Disputes Act.

Dr. Kochuthommen, J. (as he then was) of this court in *x Nair v. Dhanalakshmi Bank Ltd.* (1988 2 KLT 136) also look the same view and held thus:

A claimant under this section (Section 4 of the Subsistence Allowance Act) 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 provision of the Kerala Revenue Recovery Act, 1968. That is the summary mode of recovery. But that is not the only mode of recovery. An equally efficacious method is provided u/s 33(e)(2) of the Industrial Disputes Act pursuant to a decision of the Labour Court under Sub - Section (2) of Section 33(V

Shamsuddin, J. In *Chennamangalam Nayar Samajam v. Saradha* (1993 1 KLT 142) held thus:

It is clear from Sec. 4 itself that this remedy is without prejudice to any other mode of recovery. It is argued by learned counsel on the basis of general principle of interpretation that normally when a special statute is enacted for the purpose of enforcing some rights and a machinery is provided thereunder resources will be added to that machinery and to none else. However that principle can hardly be an application in the instant case in as much as Sec. 4 expressly states that the machinery provided under Sec. 4 is only without prejudice to any other mode of recovery.

6. It is pointed out that the provisions contained in the Subsistence Allowance Act are self-contained code similar to that of the provisions in the Payment of Gratuity Act, 1972. The Supreme Court in *State of Punjab Vs. Labour Court Jullunder and Others*, while interpreting the provisions contained in the Payment of Gratuity Act held thus:

Upon all these considerations, the conclusion is inescapable that Parliament intended that proceeding for payment of gratuity due under the Payment of

Gratuity Act must be taken under that Act and not under any other. That being so, it must be held that the applications filed by the employee respondents u/s 33C(2) of the Industrial Disputes Act did not lie, and the Labour Court had no jurisdiction to entertain and dispose of them.

Can it be said similar situation as laid down in the case of Payment of Gratuity Act, is envisaged in so far as the Payment of Subsistence Allowance Act? The answer can never be in the affirmative as long as Section 4 of the said Act contains a stipulation that the proceedings thereunder are "without prejudice to any other mode of recovery". A Similar contention advanced before this court in Chenna-mangalam Nayar Samajams case (1993 1 KLT 142) was repelled by the court after analysing the provisions.

The next contention to be considered is with regard to the period of limitation applicable to the claims available u/s 3 of the Payment of Subsistence Allowance Act which is sought to be enforced invoking the powers u/s 33C(2) of the I.D Act. The first proviso to Section 4 of the payment of Subsistence Allowance Act provides that the application shall be made within one year from the date on which the money became due to the employee from the employer.

In the present case, had the application been filed before the Government, such an application would have been definitely barred u/s 4 of the Subsistence Allowance Act. The Subsistence Allowance was claimed from 12-7-1985, the date on which the employee was placed under suspension. In the normal course the employee should have taken steps to recover the allowance during the period of suspension itself or under any circumstances within a period of one year. Otherwise the claim would get itself time barred u/s 4 of the Act. In the written objection filed by the employer, the objection based on limitation was urged as below:

The Kerala Payment of Subsistence Allowance Act 1972 Section (4) deals with recovery of money due from an employer. It is directed therein that the employee or his authorised representative may make an application to the government and the government after giving the employer an opportunity of being heard, if satisfied, that any money is so due, it shall issue a certificate for the amount to the Collector who shall proceed to recover the same by R.R. proceedings. But there is a mandatory proviso u/s 4 itself "that every such application shall be filed within one year" from the date on which the money became due to the employee from the employer. In the instant case, the employee was suspended on 12-7-1985 and so he should have filed the petition on or before 12-7-1986 whereas he has filed the petition only on 23-6-1987 and he has not assigned any reason for the inordinate delay in filing the petition.

The above contention was considered by the Labour Court not as a ground of delay, but as one relating to the maintainability of the petition. The first respondent has disposed of the above objection as per Ext. P3 in the following manner:

According to the opposite party, an application for getting subsistence allowance is to be made to the Government within one year of the due date. A petition u/s 33C(2) is not maintainable, The position is settled by the decision reported in 1988 2 KLT 136 where it was held that the money due under the Payment of Subsistence Allowance Act can be claimed u/s 33C(2). It may be noted that no period of limitation is prescribed for making a claim under Sec. 33C(2).

7. From the above it is apparent that the first respondent has proceeded on the basis that an application u/s 33C(2) is maintainable and that therefore the question of delay does not arise. It is, no doubt, true that claims available under the Payment of Subsistence Allowance Act can be recovered by filing an application u/s 33C(2). That does not mean the explanation is unnecessary as regards the delay in filing the application. No employee can put forth a contention that he has filed the application under Sec. 33C(2) to recover the subsistence allowance which is otherwise barred under Sec. 4 of the Payment of Subsistence Allowance Act, He cannot also contend that he need not give any explanation for the delay in filling the application under Sec. 33C(2) on the ground that no period of limitation is prescribed there under. It is not in dispute that there was delay in claiming the Subsistence allowance in the present case and no attempt had been made to explain the delay. The petition under Sec. 33C(2) is of course, maintainable but that does not mean the employee is under no obligation to answer the allegation as regards delay, particularly in view of the fact that the claim would be barred if filed under Sec. 4 of the Subsistence Allowance Act. In that situation the contention of the employer that the claim u/s 33C(2) was made in order to save from the clutches of limitation provided in Sec. 4 of the Subsistence Allowance Act cannot be totally ruled out. It is therefore possible to contend that the application itself is not bonafide. The employee cannot be arrogant and refuse to give any explanation for his laches. As far as this case is concerned, there are circumstances which warrant an explanation from the employee. Though the petitioner was placed under suspension on 12-7-1985 he filed the application under Sec. 33C(2) only on 23-6-1987. The employee was dismissed from service as per the order dated 12-6-1987 after conducting domestic enquiry and the Society had filed Arbitration case against the employee for realisation of the amount, which was found to be misappropriated by him. The application claiming subsistence allowance shall be filed at the earliest point of time since it is awarded for sustaining the life of the employee during the period of suspension. He cannot therefore wait till the passing of the order of dismissal. That the refusal to furnish explanation for the delay in filing the application under Sec. 33C(2) for claiming a benefit which is otherwise barred under Sec. 4 of the Payment of Subsistence Allowance Act shows the conduct of the employee, which will not find favour with the authorities adjudicating the industrial claims.

8. The next question is whether there is any bar on the Labour Court in the present case in considering the contention of delay in filing an application under Sec. 33C(2). *Vigilantibus non dormientibus Jura Subveniunt*. "The law assists the

vigilant not those who sleep over their rights." This is the general rule. The employee did not invoke the remedy under Sec. 4 of the Subsistence Allowance Act within the time prescribed. Therefore the claim under the said Act is barred. In that situation, the adjudicating authority can very well examine whether the employee has approached the different forum to escape from limitation, when such question is raised by the employer. The fact that Labour Court can entertain an application under Sec. 33C(2) at any time do not debar the Labour Court from examining such contention. Every adjudicating authority has inherent jurisdiction to go into such question when raised by the parties.

9. The Legislature did not provide a period of limitation for filing an application under Sec. 33C(2) of the I.D. Act. However it cannot be said to be a guarantee that the said provision can be used in any manner as one likes. Every provision of law has to be applied properly, reasonably and bonafide. It is repeatedly said by the Supreme Court; "Industrial adjudication should not encourage unduly belated claims." The employees who prefer to invoke the provisions - under Sec. 33C(2) shall make the application within a reasonable period. What is reasonable period will depend on the circumstances of each case. In view of my above conclusion, the first respondent Labour Court shall decide the question whether the employee has filed the Ext. Pl application for recovery of subsistence allowance under Sec.33C(2) within a "reasonable period" and whether there is any proper explanation for the delay, if any, in preferring the claim. Both parties shall be given an opportunity of being heard in the matter while deciding those questions. In that situation, the case is remanded to the Labour Court for deciding these questions alone. The court shall finally dispose of the matter within a period of three months from today in view of the findings to be entered on the questions aforesaid. The writ petition is disposed of as above. No order as to costs.