

(1997) 08 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 14366 of 1993

Kerala State Transport Workers Co-operative Society Ltd.	APPELLANT
Vs	
S. Pankajakshan Nair and Another	RESPONDENT

Date of Decision : 21-08-1997

Acts Referred:

Citation : (1998) 2 LLJ 158

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : U.K. Ramakrishnan and P.V. Lohitakshan, for the Appellant; N. Nandakumara Menon and N. Anil Kumar for Respondent No.1, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—The first respondent in this original petition was removed from service as charges issued against him were proved in a domestic enquiry. His removal from service was referred for adjudication. The Industrial Tribunal found that the enquiry was not fair and proper. But, the management was allowed to adduce fresh evidence. Meanwhile, the first respondent filed an application for subsistence allowance under the provisions of the Payment of Subsistence Allowance Act, 1972. In view of the decision in Kerala State Co-operative Employees Association v. Labour Court ILR 1984 Ker 294, the Labour Court awarded subsistence allowance as prayed for. This is challenged in this original petition.

2. It is submitted by the petitioner that the Payment of Subsistence Allowance Act is not applicable in the instant case. The petitioner was holding managerial or administrative post and, therefore, the Act is not applicable. Again, it was contended that the above Act is applicable only if a person is suspended pending enquiry. The first respondent was never suspended pending enquiry while he was in service.

3. i am of the view that in any event after termination of service there is no

employee-employer relationship and, therefore, the Subsistence Allowance Act will not be applicable. Exhibit P-1 order to pay subsistence allowance immediately before passing of the award for the period after removal from service merely because enquiry was set aside and misconduct was proved only before the Tribunal is beyond the jurisdiction of the Tribunal. In the decision in Kerala State Co-operative Employees Association v. Labour Court, (supra), this Court did not award subsistence allowance. It was held in that case that if the enquiry is held against the principles of natural justice so as to make it void, full wages can be awarded at the time of final award. Here, as the enquiry was set aside due to certain defects, evidence was adduced before the Tribunal and from the evidence, the Tribunal found that removal of the first respondent from service was correct and, therefore, he is not entitled to any relief by a subsequent award (exhibit P-2). At the time of final award, the Tribunal can grant part or full back wages considering the nature of misconduct and other circumstances; but before passing of the award in the absence of special statutory provision in a separate petition. The Tribunal cannot award subsistence allowance under the Subsistence Allowance Act merely because enquiry was set aside. In exhibit P-2 award, the Tribunal also held that punishment will relate back to the date of original punishment. Now, the Supreme Court has clarified that the punishment order will relate back to the date of original punishment even though the enquiry is set aside and misconduct is proved only before the Tribunal. In this connection, I refer to the decision of the Supreme Court in R. Thiruvirkolam Vs. Presiding Officer and another, , and Rambahu Vyankuji Kheragade Vs. Maharashtra Road Transport Corporation, Therefore, in view of these facts, exhibit P-1 order is not sustainable. There is jurisdictional error on the part of the Industrial Tribunal. Therefore, exhibit P-1 is set aside and the original petition is allowed.

4. It is submitted by the workman that he has filed original petition against the final award. This will not prejudice his case and if he succeeds, he will get the benefits accordingly.

The original petition is allowed.