

(1996) 03 KL CK 0060
In the High Court Of Kerala
Case No : O.P. No. 4351 of 1994

K.S.R.T.C.

APPELLANT

Vs

Vamadevan Nair

RESPONDENT

Date of Decision : 18-03-1996

Acts Referred:

Citation : (1997) 75 FLR 273 : (1996) 2 LLJ 557

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : N. James Koshy, J, for the Appellant; T.B. Radhakrishnan and Jose K. Kochupappu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The Managing Director of the Kerala State Road Transport Corporation has filed this original petition challenging Ext. P3 order issued by the Authority under the Payment of Subsistence Allowance Act, 1972 (Act 27 of 1973)

2. As per the said Act, allowing an application submitted by respondents 1 to 9, the Authority namely the 10th respondent quantified the subsistence allowance due to respondents 1 to 9 and directed payment.

3. Challenging Ext. P3 the Petitioner contends that the law applicable to the employees under it governing payment of subsistence allowance is the provisions in the K.S.R. It is further contended in ground D that by reason of Agreement dated February 2, 1990 "the provisions of K.S.R. is applicable" to the employees in the matter regarding their service. On that count it is stated that the provisions in the Act are not applicable to the employees. Exhibit P6 is also brought to my notice whereby an order has been issued on April 13, 1992 stating that the then existing practice of applying the Act had been discontinued with immediate effect and K.S.R is being followed. It is further submitted that the K.S.R. thus being part and parcel of the settlement entered into between the management of the K.S.R.T.C. and its workmen, in a statutory form under the

Industrial Disputes Act, the provisions in the Kerala Payment of Subsistence Allowance Act cannot be pressed into, to claim subsistence allowance.

4. These arguments cannot stand on two grounds-First when the K.S.R. is adopted as part I of settlement necessarily along with Rule 55 Part I, Rule 5 Part I also becomes its part. In that case, Rule 55 shall not operate to deprive any person the right or privilege to which he is entitled to under any law. Without any dispute, the Act comes within the purview of the law mentioned in Rule 5. Therefore, the provisions in the Act prevail by reason of application of Rule 5, over the provisions in Rule 55, governing the grant of subsistence allowance to respondents 1 to 9. On that ground K.S.R. cannot be applied for regulating subsistence allowance, even going by the contentions of the petitioner. Applying Rule 5 the Act has to be the criteria in regulating the subsistence allowance.

5. Next, the Act was enforced with effect from September 14, 1973, to provide for the payment of subsistence allowance to the employees in certain establishments during the period of suspension. Respondents 1 to 9 will come within the meaning of "employee" in definition 2(a) and the petitioner will come within the definition of "employer" u/s 2(b). Naturally, a liability is fastened on the petitioner to pay subsistence allowance in terms of Section 3 of the Act, When petitioner does not follow that mandate, necessarily the respondents 1 to 9 have the right to enforce it through the Authority as provided u/s 5. A Division Bench of this Court, has held in *Edathua Service Co-operative Bank v. Authority* u/s 6 of K.P.S.A.Act 1984 K L T284 as follows:

"Payment of subsistence allowance was a specific and important facet of suspension proceedings on which Legislature felt it necessary to express itself separately. Going by these indications the special nature of the enactment cannot, therefore, be doubted at all. The conclusion of the Division Bench about the payment of subsistence allowance being a special enactment, is, if we may say so with respect, perfectly justified."

Thus, payment of subsistence allowance is a special law governing a limited field and regulating subsistence allowance to persons placed under suspension. In that context, a settlement under the Industrial Disputes Act will only be general provisions because that governs several aspects of service conditions including the subsistence allowance, which is specifically provided for in the Act.

6. Going by Ext. P6 it can be inferred that even though, in 1960 settlement, K.S.R. was adopted, that has not been acted upon for the purpose of payment of subsistence allowance. It was acted upon for other purposes. That was why the Kerala State Road Transport Corporation followed "the practice of applying the provisions of Kerala Payment of Subsistence Allowance Act, 1972" admittedly till April 13, 1992. Thus K.S.R. is being brought into with en-forceability of settlement in the matter of payment of subsistence allowance only by Ext P6 dated April 13, 1992. At that point of time, the Act was already in force providing for more beneficial provisions in the matter of subsistence allowance. Therefore,

the special law shall certainly prevail. In the decision of the U.P. State Electricity Board, v. H. S. Jain considering the applicability of the standing orders framed under the Industrial Employment Standing Orders as against the regulations framed u/s 79(c) of the Electricity Supply Act, it was held that the Standing Orders will prevail, being the special law over the regulations statutorily issued under the Electricity Supply Act. When that proposition is adopted necessarily the provisions in the Act will prevail over any other provisions in the matter governing payment of subsistence allowance.

7. Pointing out Section 10A of the Industrial Employment (Standing Orders) Act, it is contended on behalf of the petitioner that completion of disciplinary proceedings initiated against respondents 1 to 9 are being delayed for reasons directly attributable to the conduct of such workmen. In this regard, the petitioner points out Ext. P2 interim order passed by the Munsiff Court, Trivandrum to maintain status quo as regards disciplinary action against respondents 1 to 9. That interim order was only upto March 30, 1993. To approach a court of law for certain relief, it cannot be stated, is something attributable to the plaintiffs" mentioned in Ext. P2, because the petitioner who figured as defendant in that case, was free to point out the illegality, if any, in that and to get it vacated or to approach appellate or revisional court as the case may be. There is no case that any action had been taken in that regard. Therefore, merely because respondents 1 to 9 approached court of law as revealed by Ext. P2, it cannot be said that their conduct was such that they wanted to prolong the disciplinary proceeding. At least, the petitioner also was not vigilant, as he did not get the order vacated or set aside in appropriate proceedings. Moreover, if Section 10 of the Standing Order Act is applicable, nobody prevents the petitioner from passing any order in terms of Section 10A(b) for appropriate reasons and on appropriate grounds. But, till this date no such order has been passed. No such order is seen produced before the Authority. Therefore, the Authority was perfectly justified in passing Ext. P3 on the basis of materials available on record, applying Payment of Subsistence Allowance Act and rejecting the contentions of the petitioner to apply provisions in K.S.R.

Therefore, the O.P. is dismissed. There will be no order as to costs.