

(1990) 07 KL CK 0014
In the High Court Of Kerala
Case No : O.P. 3715 of 1990

Lord Krishna Bank

APPELLANT

Vs

Deputy Labour Commissioner and Others

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 4
Kerala Payment of Subsistence Allowance Act, 1972 — Section 4, 6
Subsistence Allowance Rules — Rule 4, 5

Citation : (1990) 07 KL CK 0014

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : M. Pathrose Mathai, for the Appellant; K.G. Anil Babu, Government Pleader for Respondents 1 and 2, for the Respondent

Judgement

Radhakrishna Menon, J.—The employer is before the court.

2. Exts. P-5 and P-6 are under challenge. These are orders passed u/s 4 of the Kerala Payment of Subsistence Allowance Act, 1972, for short the Subsistence Allowance Act, directing the Petitioner to pay the third Respondent, the employee, subsistence allowance quantified by these orders.

3. The counsel for the Petitioner-bank argued that the conciliation officer competent to enquire into third Respondent's claim and report is the conciliation officer appointed by the Central Government. However, the orders under challenge are based on the reports submitted by the conciliation officer appointed by the State Government. Is this argument acceptable, is the question arising for consideration.

4. We have to consider in this connection the scheme of Sections 4 and 6 of the Subsistence Allowance Act and Rule 5 of the Subsistence Allowance Rules and Section 2(a)(i), 2(d) and Section 4 of the Industrial Disputes Act. Section 4 read along with Section 6 of the Subsistence Allowance Act would show that the authority competent to entertain an application for subsistence allowance apart

from the State Government; is the one on whom, the State Government by notification, have conferred the powers exercisable by it under the Act. The State Government or the said delegate as the case may be, on receipt of an application under Rule 4 of the Subsistence Allowance Rules is bound to send copies of the same to a conciliation officer appointed under the Industrial Disputes Act, 1947, for an enquiry into the employees' claim and report. The conciliation officer to whom the delegate of the State Government or the State Government, as the case may be, would forward copies of the claim applications, must be one appointed under the Industrial Disputes Act. If the employer is one described u/s 2(a) of the Industrial Disputes Act the conciliation officer, competent to enquire into the claim for subsistence allowance of the employee and report (within the meaning of Rule 5 of the Subsistence Allowance Rules) is the one appointed by the Central Government. A reference in this connection to Section 4 and Section 2(a) of the Industrial Disputes Act, is profitable. It can be seen from the plain and unambiguous language used in these sections that the appropriate Government competent to appoint conciliation officer charged with the duty of mediating in and promoting the settlement of industrial disputes concerning the industries/institutions mentioned in Section 2(a)(i) is the Central Government. In all other cases the appropriate Government is the State Government. It therefore follows that if the employer is one described in Section 2(a)(i) of the Industrial Disputes Act, only a conciliation officer appointed by the Central Government will be competent to enquire into the employee's claim and report, enabling the State Government or its delegate, as the case may be, to pass appropriate orders disposing of such claims.

5. Having understood the scheme of the provisions thus, let us see whether the orders Exts. P-5 and P-6 would be said to have been passed validly. It is the common case of the parties that the claim was enquired into by the Deputy Labour Officer, Alleppey who is a conciliation officer appointed by the State Government. It is not disputed that the Petitioner is a banking Company and hence an industry or establishment within the meaning of Section 2(a)(i) of the Industrial Disputes Act. If that be the position, the conciliation officer who is competent to conduct an enquiry into the application for subsistence allowance is the one appointed by the Central Government. The Assistant Labour Commissioner (Central), Ernakulam is the conciliation officer appointed by the Central Government for the area from where this dispute arises. The said conciliation officer alone therefore has the jurisdiction to enquire into the claim and submit a report to the first Respondent. Exts. P-5 and P-6 orders, inasmuch as they are based on report submitted by an authority who is incompetent to enquire into the claim application, therefore are liable to be set aside. The first Respondent under the circumstances ought to have referred the application to the Assistant Labour Commissioner (Central) appointed as the conciliation officer u/s 4 of the Industrial Disputes Act to enquire into the claim application and submit a report. The conciliation officer [Assistant Labour Commissioner (Central)] on receipt of such application is bound to enquire into the claim

application and submit the report which would be the basis for the passing of the final order in the claim application.

6. The council for the Petitioner has a further case namely, that, before the report (within the meaning of Rule 5) was prepared by the conciliation officer, the Petitioner was not given an opportunity of being heard. So far as the claim for the period subsequent to the one covered by Ext. P-5 is concerned, the counsel argues that the claim application was filed only before the conciliation officer who under law has no authority to entertain the same. The employee should have filed the said application before the first Respondent who alone under the Subsistence Allowance Act, is competent to entertain the claim. It is relevant in this context to note that it is not the case of the employee that he had filed the said claim application before the first Respondent. On the other hand it has come out in evidence that it was filed only before the conciliation officer. Going through the orders under challenge it is clear that they were passed without affording the Petitioner an opportunity of being heard. So far as Ext. P-5 is concerned it is clear from Ext. P-4 (application for adjournment by the counsel representing the Petitioner) that the Petitioner was not given opportunity to adduce evidence. The orders for the reason that they were passed without giving the Petitioner an opportunity of being heard, are not sustainable in law. Exts. P-5 and P-6 accordingly are set aside.

7. It has therefore become necessary to issue the following directions:

(i) The first Respondent shall send copy of the claim application filed by the third Respondent for the period 1st April 1989 to 31st May 1989 to the Assistant Labour Commissioner (Central) for enquiry and report as expeditiously as possible, in any event, within four weeks from the date of receipt of a copy of the judgment.

(ii) So far as the subsequent period is concerned the third Respondent if so advised, can file a fresh claim application before the first Respondent within one week from today.

(iii) If such an application is filed, the first Respondent shall forward the same along with the application for the previous period, for enquiry and report, to the Assistant Labour Commissioner (Central).

(iv) The Assistant Labour Commissioner (Central) on receipt of the claim applications shall conduct a detailed enquiry into the claim after affording the Petitioner as also the third Respondent sufficient opportunity to produce evidence and submit his report to the first Respondent as expeditiously as possible, in any event, within three months from the date of receipt of the applications from the first Respondent.

(v) The first Respondent thereafter shall give the Petitioner as also the third Respondent sufficient opportunity to represent their respective cases before final orders disposing of the claim applications are passed. Such final orders shall be

passed as expeditiously as possible, in any event, within six weeks from the date of receipt of the report from the conciliation officer.

The O.P. is disposed of in the manner indicated above. No costs.