

(1996) 11 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 8490 of 1960

Malabar Wires and Allied Products

APPELLANT

Vs

Deputy Labour Commissioner

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 19(2)

Citation : (1998) 3 LLJ 1174

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

Bench : Single Bench

Advocate : B.K. Krishnan, for the Appellant; P.F. Thomas and B.J. Yesudas, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Management of an industrial establishment has come up with this writ petition challenging Ext.P6 order of the Authority under the Kerala Payment of Subsistence Allowance Act. The order directs payment of subsistence allowance in terms of Kerala Payment of Subsistence Allowance Act, 1972 to the 3rd respondent.

2. Admittedly by the petitioner, the 3rd respondent was placed under suspension from October 19, 1987. There is no case for the petitioner either before the statutory authority or before this Court that the 3rd respondent had at any time been paid subsistence allowance or part thereof. When suspension of an employee is admitted and there is no case for the employer that the subsistence allowance had been paid, the natural consequence from the Authority constituted under the said Act is to direct payment of subsistence allowance because that is the statutory liability of the employer concerned. Therefore, I see no reason to set aside Ext.P6.

3. The Management has a different case. With regard to suspension and disciplinary action of the 3rd respondent, the union raised a dispute as per Ext.P1

demand which was settled as per Ext.P2 settlement. As per that settlement, the Management agreed to withdraw the domestic enquiry against the 3rd respondent and to admit the 3rd respondent to duty when the factory re-opened after closure. The closure became necessary because of strike. It was also agreed in Ext.P2 settlement after working for a day the 3rd respondent will retire from the service of the petitioner. In such circumstances based on Ext.P2, the 3rd respondent has no eligibility nor the petitioner has any liability to pay subsistence allowance. Exhibit P2 settlement does not contemplate for payment of subsistence allowance. Exhibit P2 binds the parties and the 3rd respondent cannot make an application for payment of subsistence allowance, in terms of Ext.P2 settlement and under the provisions of the Industrial Disputes Act.

4. This contention of the Management has no sustainability. The subsistence allowance is the statutory entitlement for the employee placed under suspension. That statutory entitlement cannot be taken away by reason of the settlement. Moreover, the settlement does not provide anything regarding payment of subsistence allowance. It is true that the dispute had been settled in terms of Ext.P2 settlement. But, by reason of that the entitlement for subsistence allowance payable in terms of a statute cannot be denied to the employee concerned. If the settlement is contrary to any law or it cannot be implemented without violating any provision of law, then the settlement cannot be enforced at all. There is nothing in Sub-section (2) of Section 19 of the Industrial Disputes Act, 1947 to suggest that "the agreement will be valid and binding notwithstanding any law to the contrary" as held by the Supreme Court in *Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees' Union and Another*, So, if the agreement contained any provision to deprive subsistence allowance, that cannot have any operation when the statute makes the employee entitled for such allowance. The statute will prevail. Therefore, the contention of the petitioner that in the light of Ext.P2 settlement he has no liability to pay the subsistence allowance, cannot be accepted.

5. Another contention of the petitioner is that as per Ext.P2 there was a settlement to reinstate the petitioner in service on re-opening of the industrial establishment after closure and therefore, the authority should not have by Ext.P6 directed payment of subsistence allowance till December 31, 1988, as at any rate the suspension had terminated on the date of settlement of Ext.P2, namely July 1, 1988. Exhibit P2 settlement only provided to withdraw the disciplinary action against the 3rd respondent and to admit her to duty and thereafter the 3rd respondent shall retire from service. But, there was no contention for the petitioner as revealed from Ext.P4 before the Authority concerned that in implementation of Ext.P2 settlement the petitioner had issued orders withdrawing the disciplinary action against the 3rd respondent and reinstating the 3rd respondent in service. When there is no such reinstatement, naturally the suspension continued even on the date of application and therefore the employee was right in claiming subsistence allowance till that date and the Authority was perfectly justified in granting subsistence allowance upto

December 31, 1988, It is true that in this original petition the petitioner has a contention that the 3rd respondent was reinstated and admitted to duty. But, no document is produced. That is a contention the petitioner should have taken before the Authority concerned. As no such contention had been taken before the Authority, it cannot be said that the Authority went wrong while issuing Ext.P3 directing payment of subsistence allowance till December 31, 1988.

6. The further contention of the petitioner is that the company was under closure because of the strike launched by the union based on the industrial dispute raised pursuant to suspension of the 3rd respondent. As the establishment was closed, nobody was entitled to payment of wages and naturally the 3rd respondent who was placed under suspension was not entitled to subsistence allowance. This contention also does not hold good. The suspension was prior to the closure. From the date of suspension the 3rd respondent had the statutory entitlement to receive subsistence allowance. Subsequent closure will not disentitle her from receiving such allowance. Taking into account the liability of the employer to pay wages pending proceedings against an award reinstating the worker, u/s 17B of the Industrial Disputes Act, 1947, a Division Bench of this Court in K. Bhaskaran Vs. R. Janardhanan Pillai, had held the liability to pay wages in terms of Section 17B will subsist inspite of the closure of the industry concerned. In such circumstances, naturally the liability to pay subsistence allowance also will continue inspite of closure of the establishment for a temporary period.

7. Another contention of the petitioner is that Ext.P6 is violative of principles of natural justice. This also cannot be accepted because the petitioner had been given an opportunity of and in Ext.P5 the petitioner had raised all the contentions before the Authority concerned. The petitioner has no case either before the authority or before this Court that the 3rd-respondent was paid the subsistence allowance. In such circumstances, even if more opportunity than that is given under Ext.P5 has also been given even then the result would be the same as in Ext.P6. Thus, there is no point in the contention that the petitioner had no opportunity before the Authority concerned. On the other hand, the Authority had given opportunity and the petitioner had availed it of as seen from Ext.P5 itself. In this case, even if no opportunity had been given, in the light of the admission of the petitioner that 3rd respondent had never been paid subsistence allowance, the petitioner could not have improved his case.

In the above circumstances, there is no merit in any of the contentions advanced by the petitioner. Original petition fails and is dismissed. No costs.