

(2014) 08 KL CK 0223

In the High Court Of Kerala

Case No : W.P.(C) No. 18209 of 2013 and W.A. No. 1424 of 2013

Manager, Jyothi Nikethan English Medium School	APPELLANT
Vs	
Deputy Labour Commissioner and Others	RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Kerala Payment of Subsistence Allowance Act, 1972 — Section 2, 2(a), 2(c), 2(f), 3

Citation : (2015) 1 KHC 673 : (2015) 2 KLJ 232

Hon'ble Judges : T.B. Radhakrishnan, J;P.B. Suresh Kumar, J

Bench : Division Bench

Advocate : Baby Issac Illickal, Advocates for the Appellant; M.K. Aboobacker, Senior Government Pleader, B. Ashok Shenoy, C.G. Preetha, K.P. Mehaboob Sheriff and K.V. George, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—The Manager of a private school filed the captioned writ petition challenging a common order under Section 4 of the Kerala Payment of Subsistence Allowance Act, 1972, for short, "the Act", issued in favour of the private respondents who are teachers of that school, hereinafter, "teachers". The learned Single Judge refused to grant interim relief as sought for by the writ petitioner. Hence the Manager's captioned writ appeal. Having regard to the question of law involved in this case, the Bench acceded to the request of both sides that the writ petition be withdrawn to be heard by the Division Bench, along with the writ appeal. Today, we have heard the learned counsel for the Manager and the teachers. The short issue for decision is as to whether a private school which is not aided by the Government, is an "establishment" as defined under Section 2(c) of the Act and whether a teacher of such a school is an "employee" as defined in Section 2(a) of that Act.

2. The learned counsel for the Manager argued, firstly, that a school does not fall within the term "establishment" and a teacher of a school does not fall within the definition of the term "employee" in the Act. The second argument is that the application under Section 4 of the Act was filed only on 15/10/2012, though the

teachers stood dismissed w.e.f. 14/03/2011, the date of their suspension from service and hence, there was no jural relationship in tact, to sustain a claim for payment of subsistence allowance under the Act. The learned counsel for the teachers supported the impugned order and criticized the Manager's writ petition as an oppression of legitimate statutory rights to sustenance.

3. At the outset, we note that the order of suspension of the teachers was issued on 14/03/2011; the applications under Section 4 of the Act were filed on 15/10/2012 and the order of dismissal of the teachers was issued on 12/02/2013, stated to be retrospectively from 15/10/2012.

4. Keeping aside the question whether there could have been a dismissal of the teachers with retrospective effect, we proceed to consider whether a dismissed employee could apply under Section 4, provided he is or was an employee covered by the Act. An application under Section 4 of the Act can be made even after the death of the employee, by the legal representatives of the deceased employee as well. Even in the case of a deceased employee, the eligibility to payment of subsistence allowance is not extinguished by that employee's demise, but would accrue in favour of his/her legal representatives, by the operation of the contents of Section 3 of the Act, for reasons that we elaborate now. Sub-section 1 of Section 3 provides for payment by the employer. That is to be effected whenever an employee is placed under suspension. Such payment has to be made for the period during which the employee is under suspension. The rate of subsistence allowance is also prescribed in that sub-section. The net effect of these provisions is that the eligibility, entitlement, quantum and the right to recover get crystalised as and when a person is placed under suspension. That right continues to run and keeps on accruing so long as the person is under suspension. It is that accrued right which is found on the basis of an application invoking Section 4 for recovery of money due from the employer. Therefore, what is sought to be recovered by making an application under Section 4 of the Act, is money, rightly and legitimately accrued and due to an employee by the operation of Section 3 of the Act.

5. The only embargo for the recovery of the aforementioned amount can be a bar to recovery created by any statutory provision. The right does not get barred, though the remedy may get barred by efflux of time, going by any prescribed period of limitation as to time for institution of proceedings for recovery. Section 4, firstly, protects all other modes of recovery. The procedure prescribed in Section 4 of the Act is without prejudice to any other mode of recovery. Therefore, if an employee were to take recourse to other modes of recovery known to law, different periods as to limitation as would apply to such proceedings may govern. But, when an employee takes recourse to Section 4, the first proviso to that section prescribes a period of one year from the date on which the money became due to the employee from the employer. The second proviso under Section 4, which, essentially, operates as a proviso to the first proviso, confers power on the authority under Section 4 to entertain an

application, even beyond the period of one year, on being satisfied that the applicant has sufficient cause for not making the application within that period.

6. The substance of the aforesaid discussion is that the continued existence of a jural relationship of master and servant or employee and establishment in terms of the provisions of the Act is not necessary to enforce recovery of amounts as were due under that Act while a person was under suspension as defined in Section 2(f) of the Act. The eligibility of such allowance is deducible with reference to Section 3 of the Act. The plea of the petitioner to the contrary is hence rejected.

7. The learned counsel on either side have made reference to different precedents which dealt with the definition of different terms like workman, establishment, factory etc. under the Industrial Disputes Act, 1947, Payment of Gratuity Act, 1972 and Minimum Wages Act, 1948. We have gone through the precedents referred to by them, that is to say: Kerala State Co-operative Coir Marketing Federation Ltd. Vs. The Deputy Labour Commissioner, ; Iritty Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. Vs. Joseph, ; Ahmedabad Pvt. Primary Teachers' Association Vs. Administrative Officer and Others, ; Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, ; Haryana Unrecognised Schools Association Vs. State of Haryana, ; and, Venkitaraman Vs. Labour Court and Others, . The salutary principle which we would immediately recall is that precedents dilating upon the definition clauses in different other legislations may be persuasive, only in cases where a particular legislation in hand does not provide material to clearly understand as to what is stated therein. For the purpose of the Act in hand, unless the context otherwise requires, the terms defined in Section 2 form the dictionary for that legislation. The word of "caution" we sound here is a thread of wisdom ingrained in judge made law. We may refer to Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, wherein it was held that it is not a sound rule of interpretation to seek the meaning of words used in an Act in the definition clauses of other Statutes. The definition of an expression in one Act must not be imported into another. Referring to Macbeth and Co. v. Chislett 1910 AC 220, the Apex Court reiterated that it would be a new terror in the construction of Statutes if we were required to limit a word to an unnatural sense because in some Act, which is not incorporated or referred to, such an interpretation is given to it for the purpose of that Act alone.

8. With the aforesaid in mind, we proceed to look at the definition of the terms "employee" and "establishment" in Section 2 of the Act and in the setting in which they are placed. Those definitions read as follows:

"2(a) "employee" means any person employed in or in connection with the work of any establishment to do skilled, semi-skilled or unskilled manual, supervisory, technical, clerical or any other kind of work for hire or reward, whether the terms of employment be express or implied, but does not include any such person who is employed mainly in a managerial or an administrative capacity or as an out-

worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the employer to be cleaned, washed, altered, ornamented or repaired by such out-worker in any place not under the control and management of the employer.

2(c) "establishment, means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, but does not include any office or department of any Government or any establishment of any railway, major port, mine or oilfield."

Going by its definition, "establishment" means any place where, inter alia, any occupation or service is carried on, excluding those specifically excluded by the last limb of that definition. The term "employee" means any person employed in or in connection with the work of any establishment to do, inter alia, any kind of work, for hire or reward. The use of the words "skilled, semi-skilled or unskilled manual, supervisory, technical, clerical" in the definition clauses clearly indicates that all such types of works, notwithstanding the different categories to which such quality and type of work may belong, would fall into the basket of the term "employee." Therefore, the use of the phrase "any other kind of work" in the definition of the term "employee" necessarily brings in all types of works for which a person is employed in or in connection with the work of any establishment.

9. Chambers's Twentieth Century Dictionary says that "school is "a place for instruction: an institution for education, esp. primary or secondary, or for teaching of special subjects: a division of such an institution: a building or room used for that purpose: the work of a school: the time given to it: the body of pupils of a school: the disciples of a particular teacher: those who hold a common doctrine or follow a common tradition: a method of instruction: the body of instructors and students in a university, college, faculty, or department: a group of studies in which honours may be taken". That dictionary says that "teaching" is "the act, practice, or profession of giving instruction: doctrine: instruction.- adj. occupied with giving instruction." What a teacher does in a school is holding and carrying out the occupation of teaching. In that process, the teacher also does the service of teaching which is imparting of instructions to students. Hence, establishment where the people are employed in the occupation or service of teaching is an establishment which will fall within the definition of that term in Section 2(c) of the Act. Therefore, a teacher of a school is one who is an employee in an establishment called the school for the purpose of the Kerala Payment of Subsistence Allowance Act, 1972. The contention of the petitioner to the contrary is, therefore, unsustainable. For the aforesaid reasons, we find no legal infirmity or jurisdictional error in Ext. P3 order issued under Section 4 of the Act by the appropriate authority. The writ petition and the writ appeal, therefore, fail.

In the result, the writ appeal and the writ petition are dismissed. No costs.