
(1988) 11 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No's. 1428-86 of 1987

R. Govendaraj and Others

APPELLANT

Vs

Govt. Tool Room and Training Centre

RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 10 A

Citation : (1989) ILR (Kar) 1864

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. In these petitions the petitioners who are employees of the Government Training Centre have questioned the legality of the order by which the subsistence allowance paid during the period of suspension is sought to be recovered from the salary of the petitioner.

2. The facts of the case in brief are as follows : The respondent is a state Government establishment. The petitioners are employees on the establishment of the respondent. Departmental enquiries on certain charges were instituted against 3 petitioners. The first petitioner was suspended on 5th September 1985, the 2nd petitioner on 22nd July 1985 and the 3rd petitioner on 23rd August 1985. In the enquiry the petitioners were found guilty of the charges. Punishment by way of reduction of their pay was imposed by the orders dated 19th August 1987, annexures "D", "E" and "F".

3. As far as the validity of the order imposing the penalty is concerned, the petitioners have presented separate writ petitions. In these writ petitions, the petitioners are seeking the quashing of that portion of the order denying subsistence allowance. As the condition imposed in all the 3 orders is similar, it is sufficient to extract the relevant portion in one of the orders, i.e. annexure "D".

"Since all the charges framed in the chargesheet dated 5th September 1985 have been proved against you and you are found guilty of the said charges, you

are deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for the said period. Hence the subsistence allowance paid for the period 5th September 1985 till date of reinstatement will be recovered from your salary with effect from September 1987 in suitable instalments.

You are hereby reinstated into service with effect from 1st September, 1987"

4. The short question therefore is whether the direction to recover subsistence allowance paid during the period of suspension is valid.

5. In support of the legality of the action the respondent relied upon the certified standing order of the respondent 25(3)(d). It reads thus :

"If, on the conclusion of the enquiry, the employee has been found to be guilty of any or all the charges framed against him, the employee shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period, and the order of punishment shall take effect from the date of suspension. If, however, the employee is found not guilty of any of the charges framed against him he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same remuneration as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period."

In particular they rely on the underlined portion of the order The learned counsel for the respondent submitted that the above standing order expressly provides that in a case in which the disciplinary proceedings instituted against suspended employee results in the imposition of any penalty on the employee he would not be entitled to any remuneration for such period and it is for that reason the impugned condition has been imposed.

6. Sri B. Swethadri, the learned counsel for the petitioners, however, contended that the real meaning of the standing order was that in a case in which the disciplinary proceedings instituted against the suspended employee, ends in his exoneration he would become entitled to full remuneration and in the case where it ends in punishment, he would not be entitled to the same, and the standing order does not mean that even the subsistence allowance paid should be recovered.

7. In support of the above submission the learned counsel for the petitioners relied upon Section 10-A of the Standing Orders Act which makes it compulsory for every employer to pay subsistence allowance during the period of suspension. That section reads thus;

"10-A Payment of subsistence allowance - (1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance -

(a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to workman under sub-section(1), the workman or the employer concerned may refer the dispute to the Labour Court constituted under the Industrial Disputes Act, 1947 (14 of 1947) within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State."

He contended that the subsistence allowance required to be paid under the Act cannot be denied either during the period of suspension or subsequently after passing of the final order.

8. The Standing Order at first sight supports the contention of the respondent. But a careful reading of the said provision discloses that though the rule is not appropriately worded the real intention of the S.O. is that in cases in which any punishment is imposed on a suspended employee, he would not be entitled to remuneration i.e., full salary and allowance for the period of suspension, whereas in cases where the suspended employee is exonerated he would be entitled to the full salary and allowance which he would have drawn had he not been placed under suspension. The rule nowhere says that subsistence allowance paid during the period of suspension can be recovered. In fact any such provision would be arbitrary and therefore if the provision is interpreted in that manner, it is likely to come into conflict with Article 14 of the Constitution on the ground that it is patently arbitrary and unjust for it would amount to denial of subsistence allowance to a suspended employee, which is essential for his survival. It is well settled that an interpretation of a statutory provision which brings it into conflict with the provisions of the Constitution, should be avoided. Further the provision if interpreted in the manner in which respondent does it, it would be violative of Section 10-A of the Act and therefore invalid. From any approach, the contention of the respondent is not tenable.

9. Accordingly I make the following order :

- (i) The writ petition is allowed.
- (ii) The impugned order in so far as it directs the recovery of the subsistence allowance paid during the period of suspension is set aside.
- (iii) The other contentions of the petitioners regarding the disciplinary proceeding are left open to be urged in the other writ petitions filed by the petitioners.