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(1988) 12 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No. 9066 of 1984

St. George Industrial Training Centre — APPELLANT

Vs

George K. John and Others — RESPONDENT

Date of Decision : 02-12-1988

Acts Referred:
Constitution of India, 1950 — Article 30(1)
Kerala Payment Of Subsistence Allowance Act, 1972 — Section 2(6), 2(a), 2(a), 2(b), 2(c)

Citation : (1989) 1 KLJ 64

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : M.P. Abraham, for the Appellant; M.C. John, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Sivaraman Nair, J.—The Managing Trustee of an Industrial Training Centre assails Ext. P3 order of the Deputy Labour Commissioner, Ernakulam, directing payment of subsistence allowance to the 1st respondent for the period of his suspension from 2-7-1983 to 16-12-1983. The 1st respondent, who was an Instructor on a consolidated remuneration of Rs. 275/- was so appointed on 10-8-1981. He was placed under suspension on 2-7-1983. After completing a disciplinary inquiry into allegations of misconduct, he was dismissed from service on 16-12-1983. Counsel for the petitioner submits that Ext. P3 is bad in its assumptions that the petitioner was "employer'''' as defined in Section 2 (b) of the Kerala Payment of Subsistence Allowance Act, 1972 or "establishment" as defined in Section 2 (6) of the Act. it is also his submission that the 1st respondent is not an ''employee'' as defined in Section 2(a) of the Act. Another submission which he makes is that Ext. P3 order was passed without giving him adequate notice as specified in Rule 5 (2) of the Kerala Payment of Subsistence Allowance Rules, 1974. Counsel also submits that the Principal of the Industrial Training Centre was not, in any case, the employer of the 1st respondent and

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therefore the Deputy Labour Commissioner ought not have passed Ext. P3 order. I am not persuaded to accept the submission that the petitioner or the Principal is not the employer of the 1st respondent. The term "employer" is defined as "the owner of an establishment and includes any person responsible to the owner for supervision and control of the establishment". ''Establishment'' is defined to mean "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". Principal of the Industrial Training Centre may perhaps not be the owner of the establishment. But he cannot but be the person responsible to the owner for supervision and control of the establishment. If he be one such, he is necessarily within the comprehension of the definition of "employer" u/s 2 (b) of the Act.

2. The next question is whether an educational institution or an industrial training centre as in this case is an establishment in the sense that it is a place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on. The petitioner is perhaps right in his submission that an industrial training institute does not carry on any industry, trade or business or manufacture, but it must still be carrying on an undertaking or occupation or must be rendering service. This is clear from a decision of the Supreme Court in Bangalore Water Supply and Sewerage Board v Rajappa, (1978) 2 SCO 213 where it was held that even educational institutions like Universities are establishments where occupation is carried on or service is rendered. It was also held that such an institution may atleast be an undertaking for the purpose of the definition of "industry" which is almost similar t(c) the definition of ''establishment'' under Section.2 (c) of the Payment of Subsistence Allowance Act.

3. This Court had occasion to consider the question whether employees of educational department will be workmen under the Industrial Disputes Act in Umayammal v. State of Kerala. 1982 KLT 829, a Full Bench of this Court held that

Where there is systematic activity organised by co-operation between employer and employee (the direct and substantial element is chimerical) and for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not purely spiritual or religious where no material things or services as such come in) there is apparently an industry. Absence of profit motive, or gainful objective is irrelevant whether the venture be in the public, joint, private or other sector. The true test is the nature of the activity where there is employer-employee relationship and a trade or business does not cease to be one of because of philanthropy behind the undertaking. An establishment can be taken out of the pale of industry only if it exercises inalienable Governmental functions-sovereign functions strictly understood.''

4. In the light of the above decisions, it cannot be held that the Industrial Training Institute of which the petitioner is the owner is not an ''establishment '' Nor can it be held that the principal does not fall within the definition of

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''employer''.

5. Employee has been defined in Section 2 (a) of the Act to mean "any person employed in or in connection with the work of any establishment to do skilled, semi-skilled or unskilled manual, supervisory, technical, electrical 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 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". He is undoubtedly a person employed in the establishment or atleast in connection with the work of the establishment. He therefore satisfied the requirements of the definition of ''employee''. The argument of the petitioner is that he is a teacher. A teacher cannot be a workman. But a skilled instructor in an industrial training unit who discharges the work of a technical and supervisory nature cannot be excluded from the above definition of an employee. I am therefore of the opinion that the 1st respondent was an employee, that the Principal of the Institute who passed the order of Suspension against him was ''employer'' and the petitioner was an establishment defined in Sections 2 (a), (b) and (c) of the Act.

6. It is true that the petitioner received notice of the application for payment of subsistence allowance filed on the date of posting. He filed his written objections. That objections were duly considered by the Deputy Labour Commissioner. In other words, the petitioner did not suffer any prejudice by reason of non-compliance with the requirement contained in Rule 5(2) of the Subsistence allowance Rules. In view of the fact that inspite of belated notice, the petitioner did file his written objections. I hold that the non-compliance with the rule did not result in any prejudice to the petitioner. The Deputy Labour Commissioner adverted to his objections-He also considered the points involved in those objections. I do not therefore find any infirmity in Ext. P3.

7. Yet another objection which the petitioner has taken in the original petition is that Exts. P3 and P4 proceedings violate the fundamental right of the minority community which owns the institution to establish and administer educational institutions of their choices. In his judgment for the majority of Judges in The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, , Mathew J. rejected a similar contention in the following words:

Regular tax measures, economic regulations, social welfare legislation wage and hour legislation and similar measures may, of course have Some effect upon the right under Article 30 (1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment.

The above observations from the apex court compel rejection of this contention

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urged by the petitioner. The petitioner assails Ext. P4 proceedings under the Revenue Recovery Act for realisation of the amount of Rs. 1632/18 as ordered in Ext. P3. It had deposited an amount of Rs. 1000/- as directed by this Court in order dated 24-10-1984 in C.M.P. No, 28234 of 1984. My learned brother Kochu Thommen, J. in a further order dated 3-8-1988 directed an amount of Rs. 600/- to be paid unconditionally to the employee. The balance amount yet to be paid is only Rs, 32/18. Since all the legal objections of the petitioner against Ext.P3 fail, no relief can be granted against its enforcement under Ext. P4.

In the above circumstances, the Original Petition is devoid of merits It therefore fails and is hereby dismissed with costs.

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