
(2002) 01 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 30667 of 1999

The Management of Majestic Exhibitors	APPELLANT
Vs	
Muthyalu	RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 C (2), 33 C (4)

Citation : (2002) 3 CGLJ 343

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S.V. Shastri, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.

V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, 1. The management has challenged in this Writ Petition the order of the Labour Court allowing the application filed u/s 33-C(2) and (4) of the Industrial Disputes Act allowing the claim of the applicant for balance 50% of the wages. The facts in brief are as under:

2. The Respondent was an employee of the Petitioner and he was working as a torch boy. He was kept under suspension by an order dated 25-12-1983 which was served on him on 16-1-1984 pending an enquiry. He has been paid 50% of the wages during the period of suspension. The Respondent made an application u/s 33-C(2) and (4) of the Industrial Disputes Act in Application No. 8/1995 claiming the remaining 50% of the wages on the ground that the Petitioner has no right to keep him under suspension and he has no right to withhold any portion of the wages and that he is entitled to full wages for the period of suspension.

3. The Petitioner resisted the said claim on the ground that it has been the practice, custom and usage to give 50% of the wages to the employees during

the period of suspension and it has almost become the service conditions between the workman and the Respondent though there are no rules and regulations providing for suspending a workman or for payment of subsistence allowance during the period of suspension and therefore they contended that the claim of the Respondent is totally misconceived. Both the parties adduced evidence in support of their respective contentions. The Labour court on consideration of the material placed on record and relying on the decisions of the Supreme Court held that the custom pleaded by the Petitioner has not been established and in the absence of any rules or regulations providing for payment of subsistence allowance the Petitioner is liable to pay Rs. 46,778-90 to the Respondent being the balance of 50% of wages for the period from 1-5-1986 to 31-8-1995 within three months. Aggrieved by the said order, the management has preferred this Writ Petition.

4. Though the Respondent is served he has remained unrepresented.

5. Shri S.V. Shastri, learned Counsel for the Petitioner contends in the absence of any rules and regulations providing for payment of subsistence allowance during the period of suspension, the workman is not entitled to payment of subsistence allowance to the extent of 100% of the wages. In the instant case admittedly there is no rules and regulations which govern the parties. The contract between the parties also do not stipulate payment of subsistence allowance and therefore he contends the Respondent is not entitled to payment of 100% subsistence allowance during the period of suspension.

6. In view of the above, the question for consideration is in the absence of any rules or regulations or stipulation in the contract providing for payment of subsistence allowance during the period of suspension what is the right of the workman.

7. The legal position in regard to the right of a master to suspend his servant is no more *res integra*. The law on the subject was succinctly stated in the following words by Hegde J., in *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, .

The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such a suspension....

Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the Rules framed under some Statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension....

It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though

there is no such term in the contract of employment or in the Rules, but.... The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him that he should not do the service required of him during a particular period. In other words, the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey.

Therefore, it follows the right of a master to suspend his servant flows either from contract or from statute or in the absence of both it is implicit in every contract of service. If the contract of service or statute provides specifically for suspension and payment of subsistence allowance the rights of the parties flow from such statutory or contractual provisions and they have to be worked out in terms thereof strictly. In the absence of contract or statute providing for either keeping a servant under suspension or payment of subsistence allowance there is no implied term for payment of subsistence allowance. Under those circumstances when an employee is suspended it means that the employer merely issues a direction to him that he should not do the services required of him during a particular period. In other words the employer is regarded as issuing an order to the employee which because the contract is subsisting the employee must obey. Therefore as the contract is subsisting, the master is under an obligation to pay the servant the agreed wages. The question of paying subsistence allowance in such cases would not arise.

8. Therefore, in the instant case the Petitioner has pleaded custom, practice and usage to give 50% of the wages during the period of suspension and he has miserably failed to establish the practice, custom and usage which he has pleaded. In the absence of any stipulation in the contract of service and a statutory provision the contract of employment subsists and notwithstanding an order of suspension pending enquiry Petitioner is liable to pay the wages to the Respondent. Under these circumstances, though the Labour Court has termed 50% as subsistence allowance in fact and in substance what the Petitioner is liable to pay to the Respondent is the agreed wages. As 50% of the agreed wages has already been paid as subsistence allowance remaining 50% is payable by the Petitioner to the Respondent. That is what the Labour Court has ordered the Petitioner to pay. In these circumstances, I do not find any infirmity in the order passed by the Labour Court which calls for interference. Accordingly, the Writ Petition is dismissed.

9. Parties to bear their own costs.