

Wpc.Thomaskutty Vs. the Rto and Another

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Court : Kerala

Decided On : Sep-24-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Wpc.Thomaskutty

Respondent : The Rto and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 24TH DAY OF SEPTEMBER 2014 2ND ASWINA, 1936 W.P.(C).No.9882 of 2005 (B) ----- PETITIONER(S):- ----- THE REGIONAL MANAGER, GROUP 4 SECURITAS GUARDING PVT.LTD., H.NO.34/259, 'AMBAT', N.H. BYE PASS ROAD, EDAPPALLY, COCHIN-682 024. BY ADV. SRI.GEORGE POONTHOTTAM. RESPONDENT(S):- ----- 1. N.K. ARAVINDAKSHAN, SECURITY GUARD, AYILATH MEETHAL HOUSE, KIZHAPPAYUR, MEPPAYUR, CALICUT.

2. THE DEPUTY LABOUR COMMISSIONER AND THE AUTHORITY UNDER KERALA PAYMENT OF SUBSISTENCE ALLOWANCE ACT, KOZHIKODE. R1 BY ADVS. SRI.N.RAGHURAJ SMT.K.AMMINIKUTTY R2 BY SENIOR GOVERNMENT PLEADER SRI.T.RAMAPRASAD UNNI. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-09-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- W.P.(C).NO.9882 OF 2005 B

APPENDIX PETITIONER'S EXHIBITS:- ----- EXT.P1
TRUE COPY OF THE CLAIM PETITION FILED BY THE1T RESPONDENT
DATED1907.2004 ALONG WITH WORKSHEET. EXT.P2 TRUE COPY OF THE

ORDER

IN S.A.C.NO.6/2004 DATED1602.2005. EXT.P3 TRUE COPY OF THE
MEMORANDUM OF SETTLEMENT DATED112.2004. EXT.P4 TRUE COPY OF
THE COMMUNICATION DATED2412.2004. RESPONDENT'S EXHIBITS:-

----- NIL. Vku/- (true copy) K. Vinod Chandran, J

----- W.P.(C).No.9882 of 2005-B

----- Dated this the 24th day of September, 2014

JUDGMENT

The petitioner is aggrieved with Exhibit P2 order of the Authority appointed under the Kerala Payment of Subsistence Allowance Act, 1972 [for brevity "the Act"].

2. The petitioner's contentions are two fold. The petitioner, who was the alleged employer before the Authority, had not been granted an opportunity to present their case and if they had been so granted an opportunity, they could have been able to prove before the Authority of the actual last wages payable to the workman at the time of suspension. The next contention is that, a conciliation was arrived at with the Union of the workers, wherein the workers had also participated and in which the management had agreed to take the workmen back to the service.

3. With respect to the first contention, of lack of opportunity, it is to be noticed that the petitioner does not have a case that the petitioner was not issued with a notice. The WP(C).No.9882 of 2005 - 2 - specific case of the petitioner was that the parties were present on 13.09.2004, for enquiry, and on that day nothing transpired which can be termed as "enquiry". The petitioner also contends that there was no intimation to the effect that the enquiry was adjourned to another date. This definitely shows that the petitioner was issued with a notice and also recorded appearance before the Authority. Any adjournment made by the Authority would have been notified in the register maintained with the Authority, for that purpose and it was for the petitioner herein to have verified the same before taking a contention of lack of opportunity.

4. In this context, it is also to be noticed that, according to the learned counsel for the respondent-employee, two employees were proceeded against on the very same set of facts by the management. Claim petitions were filed by both of them for subsistence allowance. Similar order passed by the Authority, in the case of the other employee, was challenged by the management in W.P.(C).No.9864 of 2005, which was disposed of on 10.06.2013. The learned counsel for the petitioner also hands over a copy of the judgment passed in that case, WP(C).No.9882 of 2005 - 3 - across the Bar. It is seen that the learned Judge had directed production of the records and on going through the same, it was found that though initially the management had appeared, subsequently they failed to appear before the Authority. That is the case even in the present writ petition also, as has been noticed above.

5. With respect to the contention based on conciliation, though the employees did not take up reinstatement, it is not to say that their subsistence allowance can be declined. Nor can the subsistence allowance payable under a statute be declined when the employees are kept under suspension pending enquiry. The contention is that the employees, as per the conciliation agreement, would have then been entitled to three months salary at the rate at which last pay was drawn. It is to be noticed that, as was noticed earlier, the petitioner failed to apprise the authority of the actual pay drawn or the settlement arrived at. In any event, a statutory compulsion to pay subsistence allowance cannot be easily inferred to have been waived on the basis of a settlement, especially when the workmen have not been actually reinstated as provided in the settlement. WP(C).No.9882 of 2005 - 4 - For all the above reasons, the writ petition shall stand dismissed. Parties are left to suffer their respective costs. Sd/- K.Vinod Chandran Judge. vku/- (true copy)