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Court : Kerala

Decided On : May-27-2008

Reported in : [2008(118)FLR938]; 2008(2)KLJ541

Judge : S. Siri Jagan, J.

Acts : [Kerala Payment of Subsistence Allowance Act, 1972](#) - Sections 2 and 3

Appeal No. : W.P.(C) No. 34424 of 2003

Appellant : Savithri A.N.

Respondent : Authority Under the Kerala Payment of Subsistence Allowance Act

Advocate for Def. : Paulson C. Varghese, Adv.

Advocate for Pet/Ap. : P. Ramakrishnan and; T.C. Krishna, Advs.

Disposition : Petition allowed

Judgement :

S. Siri Jagan, J.

1. An interesting question as to the interpretation of the provisions of the Kerala Payment of Subsistence Allowance Act arises here. The question is as to whether,

for the purpose of computing the amount of subsistence allowance payable to an employee suspended pending disciplinary proceedings, the increase in wages with retrospective effect from a date prior to the date of suspension, has to be taken into account.

2. The facts are simple and undisputed. The petitioner was suspended from service by the 2nd respondent employer with effect from 17-4-2000. Subsequently, by a settlement between the workmen and the management of the establishment, wages were revised with effect from 1-1-2000. The conciliation officer gave a report to the 1st respondent calculating the subsistence allowance on the basis of the wages as increased by the settlement. However, by Ext.P2 order, the 1st respondent directed payment of subsistence allowance calculated on the basis of the wages which the workman was actually drawing at the time of suspension without taking into account the increase in wages with retrospective effect as per the settlement entered into between the employees and the management which was, subsequent to the date of suspension of the petitioner.

3. The counsel for the petitioner would submit that Section 3 of the Act read with the definition of 'wage' in Section 2(g) thereof would show that what was contemplated by the Act was subsistence allowance calculated at the rate of wages which was actually payable to the petitioner was actually drawing at the time of suspension. The petitioner would also rely on a decision of the Division Bench of this Court in W.A. No. 40/1993, wherein this Court held that when the actual wages paid are less than the minimum wages, subsistence allowance has to be calculated on the basis of the minimum wages payable and not the wages actually paid at the time of suspension. According to the petitioner, this would mean that what is contemplated under the payment of Subsistence Allowance Act, 1972, is calculation of subsistence allowance on the basis of the wages which were actually payable to the delinquent under law. That would mean that the subsistence allowance should be calculated on the basis of the wages which ought to have been paid by the employer to the delinquent and not the wages actually drawn by the delinquent workman as on the date of suspension.

4. The counsel for the 2nd respondent would seriously dispute the argument of the learned Counsel for the petitioner. According to him, going by the wording of Section 3, subsistence allowance is equal to 50 per cent of the wages which the employee was drawing immediately before the suspension. He lays stress on the words, 'was drawing immediately before the suspension'. He would say that would mean that subsistence allowance has to be calculated on the basis of the actual wages the delinquent workman was drawing at the time of suspension and not the wages which the employer ought to have paid to the petitioner.

5. I have considered the rival contentions in detail.

6. Relevant portion of Section 3 of the Act reads thus:

3. Payment of Subsistence allowance. - (1) Whenever an employee is placed under suspension, he shall be paid by the employer for the period during which he is under suspension subsistence allowance of an amount equal to fifty percent of the wages which the employee was drawing immediately before such suspension. xxxxxx xxxxxxxx xxxxxxxx

7. At first blush, the argument of the counsel for the 2nd respondent sounds attractive. If strictly construed, perhaps, Section 3 would mean that subsistence allowance has to be calculated on the basis of the actual wages the delinquent workman was drawing at the time of suspension. But I am of the opinion that since the Act is a beneficial legislation, Section 3 has to be liberally construed in the light of definition of 'wage' in Section 2(g) which reads thus:

2. Definitions - In this Act, unless the context otherwise requires:

xxxxxx xxxxxxxx xxxxxxxx(g) 'wage' means all remuneration capable of being expressed in terms of money, which would, if the terms of employments, expressed or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment, and includes-

(i) Such allowance (including dearness allowance) as the employee is for time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance of other amenity or of any service or of any concessional supply of foodgrains of other articles;

(iii) any travelling concession;

(i) any bonus

(ii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(iii) any gratuity payable on the termination of his service.

Going by the above, the wages for the purpose of calculating subsistence allowance has to be that amount which would be payable to the delinquent workman if the terms of the employment, expressed or implied were fulfilled. Here there is admittedly a settlement between the employees and the employer, wherein the employer had agreed to pay increased wages to all employees of the establishment with effect from 1-1-2000 which is more than three months prior to the date of suspension. Therefore, if the terms of the employment between the 2nd respondent and the petitioner were fulfilled, then what would be payable to the petitioner is the wages as increased by the settlement. Therefore, reading these two sections together, I am of opinion that the subsistence allowance has to be calculated taking into account the increased wages with retrospective effect agreed to be paid by the 2nd respondent to the petitioner with effect from 1-1-2000. In that view, Ext.P2 order is clearly unsustainable to that extent. My above view is supported by the principles laid down in the Division Bench decision in W.A. No. 40/1993, which hold that when the actual wages being paid on the date of suspension is less than the minimum wages the subsistence allowance payable is that calculated on the basis of the minimum wages payable.

8. Accordingly, I set aside Ext.P2 order to the extent it calculates subsistence allowance on the basis of the wages at the rate of Rs. 3414.56 and hold that the petitioner is entitled to get subsistence allowance calculated as in Ext.P1.

Accordingly, Ext.P2 would stand modified to that extent and the petitioner would be eligible for subsistence allowance of Rs. 23,244.10 instead of Rs. 21,367/-. The 2nd respondent shall pay the subsistence allowance as per the above direction within one month from today failing which the amount would carry interest @ 12% per annum from the date when the subsistence allowance became due.

The writ petition is allowed as above.

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