

Thomas P.T. Vs. Chandran A.

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Court : Kerala

Decided On : Mar-17-1997

Reported in : (1998)ILLJ95Ker

Judge : K.A. Abdul Gafoor, J.

Acts : [Kerala Payment of Subsistence Allowance Act, 1972](#) - Sections 4; Kerala Payment of Subsistence Allowance Rules, 1972 - Rule 5

Appeal No. : O.P. No. 6945/1990

Appellant : Thomas P.T.

Respondent : Chandran A.

Advocate for Def. : M. Ramachandran, Adv. and; P.M. Sukumaran, G.P.

Advocate for Pet/Ap. : M.P. Asok Kumar, Adv.

Disposition : Petition dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. An employer came to this Court with this Original Petition challenging Ext. P7 order passed by the authority under the [Kerala Payment of Subsistence Allowance Act, 1972](#) directing payment of subsistence allowance to the 1st respondent. He

also sought for a declaration that Rule 5 of the Kerala Payment of Subsistence Allowance Rules, 1972 is Section 4 of the [Kerala Payment of Subsistence Allowance Act, 1972](#)

2. Petitioner is no more and subsequently, his legal heirs have sought impleadment as per C.M.P. No. 8204/95. I am separately allowing that C.M.P. today. Petitioner submits that Ext.P7 is violative of principles of natural justice, in so far as the Deputy Labour Commissioner empowered as authority under the Subsistence Allowance Act to exercise the powers of the Government under Section 4 of the said Act, did not give him an opportunity. Therefore, it is violative of the principles of natural justice. He submits that, as the order is passed by that authority, that authority ought to have rendered him an opportunity of being heard. On the other hand, he sent the papers to the Conciliation Officer and the Conciliation Officer had issued notice to the parties and heard the parties and he sent a report to the Authority and the Authority viz. the Deputy Commissioner, passed Ext. P7 order. Thus there was no proper opportunity to submit his case, petitioner submits.

3. It is an admitted case that the petitioner had been given an opportunity by the Conciliation Officer, to whom the Deputy Labour Commissioner, the Authority, who passed Ext. P7 had sent the papers. In a recent Supreme Court decision (Ashwani Kumar and Ors. v. State of Bihar and Ors. JT 1997 (1) SC 243 similar contention was examined by the Supreme Court. In that case the Director-in-Chief, Health Services, Bihar, Patna issued notice to certain employees whose services were liable to be terminated. 'Accordingly all the concerned officials were given opportunity to submit show cause replied before the Director-in-chief, Health Services, Bihar, of Patna. A Committee of the Officers was appointed to review the show cause replies and information received in course of personal hearings. The committee had to review the merits/demerits of the appointments under question in the light of policy and procedures prescribed by Government from time to time for appointment in Public Service and submit its recommendation to the Government. The learned Counsel for the appellants submitted that appointment of this review committee was after the personal hearing before the Director-in Chief, Health Services, Bihar, Patna and, therefore, this violated the basic

principles of natural justice. It is difficult to agree. All the concerned appointees whose appointments were to be filtered were given personal hearing by the Director-in-chief. Therefore the said Review Committee was only to scrutinise the data collected during the personal hearing by the Director -in-Chief of Health Services and on that basis the Committee decided the question of legality and validity of their appointments. Thus the basic principles of natural justice cannot be said to have been violated by the Committee which ultimately took the decision on the basis of the personal hearing given to the concerned employees and after considering what they had to say regarding their appointments. Whatever was submitted by the' concerned employees was taken into consideration and then the committee came to a firm decision to the effect that all those appointments made by Dr. Mallick were vitiated from the inception and were required to be set aside.' In this case also the Deputy Labour Commissioner, the authority under the Act on receipt of an application from the 1st respondent forwarded it to the Conciliation Officer. The Conciliation Officer heard the parties, collected the details and afforded them an opportunity and drew up a report and the report was sent to the Authority, the Deputy Labour Commissioner and the Deputy Labour Commissioner took decision as per Ext. P7. The aforesaid principle laid down by the Supreme Court in the above case applies to the facts framed in this case also and it cannot therefore be said as violative of the principles of natural justice. Therefore, that contention is not sustainable.

4. Moreover, in this case, such procedure has a statutory backing. That is the procedure prescribed in Rule 5 of the Kerala Payments of Subsistence Allowance Rules. In the case considered by the Supreme Court, the procedure followed by the Director in Chief of Health Services had no statutory backing. Even then the Supreme Court held that there was no violation of principles of natural justice. In this case the procedure had the statutory backing. On that reason also, Ext. P7 cannot be said to be violative of principles of natural justice.

5. The protection of the principles of natural justice and fairness can be even taken away by the Statute or can be regulated by the Statute. In this case that had been regulated by the Statute in a particular manner as hearing by the Conciliation Officer and decision by the Authority based on the report submitted by the

Conciliation Officer after hearing. So the protection of principles of natural justice that petitioner is entitled in a dispute regarding non-payment of subsistence allowance is regulated by the Statute. The petitioner cannot have any right over and above that is allowed by the Statute. On that reason also the petitioner cannot say that Ext. P7 is violative of principles of natural justice.

6. To overcome this impediment the petitioner challenges Rule 5 itself. Petitioner submits that Rule 5 is violative of Section 4 of the Act. Section 4 of the Act reads as follows:

'4 Recovery of money due from an employer:- Where any money is due to an employee from an employer under this Act, the employee himself or in the case of the death of the employee, his legal representative may, without prejudice to any other mode of recovery, make an application to the Government, in such manner as may be prescribed for the recovery of money due to him, and if the Government after giving the employer an opportunity of being heard in such manner as may be prescribed, is satisfied, that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.'

The opportunity that is rendered as per this Section is that 'the Government after giving the employer an opportunity of being heard in such manner as may be prescribed' issue a certificate to recover the amount. So the opportunity of being heard to be given by the Government-the Government's power is delegated to the Deputy Labour Commissioner-is in such manner as may be prescribed by the rules. The petitioner cannot read the Section as 'Government after giving the employer an opportunity of being heard' and then contend that the opportunity of being heard shall be by Government or the Authorised Officer himself. Continued reading of Section 2 makes it clear that the opportunity of being heard, ensured as per Section 4, is 'in such a manner as may be prescribed' by the rules to be framed by the Government. The Rules have been framed by Government as per the Kerala Payment of Subsistence Allowance Rules and the manner in which an opportunity is to be afforded is provided in Rule 5. Rule 5 reads as follows:

'5 (1) On receipt of an application under Rule 4, the Government shall send copies of the same to the Conciliation Officer appointed under the Industrial Disputes Act, 1947, for an enquiry into the employees' claim and report.

(2) The Conciliation Officer shall send copies of the application to the employer concerned by registered post with acknowledgement due directing him to submit his comments on the employees' claim within seven days from the date of receipt of the same. After giving the parties an opportunity of being heard, the Conciliation Officer, shall submit a report to the Government within a period of three months from the date of receipt of the application in his office specifying the amount, if any, due from the employer to the employee and enclosing thereto all the documents relating to the enquiry held by him.'

The portion where emphasis is given perfectly makes it clear that the opportunity of being heard is to be given by the Conciliation Officer and not by the Government in this case, the Deputy Labour Commissioner as duly empowered. So the manner in which the opportunity is to be given is prescribed in Rule 5. As already mentioned above Section 4 does not make liable the Government or the Authority to give any party an opportunity of being heard. The opportunity of being heard shall only be in such manner as may be prescribed. The manner is prescribed by Rule 5 as mentioned above. Such being the provision, it cannot be such that Rule 5 or the manner prescribed in Rule 5 is ultra vires to Section 4. There is no conflict in between mem. The procedure provided in Rule 5 in the matter of hearing is perfectly in terms of Section 4 of the Act. So the challenge against the rule fails. In the above circumstances, Original Petition fails.

7. Petitioner does not dispute the fact that the 1st respondent had been placed under suspension. Once an employee had been placed under suspension the liability to pay Subsistence Allowance under the Act is cast on the employer. Whether the employee was a permanent employee or a temporary employee or a casual employee does not arise for consideration. Once he is placed under suspension he is entitled to subsistence allowance in accordance with the rate provided under the said Act. So when it is admitted that the 1st respondent is an employee and he has been placed under suspension by the petitioner, a statutory

liability is cast on the petitioner to pay subsistence allowance. He cannot shirk that liability stating that there was procedural violation in the matter by passing an order like Ext.P7, in so far it directed the petitioner to pay the subsistence allowance. He submits that Ext. P7 is vitiated as there is a direction to the petitioner to pay the amount. Petitioner contends that there shall be only a proceeding to recover the amount and not a direction to pay the amount. That contention has no merit, because recovery proceedings need be continued only when the petitioner does not pay the amount. Section 4 provides that on the basis of the report of the Conciliation Officer if any amount is found to be due to the employee, the Authority shall issue a certificate to the Collector for recovery of the same, and therefore, shall not direct to pay the amount. That contention does not deserve much consideration because that is only a procedural error. Even if the petitioner does not pay the amount in terms of Ext. P7 naturally a certificate will be issued. On the other hand, if the petitioner pays the amount, there will be no question of issuance of further certificate. Merely because Ext. P7 directs payment of the amount it cannot be said that Ext. P7 is vitiated by any illegality.

8. In the above circumstances, the writ petition is to be dismissed with costs, which I quantify as Rs. 1,000/- to be paid to the 1st Respondent. Over and above, the petitioner shall also pay interest at the rate of 12% on the amount found to be due in Ext. P7 to the 1st respondent till the date of payment, from the date of Ext.P7. I also direct the petitioner to pay the amount within three months from the date of receipt of a copy of this judgment. If the payment is not made within the time stipulated above, the 2nd Respondent shall issue a certificate and address the District Collector to take appropriate proceedings to realise the amount due to the 1st respondent from the petitioner and to pay the 1st respondent within six months with interest.

The original petition is dismissed.