

Binny Ltd. (Engineering Division) Vs. Assistant Commissioner of Labour and ors.

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Court : Chennai

Decided On : Apr-19-2000

Reported in : [2000(87)FLR264]; (2000)IILLJ969Mad; (2000)IIMLJ706

Judge : R. Jayasimha Babu and ;Prabha Sridevan, JJ.

Acts : Tamil Nadu Payment of Subsistence Allowance Act, 1981 - Sections 3(4) and 4; [Industrial Disputes Act, 1947](#) - Sections 33C(2)

Appeal No. : W.P. No. 74/1999

Appellant : Binny Ltd. (Engineering Division)

Respondent : Assistant Commissioner of Labour and ors.

Advocate for Def. : T. Kokilavani, Adv. for Respondent Nos. 1 and 2 and ;R. Vaigai, Adv. for Respondent No. 3

Advocate for Pet/Ap. : S. Ravindran, Adv. for T.S. Gopalan & Co.

Judgement :

R. Jayasimha Babj, J.

1. The question which has been argued at considerable length before us is one which concerns the true scope of Section 4 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981). That provision reads as under :

'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 any other person authorised by him in this behalf, or in 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 are satisfied that any money is so due, they 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:

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the Government are satisfied that the applicant had sufficient cause for not making the application within the said period.'

2. Section 3 of the Act creates a right to an employee who is placed under suspension to receive payment from the employer as subsistence allowance during the period of such suspension, of an amount equal to fifty percent of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of suspension. If the suspension continues beyond the period of 90 days, but does not exceed 180 days, the allowance is to be revised upward to 75% of the wages that the employee was drawing immediately before the suspension. If the suspension were to continue even beyond the period of 180 days, the employee would be entitled to wages in full.

3. The rights so created is hedged by the other sub-sections of Section 3 of the Act. Sub-section (2) thereof provides that the employees shall not be entitled to

receive any subsistence allowance, if he accepts any other employer during the period of his suspension other than the establishment where he had been working immediately before the suspension. The amount of subsistence allowance payable to an employee may be reduced to 50% of his wages, if the enquiry, or criminal proceedings against him is protracted beyond the period of 90 days for reasons directly attributable to the employee.

4. Sub-section (4) of Section 3 of the Act requires to be set out, as it has some bearing on the construction of Section 4. That provision reads as under:

'Section 3(4): The subsistence allowance under Sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.'

5. Section 4 of the Act creates a right in an employee 'without prejudice to any other mode of recovery' to make an application, if any 'money is due' to the employee under the Act. Such an application may also be made by the legal representative in the event of death of the employee. The application is to be made 'in such manner as may be prescribed'. The application is to be made 'within one year from the date on which the money became due to the employee from the employer.' The Government, after receiving such an application, is required to give the employer an opportunity of being heard, and after such hearing, if the Government is satisfied that 'any money is so due', the Government shall issue a certificate for that amount together with such amount of compensation as the Government may think fit. Such certificate shall be issued to the Collector, who shall proceed to recover the same in the same manner as an arrear of land revenue.

6. The period of one year for making the application prescribed in the first proviso to Section 4 of the Act is not inflexible. The second proviso enables the Government to entertain the application, even after the expiry of the said period of one year, if the Government is satisfied that the applicant had 'sufficient cause for not making the application within that period.'

7. Thus for securing the right created in favour of the employee under Section 3 of the Act, a remedy has been provided in Section 4, subject to the conditions contained therein, and the remedy so provided is without prejudice to any other mode of recovery. As to when the money becomes due to the employee is to be ascertained with reference to the date on which the wages due to the employee, but for the suspension, would have become payable. The period of one year provided in the first proviso to Section 4 of the Act, therefore, is required to be computed from the date on which such payment due to the employee was required to be made under Section 3(4) of the Act, but had not been made.

8. We may also at this juncture refer to Section 33-C of the Industrial Disputes Act, more particularly, Sub-section (2) thereof. Section 33C of that Act deals with the recovery of money due from an employer. Sub-section (2) thereof, which is of relevance here, reads thus:

'Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months. Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.'

9. Thus, under Section 33-C of the Industrial Disputes Act, 'any money or any benefit which is capable of being computed in terms of money', and is payable by an employer to his workman may be computed by the Labour Court. The manner in which the amount so computed is to be recovered is provided for in the later sub-sections of Section 33C of the Industrial Disputes Act. The amount may be recovered by the Collector in the same manner as an arrear of land revenue.

10. The factual Matrix in which we are called upon to decide the scope of Section 4 of the Act may now be stated. The respondents in the appeal, who were suspended by the appellant-employer on January 8, 1986, made an application

under Section 4 of the Tamil Nadu Payment of Subsistence Allowance Act on June 8, 1989, about 3 years after the suspension in P.S.A. No. 47 of 1989 claiming subsistence allowance from January 8, 1986. There was no application for condonation of delay, and no cause had been set out in the application for not having made the same within a period of one year from the date on which the subsistence allowance had become due to the workman. That application was considered by the Assistant Commissioner of Labour, who by an order dated August 28, 1989 held that the application with respect to the period January 8, 1986 to June 9, 1988 was filed beyond the period of limitation prescribed in the first proviso to Section 4 of the Act, as sufficient cause had not been shown for condoning the delay. It is the case of the workman that on that very day, they filed an application to reopen the case, and had filed documents to show that even if there is delay, the same was due to sufficient cause and, therefore, condonable. The workman, however, appealed against the order of the Assistant Commissioner. The Deputy Commissioner of Labour, who heard the appeal by an order dated June 21, 1990, allowed the appeal by holding that the failure to pay subsistence allowance afforded the workman continuing cause of action and that no question of delay would arise. He also proceeded to quantify the amount for the entire period for which the application had been filed. That order of the Deputy Commissioner was challenged by the employer in W.P. No. 16582 of 1990. The learned single Judge having dismissed the writ petition, the appellant is now before us in appeal against the judgment. We may also notice here that the workman concerned was dismissed from the service of the employer on September 9, 1991, and we are informed that Industrial Dispute No. 66 of 1995 concerning the legality of that dismissal is pending before the Principal Labour Court at Madras. We have also been informed that during the pendency of the writ petition in this Court, a sum of Rs. 10,000 has been paid to the respondent/workman by the employer pursuant to directions given by this Court.

11. The Deputy Commissioner of Labour, held that there was no delay. He has not recorded any finding that the employee had shown satisfactory cause for condonation of delay. He held that there is no obligation on the part of the employee to show any cause at all, as according to him, the employee had a recurring and continuing cause of action on account of the non payment of

subsistence allowance that was claimed, and the amount of the subsistence allowance could be claimed by the employee without any regard to any period of limitation, so long as the amount had remained unpaid.

12. We do not find it possible to sustain that order of the Deputy Commissioner, as it is clearly one which runs counter to the express provisions of the Statute. The first proviso to Section 4 of the Act prescribes the period of limitation. That provision cannot be wisked away on the ground that the claimant is the workman, and that the amount payable is subsistence allowance. It is not for a functionary under the Statute to erase a part of the Statute itself while discharging his duties under the Statute. The period of limitation of one year is clearly required to be computed from the date on which had the employee not been suspended, the wages due to the employee, but for his suspension would have become payable. There is no difficulty whatsoever, therefore, in ascertaining the period within which the application should have been filed. The fact that the amount had remained unpaid assuming that the amount claimed by the workman were in fact payable does not on- that ground alone entitle the employee to ignore the period of limitation provided in the Statute, and claim a right to approach the Government at any time of his choosing and claim the subsistence allowance for any period in excess of the period of one year provided in the Statute. The concept of continuing cause of action is wholly inapposite in the context of the specific prescription of the limitation in Section 4 read along with the time for payment prescribed in Section 3, Sub-section (4) of the Act. Though a period of one year has been prescribed, as the normal period within which the employee must move the Government for recovery of the subsistence allowance, that period is one which is capable of being expanded, if the employee were to be in a position to show that he had sufficient cause for not making the application and the cause so shown was accepted by the Government as sufficient for condoning the delay. Moreover, the remedy provided under Section 4 of the Act is not the only remedy available to the employee for recovery of the amounts due by way of subsistence allowance. That Section, in express terms, provides that the mode of recovery provided for in Section 4 of the Act is without prejudice to any other mode of recovery.

13. We have already set out Section 33-C(2) of the Industrial Disputes Act. That section does not prescribe the period of limitation unlike the Tamil Nadu Payment of Subsistence Allowance Act and numerous other statutes governing the welfare of labour such as, Payment of Wages Act, Minimum Wages Act, Shops and Establishments Act, etc. The period specified therein is for adjudication and not for making the claim. If the benefit which the employee claims is one which can be computed in terms of money, such claim may be made before the Labour Court under Section 33-C(2) of the Industrial Disputes Act. The employee, therefore, is not without remedy, if he does not file an application within the period of one year from the date the amount became due to him in terms of Section 3, Sub-section (4) of the Act. It is no doubt true that extreme delay rendering the claim a stale one even in case of an application under Section 33-C(2) of the Industrial Disputes Act may disentitle the employee from pressing his claim. But such instances are few and far between.

14. We must at this point refer to a decision rendered by the learned single Judge of this Court on which reliance was placed by counsel for the workman to contend that Section 33-C(2) of the Industrial Disputes Act is not available to the workman for recovering the amounts due as subsistence allowance. That decision is in the case of *Natham Co-operative Agricultural Bank Ltd. v. Principal Labour Court, Madurai and Anr.* : (1997)ILLJ164Mad . The learned Judge in that case held that it was not open to an employee to make an application under Section 33-C(2) of the Industrial Disputes Act before the Labour Court for recovery of subsistence allowance. The learned Judge relied on the decision of the Supreme Court in the case of *State of Punjab v. Labour Court, Jullunder and Ors.*, : (1981)ILLJ354SC . The Supreme Court in that case of *State of Punjab v. Labour Court, Jullunder and Ors.* (supra), was concerned with a claim for gratuity which had been made under Section 33-C(2) of the Industrial Disputes Act. The Court, after referring to the various provisions of the Payment of Gratuity Act, held that Act 'enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity'. None of the provisions of the Payment of Gratuity Act expressly reserves the right of the employee to resort to the modes of recovery other than the one provided under that Act for recovery of the amount of gratuity. Payment of Gratuity Act thus being a special legislation on the subject of gratuity,

it prevailed over legislation of a more general nature such as, the Industrial Disputes Act. That special legislation being a complete code on the subject dealt with in that enactment. That, however, is not the case with the Tamil Nadu Payment of Subsistence Allowance Act, which, while creating a right to receive subsistence allowance in favour of the workman by Sub-section (3) of the Act, and while providing a mode to recover for a limited period under Section 4 expressly preserves the right to the workman to resort to other modes of recovery. We cannot, therefore, approve the view taken by the learned single Judge that an application of recovery of subsistence allowance cannot be made under Section 33-C(2) of the Industrial Disputes Act.

15. We may in this context also refer to the decision of the Supreme Court in the case of Premier Automobiles v. K.S. Wadke, : (1975) 11 LLJ 445 SC wherein the Court held that industrial disputes are beyond the purview of the civil Courts. The court therein quoted with approval the decision of the House of Lords in the case of Neville v. London 'Express', Newspaper Ltd., 1919 A.C. 368. The passage so approved dealt with three classes into which cases can be generally divided. The third class mentioned therein is where a statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it. A right so created, with a remedy therefor also being specified, can only be asserted in the manner provided by the statute which created the right and the remedy.

16. Though the enactment under consideration created the right in favour of the workman to receive subsistence allowance by Section 3 of the Act, while providing a remedy, it did not make that remedy an exclusive one, but made it one which is to be availed of by the workman at his option, and the remedy so provided was also a limited one. The remedy so provided was supplemental to remedies available to the workman under any other law. The ratio of the decision of the Apex Court in the case of Premier Automobiles, (supra), has no application here.

17. The Supreme Court in its recent decision in the case of Whirlpool of India Ltd. v. E.S.I.C. 2000 1 LLJ 1101, while considering the provisions of the Employees' State Insurance Act, 1948 which is also a welfare legislation intended for the benefit of workmen, held that though social legislation is required to be interpreted

for the benefit of employee, a plain reading of words found in the statute cannot be ignored. The Court herein considered the definition of 'wages' found in Section 2(22) of that Act. The definition contained therein excluded the payments made to workman, if such payments were made at intervals exceeding two months. The Court held that the production incentive which was paid by the employer quarterly, though paid for the work performed by the workman in the factory, such payment having been made at intervals exceeding two months, the same could not be regarded as wages for the purposes of the Act. The Court observed thus 2000 I LLJ 1101

'14. It is evident that the additional remuneration to become wages has to be 'paid' at intervals not exceeding two months as distinguished from 'being payable'. Thus, under the last part there has to be actual payment. The High Court has found that the payment was made quarterly. It is not for us to rewrite the definition of wages even if we assume that there is a possibility of misuse by employers by making the payment at a period exceeding two months and thus circumventing the provisions of the Act. When in the last part of Section 2(22), the word used is 'paid', we cannot add the word 'payable' or other similar expression thereto.'

Having regard to the law, so laid down by the Apex Court, we must decline to accept the submission that was forcefully and persuasively made by Ms. Vagai, learned counsel for the workman that having regard to the purpose of legislation, it is open to the Court to even go to the extent of adding words to the provisions in the Statute in order to give full effect to the same, and to protect in full measure the rights of the workmen for whose benefit the statute is intended. The two decisions relied upon by the learned counsel in this context were rendered in the backdrop of facts which were special to those cases, and cannot be regarded as having laid down a general proposition that the Courts while considering welfare legislations must at all times be ready and willing to rewrite the provisions of the statute, or to add words thereto to broaden the scope of the application of the statute to cover fact situations which in the view of the Court are required to be covered, though not apparently covered by the words used in the statute. The first decision on which counsel placed reliance is *State Bank of Travancore v. Mohd. Mohammed Khan*, : [1982]1SCR338 , wherein the statute under consideration was

the Kerala Agriculturists' Debt Relief Act. The Court having regard to the purpose for which the Act had been placed on the statute book, and rather drastic consequences flowing from placing too literal a construction on the provisions of the Act, held that the references to the debt 'before the commencement of the Act' should be read as relating to a debt which was due 'at' and 'before' the commencement of the Act. While doing so, the Court observed:

'We would have normally hesitated to fashion the clause by so restructuring it but we see no escape from that course; since that is the only rational manner by which we can give meaning and contend to it, so as to further the object of the Act.'

The other decision of the Apex Court relied on by counsel is the one reported in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar*, : [1988]3SCR384 . The Court therein, was concerned with the true scope of Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The Court held that the content of Sub-section (ii) in so far as it requires that the landlord should establish that the premises is required for his own use should be read into Sub-clause (iii) having regard to the scheme of the clause and the object of the enactment. While doing so, the Court observed that:

'It is no doubt true that the Court while construing a provision should not easily read into it words which have not been expressly enacted, but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted, the Court should construe it in a harmonious way to make it meaningful.'

18. Counsel for the workman also relied on a recent decision of the Apex Court in the case of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.* : (1999)ILLJ 1094 SC . The Court therein emphasised the fact that subsistence allowance is a payment meant to enable the suspended employee to keep body and soul together, and denial of such allowance which had resulted in not being able to attend the enquiry vitiated the ultimate order of termination that was made against him. While there can be no two opinions about the importance of subsistence allowance being paid on time to the suspended employee, who during the period of such suspension is without any income, that does not warrant, on that

score alone, a rewriting of the provisions of the statute, and to extend the scope of the relief, though such widened scope was not intended by the legislature.

19. Learned counsel for the workman also invited attention to the Rules framed under the Tamil Nadu Payment of Subsistence Allowance Act, and the forms prescribed therein, and submitted that guidance should be obtained from the Rules and the forms for determining the true scope of Section 4 of the Act. Guidance from such sources may be warranted in certain special situations, but where the statutory provision itself is unambiguous and clear, to resort to any such aid is wholly uncalled for. The substantive right conferred on the employee is by Section 3, the mode of recovery provided is shown in Section 4; and the period of limitation is also prescribed in Section 4 of the Act. Rules cannot detract from, or widen the scope of any of these provisions. The Rules can only prescribe the method by which the right and remedy provided in these sections, are secured to the workman.

20. Section 4 of the Act is rather inelegantly drafted, but the substance of it is quite clear. While the workman may make a claim for payment of subsistence allowance, he is required to be alert and make his claim within a period of one year from which the date on which allowance had become due to him. When such an application is made, the employer must be given the opportunity of being heard. It is only thereafter that the Government is to determine as to the amount which can be regarded as properly due to the employee. After such ascertainment has been done, the question of recovery would arise. The Rules merely set out the steps involved in reaching the stage of recovery. Those Rules cannot be read as having created a special provision to suspend the period of limitation till the process of quantification of the amount by the Government is completed.

21. Rule 5 of the Rules titled - application for recovery of money due to an employee prescribes the application to be made under Section 4 of the Act. The application is to be in Form 3 or Form 4, as the case may be. On such application being made, notice is to be given to the employer, and the parties heard. Thereafter, the authority to whom the power of the Government has been delegated is to determine the amount due to the employee. In order to provide

protection to the employee, as also the employer against any error that may be committed by the delegate of the Government exercising powers under Rule 5, an order made under that Rule is made appealable by Rule 5-A of the Rules. The determination made in such appeal will form the basis for the grant of the certificate to the Collector, who is to proceed to recover the amount, as if it were an arrear of land revenue.

22. These procedural provisions do not in any way have the effect of enlarging the period of limitation. It is only when the application is made within the period of limitation set out in Section 4 of the Act, the provisions in the Rules come into play. It is open to the original Authority under Rule 5, as also the appellate Authority under Rule 5-A to uphold the objections of the employer regarding the limitation.

23. The fact that the form does not use the words 'application for recovery' but merely use the words 'application for payment of subsistence allowance' does not make any difference. When recovery is effected, payment is made. The substantive effect of the two are one and the same.

24. Learned counsel in this context drew our attention to the decision of the Apex Court, wherein, the Court had taken aid of the Rules to interpret the scope of the enactment. The decision so relied on was *P. Kasilingam v. P.S.G. College of Technology* : AIR 1995 SC1395 . The Court held that the consistent understanding of the authorities under the Act that the Act was applicable only to institutions other than the professional and technical institutions was reflected in the Rule, and the Rule having been followed all along regard must be had to that understanding of the enactment. Moreover, the professional and technical institutions were subject to other enactments, and it was in the background of those facts that the Court held that the definition of 'private college' in the Rule could be adopted for the purpose of determining the scope of the enactment. That decision is not of any assistance to the respondents, having regard to the language of the statute now under-consideration. It is wholly unnecessary to refer to the Rules to ascertain the scope of the enactment. The Rules also have not provided any larger period of limitation. In fact, the Rules do not deal with the subject of limitation at all.

25. Counsel also relied on certain decisions regarding the scope of the expression 'money due'. It is unnecessary to refer to those decisions, as the statute here, itself provides the basis for determining the time from which the money becomes due in Section 3(4). The claim made by the workman is not necessarily the amount that the Government may find ultimately to be due. The claim made is subject to the comment, if any, that the employer may offer when he is, heard in the matter, and is subject to the final determination to be made by the Government. As to whether on the facts of a given case, Section 3(2), which sets out the circumstances in which a reduced quantum is payable or is not attracted will have to be gone into by the Government before determining the extent of the amount due to the employee.

26. We must, therefore, hold that the period of limitation has been specified in Section 4 of the Act, as the period of one year from the date on which payment of the subsistence allowance becomes due to the employee. It becomes due on the date on which wages would have been payable to the employee had he not been suspended. The period of limitation of one year can be enlarged, if the workman is able to show sufficient cause for condoning delay beyond the period of one year. Section 4 of the Act does not exclude the remedies available under other enactments being availed of by the workman. The workman would still have the right to proceed under Section 33-C(2) of the Industrial Disputes Act for the recovery of the amount of the subsistence allowance, as the subsistence allowance is an allowance which is capable of being computed in terms of money, and such computation is within the jurisdiction of the Labour Court to make. The choice of the forum is that of the workman. He may resort to one or both, so long as he does not make the same claim before both fora. It is open to the workman to make a claim within a period of one year from the date the amount becomes due, before the Government under Section 4 of this Act. It is equally open to the workman to make a claim before the Labour Court for the period preceding that one year, if he so chooses. It is also open to him to seek condonation of delay in making the claim, if he has sufficient cause for doing so, before the Government under Section 4 of the Act.

27. The view of the Deputy Commissioner of Labour that there is continuing cause of action which entitled the authority to ignore the period of limitation prescribed in

Section 4 of the Act cannot be approved. The order of the Deputy Commissioner of Labour is, therefore, set aside. The matter, however, shall stand remanded to the Assistant Commissioner who shall take on his file and consider the application said to have been made by the workman on the very day on which the order was pronounced to reopen the matter, wherein, it is said that sufficient cause has been shown for condoning the delay.

28. Any amount that may be awarded to the workman in the proceedings that may hereafter take place shall, in the event of the proceedings resulting in an award in his favour, shall stand reduced by the sum of Rs. 10,000 which has already been paid to the workman by the employer during the pendency of the writ petition in this Court.

29. The Assistant Commissioner of Labour is directed to dispose of the matter within a period of six months from the date of receipt of a copy of this order.

30. We place on record our appreciation for the able assistance rendered by the learned Additional Advocate General at our request

31. The writ appeal is disposed of accordingly. No costs. Consequently, pending C.M.P. if any, is dismissed.