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High Court Of Kerala

Case No: WP (C) . No. 20277 of 2009 (D)

Secretary-in-Charge, Cherthala Service		APPELLANT
	Vs	
Deputy Labour Commissioner and P. Vamadevan		RESPONDENT

Date of Decision: Aug. 12, 2009

Acts Referred:

- Kerala Payment of Subsistence Allowance Act, 1972 - Section 2(A), 3

Hon'ble Judges: V. Giri, J

Bench: Single Bench

Advocate: S.P. Aravindakshan Pillay, for the Appellant; Vakkom N. Vijayan, for the Respondent

Final Decision: Allowed

Judgement

V. Giri, J.
The petitioner is the Assistant Secretary-in-charge of Secretary of the Cherthala Service Co-operative Bank Limited No. 1688, Cherthala. The second respondent was working as a Chief Accountant and Manager-in-charge of the morning and evening branch of the Bank. He was placed under suspension on 07.05.2003. He was paid subsistence allowance at the rate of 50% of the last drawn salary. He challenged the suspension and sought for reinstatement in service, by approaching this Court in W.P.(C). No. 6302/2006. He had also sought for a direction in the said writ petition, to the petitioner herein namely, the respondent in the said writ petition to pay subsistence allowance u/s 3 of the Kerala Payment of Subsistence Allowance Act 1972. The writ petition was dismissed by this Court under Ext.P1 judgment, finding that the petitioner is not entitled to any reliefs.

2. The second respondent then filed an application before the first respondent under the provisions of the Kerala Payment of Subsistence Allowance Act claiming an amount of

Rs. 3,63,870/-. The petitioner submitted remarks to the said application as per Ext.P3. The objections were overruled and the first respondent passed an order Ext.P4 holding that the second respondent is eligible for a sum of Rs. 3,63,870/- by way of subsistence allowance. This has been challenged in this writ petition.

3. Notice on admission was issued from this Court. The second respondent has entered appearance and has filed a counter affidavit.

4. I heard Counsel on both sides and have taken up the writ petition for disposal by consent of parties.

5. Several contentions have been taken up in the writ petition challenging Ext.P4 order. This includes a contention that the second respondent was not an employee within the meaning of Section 2(A) of the Kerala Payment of Subsistence Allowance Act since his duties were mainly managerial or administrative.

6. But, in my view, the petitioner is entitled to succeed on the short ground that the second respondent had approached this Court in W.P.(C). No. 6302/2006 inter alia praying for a direction to the respondents in the said writ petition, including the petitioner herein to pay him subsistence allowance as provided u/s 3 of the Kerala Payment of Subsistence Allowance Act. The said writ petition was dismissed in it''s entirely this by Court, holding that the points raised by the writ petitioner are liable to be held against him. It was not open to the second respondent to move the first respondent thereafter for subsistence allowance under the Payment of Subsistence Allowance Act. This objection should have been specifically taken by the Bank, on receipt of notice from the first respondent. Mr. S.P. Aravindakshan Pillay, learned Counsel for the petitioner submits that the said objection which was fatal to the very maintainability of the application filed by the second respondent herein was not taken because the then Secretary of the Bank, who was responsible for the conduct of the case before the first respondent was also facing disciplinary action along with the second respondent herein.

7. Be that as it may, Ext.P1 judgment clearly stands in the way of the second respondent prosecuting a claim for subsistence allowance under the Kerala Payment of Subsistence Allowance Act, before the first respondent.

Accordingly, the writ petition is allowed and Ext.P4 order passed by the first respondent is quashed.