

**(1968) 04 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** None

Andhra Pradesh Road Transport  
Corporation

APPELLANT

Vs

Payment of Wages Authority and  
Another

RESPONDENT

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**Date of Decision:** April 8, 1968

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1970) 1 LLJ 700

**Hon'ble Judges:** Gopal Rao Ekbote, J

**Bench:** Single Bench

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### **Judgement**

Gopal Rao Ekbote, J.

This is an application under Article 226 of the Constitution of India, for the issue of a writ of certiorari to quash the order of the Authority under the Payment of Wages Act dated 6 October 1965.

2. The relevant facts are that respondent 2, who was working as supervisor-in-charge at Yemmiganoor in Karnool district, was trapped on 20 December 1963, by the Anticorruption Bureau for having indulged in corruption. He was, therefore, placed under suspension with effect from 21 December 1963, pending enquiry by the Anti corruption Department. During the period of suspension respondent 2 was paid a substitutes allowance for a period of ten months. It was however, subsequently withheld.

3. Respondent 2, therefore, filed a petition under the Payment of Wages Act before respondent 1, claiming subsistence allowance on the ground that it was unlawfully withheld. The petition was resisted by the petitioner before me. Respondent 1 however allowed the petition and directed the petitioner to pay the subsistence allowance due to respondent 2. It is this order that is now assailed in this writ

petition.

4. Two contentions were raised before me by Sri Ramachandra Rao, the learned Counsel for the petitioner. It was firstly contended that the amount of subsistence allowance claimed by respondent A does not come within the definition of "wages" under the Payment of Wages Act, and secondly, the Authority under the Payment of Wages Act had no jurisdiction to entertain the claim.

5. In order to appreciate the first contention, it is necessary to read the definition of "wages" in so far as it is relevant:

"wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment....

6. A close reading of this definition would indicate that it is not an exhaustive definition. On the other hand, it is inclusive. It includes certain items apart from the general language used in the main definition. It also excludes certain items mentioned in the definition. It is not in dispute that the case of subsistence allowance of the nature with which I am concerned is not expressly excluded by the definition. Nor is it expressly included. The objection of the learned advocate for the petitioner was that payment of subsistence allowance is not a term of the employment because payment of subsistence allowance is discretionary and not obligatory on the part of the employer. It is difficult to accept this contention. The relevant words of the definition "which would if the terms of the employment, express or implied, were fulfilled," in my opinion, include the payment of subsistence allowance when the employee is suspended during enquiry into certain charges against him.

7. It is true that Rule 2-13(1) of the Government of Hyderabad, Railway Department, Establishment Code, says:

The pay and allowances of a railway servant who is removed or dismissed from service cease from the date of the order of removal or dismissal.... A railway servant under suspension may be granted by the suspending authority, for the first year of suspension, subsistence allowance at an amount equal to the leave-salary which he would have drawn under the leave rules applicable to him if he had been on leave on half-pay, and for any period subsequent thereto at three quarters of such an amount. The railway servant under suspension may be granted in addition a compensatory allowance (e.g., dearness allowance, house-rent allowance, etc) of which he was in receipt on the date of suspension to such extent and subject to such conditions as the suspending authority may direct. The amount of dearness allowance shall be based on the subsistence allowance paid from time to time....

Merely because the granting of subsistence allowance is left to the discretion of the authority concerned, it cannot be said that it is not a term of employment. It must be borne in mind that merely because the employee is suspended on, certain charges the relationship of employer and employee does not cease. Taking of the work from the employee is suspended because some enquiry is going on against him. During the period in which he is kept under suspension, subsistence allowance may be paid to the employee if the employer so directs. It is not, however, necessary in this case to decide whether the word "may" appearing in this rule can be read as "shall," assuming that it was within the discretion of the authority, to pay or not the allowance. The discretion was exercised in favour of respondent 2 and he was granted subsistence allowance for ten months from the date on which he was kept under suspension. Once that, discretion is exercised, I fail to see why it could not be treated as a term of employment. He has on his part fulfilled all the terms of his employment. The order of suspension states that he has been kept under suspension and that he would be required to give attendance in the office every day. It is admitted in the counter that respondent 2 has been complying with that direction. Thus respondent 2, who still is in the employment of the petitioner, has fulfilled all the terms of his employment and is ready to fulfil the other terms. He has been suspended and thus stopped from doing that part of his work, During such period he would naturally be entitled to the subsistence allowance which he was given. Such subsistence Allowance, therefore, in my opinion, falls within the definition of wages.

8. I am supported in this view by a Full Bench decision of the Punjab High Court in [Divisional Superintendent Northern Railway, Delhi Division Vs. Mukand Lal](#), At p. 468, their lordships observed:

Another way of looking at the matter is that there is no question of holding the contract in abeyance, but the parties have agreed upon a certain contract. That contract says that in the normal course of events the employee will be paid a certain wages. the contract goes on to say that when a certain eventuality occurs then different term of contract will apply, and these different terms are that the employee will not be called upon to work for a temporary period though he may be required to remain present at his house or at the office and for that period he would be paid a smaller amount which for the sake of convenience is called compensatory or subsistence allowance. Therefore, the contract is one whole transaction providing for different sets of circumstances.... Therefore when the employee goes to the Authority under the Payment of Wages Act, he can only recover the subsistence allowance because that is what falls under the definition of "wages." In other words, the employee must enforce the whole contract, and not a part of the contract. The whole contract covers suspension and the subsistence allowance payable to him during suspension.

9. It is true that their lordships of Punjab High Court were concerned with Rule 2043 of the Railway Fundamental Rules which, in so far as it is relevant, is as follows:

A railway servant under suspension shall be entitled to the following payments, namely,

(i)

(ii) In the case of a railway servant other than that mentioned in Clause (1) --

(a) a subsistence allowance at an amount equal to the leave salary and dearness allowance which the railway servant would have drawn if he had been on leave on behalf average pay or on half-pay.

Merely because the word "shall" is used in that rule, while the word "may" is used in Rule 213 with which I am concerned, in my opinion, it does not make any material difference. In either case, it is one of the terms of the contract that in case the employee is kept under suspension he can be paid subsistence allowance during the pendency of enquiry against him, and when once he has been given subsistence allowance, it would be deemed that even the petitioner treated it as a term of employment and therefore it falls within the definition of "wages." I am not therefore prepared to accept the contention that since the subsistence allowance does not come within the definition of "wages," the Authority under the Payment of Wages Act had no jurisdiction to entertain the claim of respondent 2.

10. The second contention was, the granting of subsistence allowance being discretionary, the Authority under the Payment of Wages Act cannot allow the claim of respondent 2. It is not, however, disputed that what Rule 213 says is only about granting subsistence allowance. Assuming without so holding that it was in the discretion of the authority concerned, when once that discretion is used, there is no rule providing for the withdrawal of the subsistence allowance once granted. On the other hand, Rule 2043 referred to above clearly provides for reducing or increasing the subsistence allowance in case the enquiry could not be completed within a specified time. That rule also does not provide for withdrawal. Thus, the normal feature of the subsistence allowance seems to be that the employee, who has been kept under suspension will be entitled to the subsistence allowance although at reduced or increased rates if the enquiry is protracted. In this case, respondent 2 was kept under suspension in 1963. The learned advocate for the petitioner says that the employee has not been served with the charges as the Anti-corruption Bureau took more than five years to investigate. The petitioner can not expect respondent 2 to live without any subsistence allowance merely because the Anti corruption Bureau took five years to investigate. How long the petitioner would take to complete the disciplinary proceedings is not known. Merely because there are certain allegations of corruption against respondent 2, he cannot be kept under suspension indefinitely and deprived of even the meager subsistence allowance which the rules direct to be given. In the absence of any rule providing for

withdrawal, the petitioner ought to have continued the payment. The enquiry is not delayed because of any fault of respondent 2. The Authority under the Payment of Wages Act, in my view, rightly held that there were no justifiable reasons for withdrawing the allowance. Assuming that the grant of the subsistence allowance also includes the power to withdrawal, is even in such a case the authority must give some reasons on the basis of which the subsist once allowance was withdrawn, The learned advocate appearing for the petitioner could not tell me as to on what grounds the allowance has been withdrawn. It is, however, clear that respondent 2 has not been responsible in any manner for the delay caused. I do not, therefore, experience any difficulty in rejecting the second contention also.

11. For the reasons stated above, the writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.