



2023/KER/52154

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

FRIDAY, THE 18<sup>TH</sup> DAY OF AUGUST 2023 / 27TH SRAVANA, 1945

WP(C) NO. 27421 OF 2023

**PETITIONER/S:**

KERALA STATE HORTICULTURAL PRODUCTS DEVELOPMENT CORPORATION LIMITED,UDAYAGIRI, POOJAPPURA P.O., THIRUVANANTHAPURAM - 695 012 - REPRESENTED BY ITS MANAGING DIRECTOR, PIN - 695012

BY SHRI.RAHUL SURENDRAN, SC, KERALA STATE HORTICULTURAL PRODUCTS DEVELOPMENT CORPORATION LIMITED

**RESPONDENT/S:**

- 1 SUNIL KUMAR S  
T.C. 32161, EENTHIVILAKOM, CHURCH ROAD, BEACH P.O.,  
THIRUVANANTHAPURAM - 695007, PIN - 695007
- 2 THE DEPUTY LABOUR COMMISSIONER & SECRETARY, STATE ADVISORY  
CONTRACT LABOUR BOARD, THIRUVANANTHAPURAM  
THOZHIL BHAVAN, VIKAS BHAVAN PO, THIRUVANANTHAPURAM -33, PIN -  
695033
- 3 THE DISTRICT LABOUR OFFICER, THIRUVANANTHAPURAM  
DISTRICT LABOUR OFFICE, THOZHIL BHAVAN, VIKAS BHAVAN PO,  
THIRUVANANTHAPURAM -33, PIN - 695033

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT**

The petitioner is a company under the Department of Agriculture, Government of Kerala. According to the petitioner, the 1<sup>st</sup> respondent was working as a driver of the petitioner on daily wages from 5.10.2012 on as and when required basis. While so, Ext.P1 show cause notice dated 8.5.2020 was issued to the 1<sup>st</sup> respondent pursuant to a complaint received from the District prison authorities and it was decided not to engage the 1<sup>st</sup> respondent from 05.05.2020, pending enquiry.

2. Thereupon, the first respondent approached the 2<sup>nd</sup> respondent vide Ext.P2 application under Section 3 of the Kerala Payment of Subsistence Allowance Act, 1972 (for short 'the Act') claiming subsistence allowance during the period from 5.5.2020 to 6.8.2020. The 2<sup>nd</sup> respondent, vide Ext.P4 order, allowed the application of the 1<sup>st</sup> respondent and directed the petitioner to pay an amount of Rs.24,300/- towards the subsistence allowance for the period from 5.5.2020 to 6.8.2020. Ext.P4 order is impugned in the writ petition on the ground that the 1<sup>st</sup> respondent being a daily wage driver, is not entitled to



subsistence allowance. The petitioner also contended that Ext.P4 is not a reasoned order and has been passed in violation of the principles of natural justice.

3. Heard the learned counsel for the petitioner.

4. It is evident from Ext.P4 order that on receipt of an application for subsistence allowance from the 1<sup>st</sup> respondent, the Conciliation Officer conducted an enquiry and submitted a report recommending sanction of subsistence allowance. After serving the copy of the report to the petitioner, the 2<sup>nd</sup> respondent conducted hearing on 02.08.2022, 05.09.2022 and 8.11.2022. It is stated that though the petitioner submitted comments on the employee's claim stating that he is a daily wage employee and hence not eligible for subsistence allowance, the petitioner did not attend the hearing. The 2<sup>nd</sup> respondent, based on the materials available, passed the impugned order directing the petitioner to pay an amount of Rs.24,300/- as subsistence allowance to the 1<sup>st</sup> respondent.

5. As regards the contention of the petitioner that the 1<sup>st</sup> respondent, being a daily wage worker, is not entitled to subsistence allowance, it will be apposite to refer to the definition



of 'employee' under Section 2(a) of the Subsistence Allowance Act. Section 2 (a) reads as follows: -

(n) "employee" means any person employed in or in connection with the work of any establishment to do skilled, semi-skilled or unskilled manual, supervisory, technical, clerical or any other kind of work for hire or reward, whether the terms of employment be express or implied, but does not include any such person who is employed mainly in a managerial or an Administrative Capacity or as an out worker, that is to say a person to whom any articles or materials are given out by or on behalf of the employer to be cleaned, washed, altered, ornamented or repaired by such out-worker in any place not under the control and management of the employer.

6. The 1<sup>st</sup> respondent, a driver, is a skilled worker who comes within the definition of an employee under Section 2(a) of the Act. Further, Section 2(a) does not exclude a daily wage employee for the purpose of payment of subsistence allowance. The petitioner is a Government owned company and not an office or department of the Government and is an 'establishment' under Section 2(c) of the Act. There is no averment in the writ petition that the 1<sup>st</sup> respondent was employed in any other establishment during the period of his suspension. The petitioner cannot have a case that the 1<sup>st</sup> respondent, being a daily wage



driver, is working in a managerial or administrative capacity. Accordingly, I hold that the 1<sup>st</sup> respondent, a daily wage driver, is an employee as defined under Section 2(a) of the Kerala Payment of Subsistence Allowance Act, 1972, and is entitled to subsistence allowance during suspension.

7. The petitioner, having absented from the hearing conducted by the 2<sup>nd</sup> respondent, cannot, now, contend that the impugned order is passed in violation of the principles of natural justice. Ext.P4 does not suffer from any legal or jurisdictional errors to be interfered with by this Court. Accordingly, the writ petition is dismissed.

Though this writ petition deserves to be imposed with cost, I refrain from doing so since the matter is dismissed *in limine*.

Sd/-

**MURALI PURUSHOTHAMAN  
JUDGE**

al/-



**APPENDIX OF WP(C) 27421/2023**

PETITIONER EXHIBITS

- |               |   |
|---------------|---|
| Exhibit P1    | COPY OF SHOW CAUSE NOTICE DATED 08.05.2020 ISSUED BY THE PETITIONER CORPORATION TO THE 1ST RESPONDENT |
| Exhibit P2    | COPY OF THE APPLICATION DATED 06.08.2020, PREFERRED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT   |
| Exhibit P2(a) | COPY OF THE BANK STATEMENT FOR THE 1ST RESPONDENT'S BANK ACCOUNT THE PERIOD 01.01.2020 TO 13.08.2020  |
| Exhibit P3    | COPY OF THE ENQUIRY REPORT NO. G(3)2966/2020 DATED 30.04.2020 OF THE 3RD RESPONDENT                   |
| Exhibit P4    | COPY OF THE ORDER NO.G.322/2020 DATED 22.12.2022 PASSED BY THE 2ND RESPONDENT                         |