

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 15174 of 2005 (F)

PETITIONER:

**EASTERN CONDIMENTNS (P) LTD.,
ADIMALI.**

**BY SRI.E.K.NANDAKUMAR(SENIOR ADVOCATE)
ADV.SMT.PRIYA MAHESH**

RESPONDENT(S):

- 1. T.THOMAS, THOTTIPPARAMBIL HOUSE,
ANAVIRATTY P.O. , ADIMALI.**
- 2. THE DEPUTY LABOUR COMMISSIONER,
VELLAPPALLY LANE, KOTTAYAM.**

**R1 BY ADVS. SRI.K.BALACHANDRAN (MANGALATH)
SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN**

R2 BY SENIOR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 2.1.99 ISSUED TO THE 1ST RESPONDENT.
- EXT. P2 : TRUE COPY OF THE DISMISSAL ORDER OF THE 1ST RESPONDENT DATED 24.12.99.
- EXT. P3 : TRUE COPY OF THE LOCK OUT NOTICE DATED 19.2.2000.
- EXT. P4 : TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 26.7.04 DIRECTING THE PETITIONER TO PAY THE SUBSISTENCE ALLOWANCE.
- EXT. P5 : TRUE COPY OF THE JUDGMENT DATED 24.11.04 OF THE HON'BLE HIGH COURT IN THE WRIT PETITION NO.29175/04.
- EXT. P6 : TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 21.2.05.
- EXT. P7 : TRUE COPY OF THE ORDER DATED 7.3.05 PASSED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15174 of 2005

Dated this the 15th day of September, 2015

J U D G M E N T

Aggrieved by the order of the 2nd respondent, allowing the 1st respondent's claim for subsistence allowance from 25.12.1999 to 30.04.1999, the petitioner has come up before this Court.

2. Disciplinary action was taken against the 1st respondent, who was employed as Machine Operator under the petitioner. He was also suspended pending enquiry with effect from 02.01.1999. After conducting an enquiry, based on the findings of the enquiry officer, he was dismissed from service with effect from 24.12.1999. The petitioner alleges that during the period of suspension, the respondent workman was paid subsistence allowance from 02.01.1999 to 30.06.1999. The 1st respondent filed an application before the 2nd respondent for subsistence allowance till 30.04.2004, stating that dismissal order dated 24.12.1999 was not communicated to him. The 2nd respondent allowed

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the application for subsistence allowance up to the date of dismissal, i.e., 24.12.1999. The amount ordered was paid to the 1st respondent. Aggrieved by the order, the 1st respondent filed a writ petition. This Court remanded the matter to the 2nd respondent for fresh consideration. The petitioner alleges that it had adduced evidence before the 2nd respondent to the effect that the establishment was under lock out from 19.02.2000 and the 1st respondent was employed as driver under different employers during the period, subsistence allowance was claimed. The petitioner further alleges that ignoring the fact that the suspension order merged with the order declaring the lock out, the 2nd respondent wrongly allowed the claim beyond 19.02.2000. According to the petitioner, subsistence allowance is also wages though it is paid at a reduced rate for a specific period and the workmen of the establishment are eligible for wages during the period of lock out only as per the award passed by the Labour Court, Ernakulam in ID No.6/2001, wherein the legality and justifiability of the lock out is under consideration. Therefore, according to the

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petitioner, by the impugned order, the 1st respondent was rewarded for the misconduct by allowing wages during the period of lock out, though the claim for wages of other workers were subject to the result of adjudication by the Labour Court, Ernakulam. The petitioner alleges that while allowing the application, the 2nd respondent over looked the fact that an employee shall not be entitled to subsistence allowance if he accepts employment during the period of suspension in any establishment other than the establishment, where he had been working immediately before the suspension. It is with this background, the petitioner has come up before this Court.

2. Arguments have been heard.

3. Opposing the writ petition, the learned counsel for the 1st respondent submitted that though the petitioner alleges that there was lock out and therefore, the respondent workman is not entitled to subsistence allowance, the lock out was challenged by the unions and there was a settlement.

4. The arguments advanced by the learned counsel

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for the petitioner are as follows;

Firstly, it was pointed out that as the petitioner company was under lock out for a particular period, the 1st respondent was not entitled to have subsistence allowance for that period. Secondly, for claiming subsistence allowance during the period of suspension, the respondent workman has to show that he has not accepted employment during the period of suspension. It was further pointed out that the initial burden is on the workman to prove the same. According to the learned counsel for the petitioner, the 1st respondent has nothing to show that he did not accept any employment during the period of suspension. However, evidence has been adduced to show that the 1st respondent accepted employment during the period of suspension; so submitted the learned counsel for the petitioner.

5. While considering the entitlement of the 1st respondent for subsistence allowance, the 2nd respondent ought to have examined whether there was a lock out and, therefore, ought to have waited for the final outcome of the ID pending before the labour court in the matter. As it is

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submitted that there was settlement in that ID, this Court is of the view that the matter requires a reconsideration by the 2nd respondent in the light of the same.

Therefore, the writ petition is allowed and Ext.P7 is quashed. The matter is remitted back to the 2nd respondent for reconsideration of the issue after affording the petitioner and the 1st respondent an opportunity of being heard in the light of what has been stated above. It shall be open to the 2nd respondent to consider whether the 1st respondent has accepted any employment during the period of suspension. The 2nd respondent shall also take note of the settlement arrived at in the proceedings, in which the union has challenged the lock out of the petitioner company. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment. It shall be open to the petitioner to prove the exact date, during which the petitioner company was under lock out.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-