HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P. 3329 (W) of 2018

The Peerless Inn
-versus-
First Labour Court & Ors.

For the Petitioner	**:**	**Mr. Ranjay De** **Mr. B. Banerjee**
For the Respondent No.3.	**:**	**Mr. Rananeesh Guha Thakurta**
Heard On	**:**	**February 10, 2020.**
Judgement On	**:**	**February 10, 2020**

The Court:

"The Constitution of India is not a non-aligned parchment but a partisan of social justice with a direction and destination which it sets in the Preamble and Art. 38, and so, when we read the evidence, the rulings, the statute and the rival pleas we must be guided by the value set of the constitution. We not only appraise Industrial Law from this perspective in the disputes before us but also realize that ours is a mixed economy with capitalist mores, only slowly wobbling towards a socialist order, notwithstanding Sri Garg's thoughts. And, after all, ideals apart, "law can never be higher than the economic order and the cultural development of society brought to pass by that economic order." The new jurisprudence in industrial relations must

prudently be tuned to the wave-length of our constitutional values."[1]

1. The above prose of V. R. Krishna Iyer, J., better known as the People's Judge, resonates in each ion of my being as I embark on the short journey to resolve the present controversy between Management and Labour. The present application has been filed under Article 226 of the Constitution of India wherein the writ petitioner (the Management) is assailing an award dated December 6, 2017 passed by the First Labour Court, Kolkata, West Bengal (hereinafter referred to as the 'said Labour Court'). The issue that was brought before the said Labour Court was with regard to the interpretation of Clause 5 of the settlement agreement that had been reached between the petitioner company and the employees of the petitioner company in reference under Section 36A of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'said Act').

2. Mr. Ranjay De, learned Counsel appearing on behalf of the petitioner company placed Clause 5 before this Court and argued that the service charge that is collected on Food and Beverage sales was decided to be disbursed amongst all the employees and the managerial personnel connected with the **hotel functioning**. It was his submission that the service charge is only payable to personnel who are functioning in the hotel, and not to personnel that have been suspended. He submitted that as the employees in question were suspended, and the said suspension having been upheld by the Industrial Tribunal by an order dated December 17, 2018, there was no question of the service charge being treated as part of wages.

[1] Gujarat Steel Tubes Ltd. -v- Gujarat Steel Tubes Mazdoor, Sabha and others; AIR 1980 SC 1896

3. He further relied on the West Bengal Payment of Subsistence Allowance Act, 1969 (hereinafter referred to as the 'Subsistence Act') and specifically placed Section 2(f) defining 'suspension' and Section 2(g) defining 'wages'. He submitted that the definition of wages in the Subsistence Act would be the meaning assigned to the term 'wages' in Section 2(rr) of the said Act. He further placed reliance on Section 3 to indicate that the Subsistence Act only quantifies the amount of the subsistence allowance payable to an employee and nothing more.

4. Placing reliance thereafter on Section 2(rr) of the said Act, he canvassed the argument that unless the employee was functioning, he could not be entitled to any service charge, as the same did not find any place in the above definition under Section 2(rr). He submitted that neither was the service charge included in Clauses (i) to (iv) nor was it covered in the first part of the definition of wages. He, in fact, submitted that only if the terms of employment were fulfilled, the workmen would be entitled to any benefits/privileges.

5. He placed reliance on the judgment of the Supreme Court in ***Bank of India vs. T.S. Kelawala***[2] to buttress his argument that wages are payable to the employees only upon fulfillment of the contract and not otherwise. He further relied on ***State of Punjab vs. Jaswant Singh Kanwar***[3] wherein the Supreme Court had held that a person, who is suspended would be debarred from any privilege. The Supreme Court held that by reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to discipline and penalties, and to the same authorities. In this judgment, the Supreme Court held that the increment is an incidence of employment and an employee gets an increment upon working the full

[2] (1990) 4 SCC 744
[3] (2014) 13 SCC 622

year and drawing full salary, and therefore, if he is under suspension, no such increment can be given to him.

6. On interpretation of welfare statutes, he placed ***Dalco Engineering Private Ltd. vs. Satish Prabhakar Padhye***[4] in support of the general principle that socioeconomic legislation should be interpreted liberally with the caveat that Courts cannot expand the application of a provision in a socioeconomic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner that militates the provisions of the statute itself or against any constitutional limitations. He also relied on ***Allahabad Bank vs. Presiding Officer, Central Government Industrial Tribunal and Another***[5] wherein the Division Bench of the Calcutta High Court had held that when an agreement is specific and clear and is agreed between the parties, neither the Tribunal nor the Court can substitute the same nor can it extend the scope of the said agreement.

7. Based on the above judgments, Mr. Ranjay De argued that the said Labour Court had erred in law in holding that the service charge was payable to employees that were under suspension. He further argued that the interpretation of the clause 'service charge' collected on Food and Beverage sales will be disbursed amongst all employees including managerial personnel connected with the hotel functioning by the Tribunal is absolutely incorrect, as the Tribunal has held that the term 'connected with the hotel functioning' is redundant. He argued that the interpretation on the basis of the rule of the last antecedent is incorrect in the present context. He submitted that the correct interpretation of the above clause would have been to read that service charge was payable only to those employees and managerial personnel,

[4] (2010) 4 SCC 378
[5] 2005 (2) CHN 616

who were included in the hotel functioning. Limiting the 'hotel functioning' only to the managerial personnel, according to him, was a fallacious interpretation.

8. Mr. Rananeesh Guha Thakurta, counsel appearing on behalf of the Union of employees placed the impugned order before me in great detail, and argued that there was no scope for interference by this Court to the order passed by the said Labour Court, as the same was a perfectly logical, well-reasoned and legal order. He further submitted that the writ Court does not sit in appeal against an order passed by the Labour Courts and only examines the same from a point of view of judicial review.

9. The next limb of his argument was that the settlement clearly did not exclude any suspended employees. According to him, such an exclusion would amount to reading into the settlement a particular word that was not intended by the parties to the said settlement. He further submitted that the Supreme Court had held in umpteen number of decisions that a beneficial interpretation is required to be given in favour of the employees, wherein settlement have been reached between the management and the workers.

10. He relied on ***KCP Employees' Association, Madras vs. Management of KCP Ltd., Madras and Others***[6], wherein Justice V.R. Krishna Iyer, J. in his inimitable style has stated that in Industrial law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there is such doubt, must go to the weaker section, that is labour. He further drew my attention to ***Harjinder Singh vs. Punjab State Warehousing Corporation***[7], and specifically to the concurring judgment delivered by Asok Kumar Ganguli, J. to emphasise on the issue that it is the Court's duty to interpret statute with social

[6] (1978) 2 SCC 42
[7] (2010) 3 SCC 192

welfare benefits in such a way as to further the statutory goal and not to frustrate the same.

11. The next limb of Mr. Thakurta's argument was with regard to the plain and clear interpretation of Section 3 and Section 2(g) of the Subsistence Act read with Section 2(rr) of the said Act. He argued that if the interpretation as given by Mr. Ranjay De is to be followed, no subsistence allowance could at all be paid to any employee as the question of fulfilling 'terms of employment' during a period of suspension cannot and does not arise. He further submitted that on a plain interpretation of Section 2(rr) the service charge would fall under Section 2(rr)(i), that is, an allowance.

12. I have heard learned Counsel appearing on behalf of the respective parties and perused the materials placed on record.

13. Before analyzing and coming to a conclusion, I would like to bring on record the relevant provisions of law that have been referred to by the learned Counsel appearing on behalf of the respective parties. Accordingly, Section 2(f), Section 2(g) and Section 3 of the Subsistence Act and Section 2(rr) of the said Act are delineated hereinbelow:-

> **"Section 2 of the Subsistence Act -**
>
> (f) : *'suspension' means an interim decision of an employer as a result of which an employee is debarred temporarily from attending his office and performing his functions in the establishment where he is employed, such restriction being imposed on the employees on the ground either that a disciplinary proceeding has already been, or is shortly to be, instituted against him or that a criminal proceeding in respect of an offence alleged to have been committed by him is under investigation or trial.*
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> *(g) : 'wages' shall have the meaning assigned to it in clause (rr) of section 2 of the Industrial Disputes Act, 1947.*

3. Payment of subsistence allowance.—(1) *an employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance an amount equal to fifty* per centum *of the wages which the employee was drawing immediately before such suspension:*

Provided that where the period of suspension exceeds 90 days the amount of subsistence allowance shall be increased after the expiry of 90 days to seventy-five per centum of the wages which the employee was drawing immediately before such suspension:

Provided further that an employee shall not be entitled to any subsistence allowance if he accepts employment during the period of suspension in any place other than the establishment where he had been working immediately before his suspension.

(2) An employee shall not in any event be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1) but when an employee is exonerated of the charge which caused his suspension, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the same period.

Section 2 (rr) of the said Act:

'wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes—

(i) such allowances (including dearness allowance) as the workman is for the time being entitled top;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other article;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service."

14. For a better understanding of the issue involved, Clause 5 relating to service charge is quoted below:

> *"**5. SERVICE CHARGE***
>
> *It is agreed between the parties that effective 1st October 1994, 70% of Service Charge collected on Food & Beverage sales will be disbursed amongst all employees including managerial personnel connected with the hotel functioning. The Industrial Trainees and the hotel operation trainees coming for on the job training from different Institutes/source will not get share of service charge. The tipping zone employees will get 50% less service charge than the amount payable to the non-tipping zone employees. From 1st October 1996 disbursement of service charge will be 75%."*

15. Prior to embarking on an analysis of the provisions, I would like to bring on record the Supreme Court's view on the golden thread that is applicable to interpretation of a welfare statute. In ***Harjinder Singh (supra)***, the Supreme Court observed as follows:

> *"21. …..the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble to the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues.…."*

16. The Supreme Court has undoubtedly warned that Courts should not embark on judicial legislation contrary to the intent of the statute. However, in a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour by the Legislature but without re-writing and/or doing violence to the provisions of the enactment.[8]

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[8] see *Steel Authority of India vs. National Union Water Front Workers, (2001) 7 SCC 1 (CB).*

17. Upon a plain reading of the above provisions, on first principles, it appears that subsistence allowance is payable to an employee who has been suspended and the same is to be 50% of the wages which the employee was drawing immediately after suspension. Subsequent to passing of 90 days, the subsistence allowance is to be increased to 75% of the wages. The Subsistence Act clearly states that the definition of wages shall have the meaning assigned to it in clause (rr) of Section 2 of the said Act. Section 2 (rr) of the said Act includes all remuneration that can be expressed in terms of money and contains inclusive and exclusive clauses. At the outset, it is clear that the service charge is not a part of the exclusive clause. On a plain reading, it further appears that the same may not be part of the inclusive clause either as the service charge is neither an allowance nor is it a payment for house accommodation/travelling concession/commission payable.

18. In my view, the service charge comes within the first portion of Section 2 (rr) of the said Act wherein it is stated that 'wages' means all remuneration capable of being expressed in terms of money.

19. One need not go into great detail to the several decisions that have been cited by the parties, as the same are on general principles of law. The judgment in ***T.S. Kelawal (supra)*** is on the first principles that holds that wages are payable on fulfillment of work. One need not join issue with this principle enumerated in this judgment as the same is not applicable to the present case that deals with a case of suspended employees who are eligible for subsistence allowance and the definition of wages is only used to identify and quantify the extent of the subsistence allowance. The second decision of ***Jaswant Singh Kanwar (supra)*** is on the general principle that an employee who is suspended is debarred from exercising any

privilege, powers and functions and cannot get the benefit of increments for the period when he has not served.

20. The case of ***Allahabad Bank (supra)*** is also on first principle and one need not join issue with the same, as I do not intend, in any manner, to expand on the clause dealing with service charge. The Supreme Court in ***Dalco Engineering Private Ltd. (supra)*** cautions that Court should not expand the application of a provision in a socioeconomic legislation by judicial interpretation to levels unintended by the legislature.

21. I have taken note of the above judgments, and accordingly, do not intend to jump into judicial legislation in the present judgment either. In my view, the interpretation by the said Labour Court of clause 5 relating to service charge is the correct interpretation and does not require any interference by this Court. The reasoning that the term 'hotel functioning' would apply only to the managerial personnel is due to the fact that the settlement agreement is between the Management and the employees. In case of service charge, the agreement clarifies that the managerial personnel connected to the hotel functioning shall also obtain a share as they are also actively involved in the 'service' being provided to the customers. However, only those managerial personnel connected to the hotel functioning would be included and others such as financial, hotel promotion and advertising personnel, directors etc., would stand excluded. The clause specifically includes 'managerial personnel connected to the hotel functioning' to remove any doubts from the minds of the employees as also to prevent futuristic conflict. In fact, keeping in view the general principles of industrial law, I am of the view that treating the term 'employees' in the said clause as only employees that are presently working and excluding those who are suspended would amount to a very narrow interpretation of

the said clause. Excluding suspended employees would be reading into the settlement something that was neither intended by the parties that arrived at the settlement nor what appears on a plain perusal of the clause.

22. Secondly, the Settlement Agreement does not deal with suspended employees anywhere. Treating Clause 5 to be an exception would be akin to marching on a path contrary to the rule of liberal and broad construction that would result in losing sight of the fact that welfare statutes in a welfare State are enacted with a specific goal of promoting general welfare; a goal that cannot be thrown off the cliff in a sea of technicalities. Ergo, I agree with the finding of the said Labour Court that if a benefit has to be curtailed by way of settlement, the same has to be done in an expressed manner.

23. Finally, the argument raised by Mr. Ranjay De on the interpretation of Section 2(rr) of the said Act. His argument that only upon fulfillment of the terms of employment a remuneration would be included as ‘wages’ is a novel submission but the sophistry of the same is fallacious and has no feet to stand on. In cases of subsistence allowance payable to an employee who is suspended, it is immanent that the employee is not in a position to perform any duties whatsoever. Inspite of the same, he is to be paid 50% of his wages as provided in the Subsistence Act read with the said Act. Therefore, the narrow interpretation espoused by the petitioner as regards Section 2(rr) of the said Act is rejected by me. The second point argued was that the suspension has been upheld by the Industrial Tribunal – this is of no consequence as the disciplinary proceedings have not yet been concluded. Furthermore, upholding of suspension proceedings cannot in any manner curtail the right of the employees to be entitled to the subsistence allowance.

24. Upon conspectus of the decisions that have been referred to and the discussions held above, I come to the inexorable conclusion that the impugned order is not required to be interfered with by me sitting in the writ jurisdiction.

25. In conclusion, the writ petition is dismissed. Since an interesting legal point was involved, I am of the considerate view that no costs should be imposed. I would definitely go amiss if I do not state my appreciation to both counsels for their assiduous efforts in preparation and crafty court skills executed with equanimity at the time of arguments.

An AFTERWORD.

26. One cannot but identify with the poignant prose by V.R. Krishna Iyer, J.[9], wherein he laments at the pace at which courts function and the dilemma faced by the downtrodden specially in labour litigations:

> *"164. This litigation, involving many workmen living precariously on poor wages amidst agonizing inflation and a Management whose young budget, what with steel scarcity, may well be shaken by the burden of arrears, points to the chronic pathology of our Justice System- the intractable and escalating backlog in the Forensic Assembly Line that slowly spins Injustice out of Justice and effectually wears down or keeps out the weaker sector of Indian life. This trauma is felt more poignantly in Labour litigation and the legislature fails functionally if it dawdles to radicalise, streamline and simplify the conflict resolution procedures so as to be credibly available to the common people who make up the lower bracket of the nation. The stakes are large, the peril is grave, the evils are worse than the prognostics of Prof. Laurence Tribe (of the Harvard Law School):*
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> > *" If court backlogs grow at their present rate, our children may not be able to bring a lawsuit to a conclusion within their lifetime. Legal claims might then be willed on, generation to generation, like hillbilly feuds; and the burdens of pressing them would be contracted like a hereditary disease."*
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> *165. Law may be guilty of double injustice when it is too late and too costly for it holds our remedial hopes which peter out into sour dupes and bleeds the anaemic litigant of his little cash only to tantalise him into a system equal in form but unequal in fact. The price of this*

[9] Gujarat Steel Tubes Ltd. (supra)

promise of unreality may be the search by the lowly for the reality of revolutionary alternatives. Compelled by the crisis in the Justice System, we sound this sombre judicial note."

27. Coupled with the above is the procrastination caused by the Management's umpteen challenges of orders and judgments delivered by the Tribunals and Labour Courts (the last court for fact finding and decision making) before the High Court in writ jurisdiction impeding the finality of the same. To eschew such delay that is deleterious to the Labour, it is the duty of the High Court to only interfere in such matters where there exists gross perversity in findings and/or the High Court finds an egregious error in law. Routine interference by the High Court on mere change of opinion or on a different plausible interpretation should be abstained from, at all costs.

28. Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Shekhar B. Saraf, J.)