
(1978) 11 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 3949/77 C

Achamma

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-11-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 33, 33A, 33B(1)

Citation : (1978) 11 KL CK 0007

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Advocate : S. Parameswaran, R. Nithyanandan and Joseph P. Markose, for the Appellant; Government Pleader for Respondent 1 and 2 and Menon and Pai, for the Respondent

Final Decision : Dismissed

Judgement

Namboodiripad, J.—This Original Petition is concerned with the construction of Section 33-B(1) of the Industrial Disputes Act, 1947, hereinafter referred to as the "Act".

2. The Petitioner made Ext. P-1 application before the District Labour Officer, Alleppey complaining that the 3rd Respondent, her employer, refused employment to the Petitioner subsequent to 20th August 1974. Since conciliation proceedings did not succeed, the first Respondent, which is the State of Kerala, exercising its powers u/s 10(1)(d) of the Act, referred the dispute for adjudication to the second Respondent, which is the Industrial Tribunal, Alleppey. The dispute was numbered as I.D. No. 15 of 1976 and the adjudication proceedings started. At a certain stage of the proceedings the Petitioner felt that the second Respondent was biased against her and consequently she filed Ext. P-3 application before the first Respondent u/s 33-B(1) of the Act for transferring I.D. No. 15 of 1976 from the file of the second Respondent to the Labour Court, Quilon for proper adjudication. The first Respondent rejected Ext. P-3 by Ext. P-5 order dated 7th October 1977. The Petitioner challenges the legality of Ext. P-5

and prays for a transfer of I.D. No. 15 of 1976 from the files of the second Respondent to that of the Labour Court, Quilon.

3. The operative portion of Ext. P-5 reads as follows:

Under Section 33-B(1) of the Industrial Disputes Act, 1947 a proceeding pending with an Industrial Tribunal cannot be withdrawn and transferred to a Labour Court or withdrawn from a Labour Court and transferred to a Tribunal. Your request contained in the petition cited is to transfer the I.D. No. 15 of 1976 now pending in the Industrial Tribunal, Alleppey to the Labour Court, Quilon. In view of the position stated above, your request is not admissible under law.

4. The three authorities mentioned in Section 33-B(1) of the Act are: (i) Labour Court constituted u/s 7(ii) Tribunal constituted u/s 7A and (iii) National Tribunal constituted u/s 7B of the Act. In support of his contention that the Government can u/s 33-B(1) of the Act transfer a proceeding pending before any one of those authorities to any one or the other of the three authorities mentioned in that section, the learned Counsel for the Petitioner relies upon the similarity in the qualifications prescribed by the relevant provisions of the Act of the persons who can be appointed as presiding officers of the three authorities mentioned above, the circumstance that the Tribunal and the Labour Court have got concurrent jurisdiction over matters included in Schedule II of the Act and the common procedure to be followed in the matter of adjudication. Those board similarities in certain limited fields are not of much relevance in construing the real import of Section 33-B(1) of the Act.

5. The acceptance of the broad proposition bargained for by the learned Counsel for the Petitioner that a dispute pending before a Tribunal can be transferred to a Labour Court, may lead to one anomalous situation. While the Labour Court has got exclusive jurisdiction to adjudicate upon matters falling only under Schedule II, the Tribunal has got authority to adjudicate upon matters falling both under Schedule 2 and Schedule 3. There cannot be any dispute that a Labour Court cannot adjudicate upon any matter falling under Schedule III, except in the case of a matter falling under the proviso to Section 10(1) of the Act. If a proceeding pending before a Tribunal pertaining to a matter falling under Schedule III is to be transferred to a Labour Court, which apparently has no jurisdiction to adjudicate upon such matters, that would necessarily mean that u/s 33-B(1) of the Act, a power has been conferred upon the Government to ignore the provisions of Section 10(1) of the Act.

6. The language used in Section 33-B(1) also indicates that the power of withdrawal and transfer provided for by that provision is from one authority at a place to a corresponding authority elsewhere and not to either of the other two authorities mentioned in the section. In Section 33-B(1) of the Act the words which specifically confer the power of withdrawal and transfer on the Government are followed by the expression "as the case may be". That expression unmistakably shows that a proceeding pending before one authority

can be withdrawn and transferred only to a corresponding authority situated in a different station. In other words, a proceeding pending before a Labour Court can be transferred only to another Labour Court; a proceeding pending before a Tribunal can be transferred only to another Tribunal and a proceeding pending before a National Tribunal can be transferred only to another National Tribunal.

7. The real scope of the power conferred by Section 33-B(1) of the Act is further clarified by the proviso to Sub-section (1) of Section 33-B. By virtue of the proviso where a proceeding is pending before a Tribunal or National Tribunal, and a fresh proceeding is initiated on the basis of Section 33 or Section 33-A of the Act, then, that fresh proceeding can be transferred to a Labour Court. Thus, the transfer to a Labour Court with regard to a proceeding which is pending either before a Tribunal or a National Tribunal is exclusively confined to a proceeding u/s 33 dealing with the procedure to be followed by an employer in taking any further action against an employee during the pendency of a reference u/s 10 of the Act, or u/s 33-A, which confers a right upon the employee to move the authority before whom a reference u/s 10 is pending, if the employer concerned violated the provisions of Section 33 of the Act. Reference in this context may also be made to Sub-section (2) of Section 33-B. That sub-section confers powers upon the Government to authorise a Tribunal or a National Tribunal to transfer any proceeding u/s 33 or u/s 33-A pending before it to any one of the Labour Court specified, for the disposal of such proceedings. These provisions would show that when adjudication proceedings are pending before a Tribunal or a National Tribunal, the legislature had made special provision for transferring a proceeding from that body to the Labour Court. There is again Section 33-C dealing with the recovery of money due from an employer. There are several reported cases which would show that the position of a Labour Court while exercising powers u/s 33-C(2) of the Act is very similar to that of an executing Court.

8. It follows, therefore, that neither the language of Section 33-B(1) nor the other relevant provisions of the Act would support the contention of the learned Counsel for the Petitioner that a proceeding pending before the second Respondent can be transferred to the Labour Court, Quilon. Ext. P-5 passed by the first Respondent has only to be confirmed and I do so.

In the result, the original petition is dismissed and I make no order as to costs.