

(1968) 11 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 1469 of 1966

Bombay Labour Union

APPELLANT

Vs

Industrial Tribunal (K.R. Powar) and Another

RESPONDENT

Date of Decision : 12-11-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1969) 18 FLR 246 : (1969) 1 LLJ 232

Hon'ble Judges : N.L. Abhyankar, J;D.P. Madon, J

Bench : Division Bench

Judgement

Madon, J.—This is a petition under Art. 227 of the Constitution of India challenging an award made by the industrial tribunal constituted of respondent 1 in an industrial dispute referred to it for adjudication between respondent 2 and its workmen. Respondent 2 is a partnership firm which carried on at the material times the business of preparing and selling ice-cream and other milk preparations and employed about thirty workmen. Four demands were referred to the tribunal for adjudication under S. 10(1)(d) of the Industrial Disputes Act, 1947, on 23 July, 1965. The said demands were :

All the workmen shall be paid point-to-point adjustment while fitting them into above scales in accordance with the number of years service if any by them.

Demand 2 - Uniform :- (a) All the workmen shall be supplied with three sets of uniforms per year and uniforms should be washed at the company's cost.

(b) All waiters shall be supplied with pair of leather shoes every year.

Demand 3 - Retrospective effect. - The benefit flowing from the above demands shall be conceded with retrospective effect from 1 July, 1964.

Demand 4. - A model gratuity scheme may be introduced for the benefit of workmen with the provision that for each year of continuous service the workman shall be paid one month's consolidated salary as gratuity."

2. In support of the workmen's demand a statement of claim was filled by the petitioners namely, the Bombay Labour Union which represented the workmen in the said reference. Respondent 2 filed its written statement contesting the said demands on merits. It appears that when the said reference reached hearing on 10 March, 1966, a statement was made to the tribunal on behalf of respondent 2 that the business of respondent 2 had closed since 1 March, 1966. Accepting the said statement the tribunal made in award on 22 March, 1966 declining to adjudicate the said demands on merits and the holding that since the benefits claimed in the said demands were all long-term benefits and since the business was closed, there was no necessity to go into merits.

3. We find it difficult to appreciate how the tribunal came to this conclusion. No supplementary written statement or affidavit was failed by respondent 2 before the tribunal setting out the fact of the closure of the business, the circumstances in which the business was closed and whether such closer was permanent or temporary. On a perusal of the record of the case before the tribunal, we find that the statement made on behalf of respondent 2 is not even recorded in the order sheet. All that we have been able to ascertain is that a none was taken by the tribunal in the course of the arguments to the effect that the business was closed on 1 March, 1966. This note does not mention the nature of the closure or the circumstances in which the business came to be closed. It is however, stated in the award that during the pendency of the proceeding, with effect from 1 March, 1966, the concern is closed, closed completely. On the record there does not appear to be any warrant for this statement made in the award. Several authorities have been referred to before us. We do not propose to discuss these authorities because in view of the paucity of materials before us as consequence of proper materials not being brought on the record before the tribunal, it is not possible for us to determine which authority applies to the present case. It it was the contention of respondent 2 that during the pendency of the proceedings before the tribunal the business was closed permanently, in the sense that it ceased to be carried on and had come to an end, and the nature of the demand on behalf of the workers was such as by reason of such closure could not be granted for the period prior to the closure, respondent 2 ought to have put the facts and plea in that behalf on the record by filings supplementary written statement or affidavit, so that the workers would have then had an opportunity of meeting such case. Respondent 2's failure to do so has resulted in the reference being decided in this unsatisfactory manner.

4. In these circumstances, we feel that the proper course would be to set aside the award and to remand the matter back to the tribunal with a direction to permit respondent 2 to file a supplementary written statement setting out their case of closure, the circumstances in which such closure took place and whether such closure was permanent or temporary and to give an opportunity to the petitioners to controvert such case and after the facts in this behalf are ascertained to decide the reference according to law.

5. We therefore, set aside the impugned award and remand the case back to the tribunal with a direction to allow the parties to put in fresh pleadings on the point indicated above by us and, after ascertaining the fact in that behalf to decide the said reference according to the law applicable to the case.

6. There will be no order as to costs of this petition.