

(1959) 12 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 774 of 1958

K.V. Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-12-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 24(2)
Industrial Disputes Act, 1947 — Section 2, 33B, 33B(1)

Citation : AIR 1960 Ker 292 : (1960) 1 FLR 489 : (1960) 4 KLJ 200 : (1960) 1 LLJ 782

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : T.K. Narayana Pillai and D. Narayanan Potti, for the Appellant; Govt. Pleader, for 1st Respondent, V. Viswanatha Menon and V.N. Gopalakrishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition questions the validity of the award of the Labour Court, Quilon, in Industrial Dispute No. 14 of 1958. The issue referred for adjudication was:

"Whether or not the management of the Kunnad Boat Service is justified in refusing employment to worker Sri K. V. Ramkrishnan. In either case what should be the remedy?"

The Tribunal said:

"On an anxious consideration of the entire evidence adduced in the case and of the circumstances pointed out above I hold that Sri Ramakrishnan was under the services of the management for the 2 1/2 years period and the denial of employment to him is therefore quite illegal and unjustifiable and hence I reinstate him but without back wages since it has come out in evidence that he was being employed occasionally in other services. Consequent on the reinstatement of Ramkrishnan if any retrenchment becomes necessary, the

management is free to do the same bearing in mind the well established principle of "last come first go".

2. The first contention urged before us is that the dispute referred was only an individual dispute and not an Industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947. As pointed out in Supdt. Chittady Estate v. Industrial Tribunal 1959 K LT 370 a dispute between an employer and a single employee though not an industrial dispute per se may become one if it is taken up by the Union or a number of workmen. The Tribunal has considered the evidence on the subject and found that the workmen had espoused the cause of Ramakrishnan. It said:

"I have therefore no doubt to hold that this is an industrial dispute as contemplated by the Act and not an individual dispute as contended by the management".

We see no reason to differ from this conclusion.

3. The second contention urged before us is based on the fact that the industrial dispute was originally referred for adjudication to the Labour Court, Ernakulam, and that the transfer of the case to the Labour Court, Quilon, was only after the entire evidence was recorded by the Labour Court, Ernakulam. According to the petitioner such a procedure cannot be justified.

4. Section 33-B of the Industrial Disputes Act, 1947, deals with the power to transfer proceedings. Sub-section (1) of that section (omitting the proviso thereto) reads as follows:

"The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred."

In this case the Tribunal decided not to proceed de novo but from the stage at which the case stood at the time it was transferred from the Labour Court, Ernakulam, to the Labour Court, Quilon. We are unable to see anything wrong in the procedure adopted.

5. According to counsel for the petitioner the whole proceeding from the commencement of the evidence till the passing of the award forms a distinct stage, and the Labour Court, Quilon, should have recorded the evidence afresh and then passed an award instead of passing an award on the basis of the evidence already recorded by the Labour Court, Ernakulam. We are unable to accept this contention,

6. Counsel for the petitioner also drew our attention to Bandhu Naik v. Lakhi

Kuar ILR 7 All 342 at p. 343. In that case Petheram, C. J. said:

"The trial was commenced by the Subordinate Judge, and the suit was then transferred by the District Judge to his own file u/s 25 of the Civil Procedure Code. By that section the District Judge had power to transfer and try it. But inasmuch as the evidence was not taken before the District Judge, we do not think that he has tried the case. The decree must be set aside, and the case remanded to the Court which has cognizance of suits of the nature of the present one for trial on the merits".

The decision was based on Section 25 of the CPC 1882, and hence the emphasis on the word "tried" and the reference to the meaning thereof. The relevant portion of that section reads as follows :

"The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such Subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter".

7. The position u/s 33-B of the Industrial Disputes Act. 1947, so far as we can see is the same as that u/s 24(2) of the Code of Civil Procedure, 1908 which provides that where any suit or proceeding has been transferred or withdrawn under Sub-section (1) of Section 24,

"the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn". The words "either re-try it or proceed from the point at which it was transferred or withdrawn" in Section 24(2) of the Code of Civil Procedure, 1908, and the words "proceed either do novo or from the stage at which it was so transferred" in Section 33-B(1) of the Industrial Disputes Act, 1947, produce the identical result.

8. We are unable to see any violation of a statutory provision or a canon of natural justice and in the light of what is stated above this petition has to be dismissed. We do so with costs, advocate's fee Rs. 100/- to respondent No. 1 and a like amount to respondents 2 and 3 together.