

(1961) 06 KL CK 0013
In the High Court Of Kerala

Lonetree Estate

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 29-06-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25E

Citation : (1961) 5 KLJ 1147 : (1962) 2 LLJ 319

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Judgement

S. Velu Pillai, J.—An industrial dispute between the petitioner, the management of Lone tree estate, land its workmen represented by the respondent 2, one of the labour unions in the estate, was referred by Government to the respondent 1, the industrial tribunal, Alleppey, for adjudication, issue 2, one of the matters in dispute, related to the payment of unemployment compensation to the workers for four days from 1 July 1958. Following a strike by the members of the staff, the management laid off the workmen for four days from 1 July to 4 July 1958 both days inclusive. There was an attempt at conciliation under the Industrial Disputes Act, 1947, and a memorandum of settlement was drawn up between the management and some of the workmen represented by two other labour unions of the estate. Under Rule 59 of the Kerala Industrial Disputes Rules, 1957, the memorandum of settlement had to be signed by the representatives of the unions specified in that behalf. It was common ground that such representatives of the respondent 2 did not sign the memorandum of settlement, although it is said that one Sivan Pillai representing the respondent 2 gave a letter afterwards, accepting the settlement. The tribunal held that this was not sufficient compliance with Rule 59 and the contention of the management that the tribunal has committed an error in not accepting the memorandum of settlement as final and conclusive, cannot be sustained.

2. The tribunal also came to the conclusion that the denial of employment to the workmen during the four days was a lookout and not a lay-off. It was urged on

behalf of the management that this conclusion of the tribunal constituted an error of law apparent on the face of the record. The learned Government Pleader for the tribunal maintained that the above conclusion was on a question of fact and cannot be canvassed in a proceeding under Article 226 of the Constitution to quash the award to the above extent. Three principal grounds on which the tribunal reached its conclusion are, firstly, that the management had not proved that the denial of employment to the workmen was for any of the reasons specified or indicated in the definition of "lay-off" in Section 2(kkk) of the Industrial Disputes Act, secondly, that the closure of work was brought about by a notice which is marked before me as Ex. R. 1 and thirdly, that such closure was in pursuance of Rule 18 of the petitioner's standing orders and was not a lay-off. The grounds relied on are sufficient for holding that the tribunal did not deal with the question as one of fact.

3. A "lay-off" is defined in Section 2(kkk) as follows:

Lay-off (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

4. The tribunal was right in thinking that the expression "any other reason" in the definition ought to be construed ejusdem generis with the reasons specifically mentioned in it. But the tribunal overlooked the provision in Section 25E(iii), which shows clearly that a strike on the part of the workmen in another part of the establishment is a justifiable reason for a lay-off and even exonerates the employer from liability to pay compensation to the workmen laid off. The Supreme Court has held in *Kairbetta Estate v. Rajamanickam and Ors.* 1960-2 L.L.J. 275 that a strike in another part of the establishment can be a reason for a lay-off. Though the word "lay-off" does not find a place in Ex. R. 1 or in Rule 18 of the standing orders, there is nothing in them to indicate that what was contemplated was a lookout. The closure of work ordered by Ex. R. 1 or contemplated by Rule 18 does not clinch the issue, and it was not disputed before me, that it is open to an employer to lay off the whole body of workmen is a proper case. It has to be observed that, from the very commencement of the proceedings before the tribunal, the case of the management was one of lay-off and not of lookout and the case of the respondent 2 in Ex. P. 2, the written statement filed by it, was not different, notwithstanding the claim put forward for compensation and the fact, that in previous correspondence like Exs. R. 3 and R. 4, it had referred to the situation as a lockout. It was at the final hearing before the tribunal that the respondent 2 put its case as one of lookout. This change in the stand taken by the respondent 2 is by itself inconsequential in a proceeding like this. The fact remains that not only the tribunal failed to advert to Section 25E(iii) and to understand properly the effect of Ex. R. 1 and of Rule 18, but also failed to notice the distinction in law, between a lay-off and a lockout. This

distinction has been stated in Kairbetta Estate case 1960-2 L.L.J. 275 (vide supra). The Supreme Court observed that the deletion of the following clause,

such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons or of aiding another employer in compelling persons employed by him to accept terms or conditions of or affecting employment,

which found a place in the definition of a lookout in Section 2(e) of the Trade Disputes Act, 1929, from the definition in Section 2(i) of the Industrial Disputes Act, 1947, does not affect the essential character of a lookout, which, as has been held, is a weapon available to the employer to persuade his employees by a coercive process to accept his demands. It is the antithesis of a strike by the employees. As also held by the Supreme Court, one of the broad features of a lay-off is that the employer is unable to give employment, for any of the reasons falling within the purview of Section 2(kkk) of the Act. Though the define-of "lay-off" was introduced by Act XLIII of 1953, the concept of lookout had remained the same. In Sri Ramachandra Spinning Mills, Pandalapaka v. State of Madras 1953-1 L.L.J. 216 it was observed that

If an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees or generally speaking, when his act is what may be called an act of belligerency, there would be a lookout. If, on the other hand, he shuts down his work because he cannot, for instance, get the raw materials or the fuel or the power necessary to carry on his undertaking...that would not be a lookout.

That the reasons which induce an employer to deny employment has a material bearing on this issue, was also held in J.K. Hosiery Factory v. Labour Appellate Tribunal of India 1956-2 L.L.J. 4.

5. I think I have said enough to bring out the distinction, as established by decided cases, between a lay-off and a lookout. The tribunal has committed errors of law apparent on the face of the record, and has failed to advert to the real distinction between a layoff and a lookout in coming to its conclusion on issue 2, which was referred to it. On this ground, the award passed by it is quashed to the above extent. This petition is allowed in these terms, but without costs.