

(1986) 11 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 9141 of 1982

The Catholic Syrian Bank Ltd

APPELLANT

Vs

The Appellate Authority and another

RESPONDENT

Date of Decision : 12-11-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 33(c)(2), 6
Kerala Land Reforms Act, 1963 — Section 125(3)

Citation : (1986) 23 KLJ 1137

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer, for the Appellant; Thampan Thomas and P.V. Baby, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—A short, but interesting question arises for consideration in this petition. Petitioner is a scheduled bank. Second respondent claiming himself to be an employee of the petitioner approached the first respondent, the appellate authority under the Kerala Shops and Commercial Establishments Act, 1960 (hereinafter referred to as the Act) alleging that his services have been illegally terminated. The application put in by the second respondent was entertained as Shop Appeal No. 71/78. During the pendency of that petition. Government by Notification dated 20-4-1982 exempted all scheduled commercial banks from all the provisions of the Kerala Shops and Commercial Establishments Act, 1960. Consequently, the petitioner put in an application before the first respondent questioning his jurisdiction to proceed with Shop Appeal No. 71/78. By Ext.P1 order dated 30-7-1982 the first respondent over-ruled the objection. Finally by Ext. P2 order dated 1-11-1982 the first respondent directed to pay a sum of Rs. 70,000/- as compensation in addition to back wages. Petitioner challenges Exts. P1 and P2 orders. The learned counsel appearing for the respondents would contend that when the petition was filed by the second respondent, the first respondent had the jurisdiction to entertain the same and

that the said jurisdiction is not lost to him on account of Ext P3 notification. In this view, it is argued that Exts. P1 and P2 are not open to challenge.

2. The learned counsel appearing for the respondent brought to my notice various decisions to support His contention that the notification will not in any way affect the appeal which was pending on the date of the notification and that the appellate authority was perfectly competent to pass Exts. P1 and P2 orders. The first decision referred to is *Meenakshi Amma v Madhavan Nair* (1968 KLT 744). The question that arose in that case was whether the provisions of the Kerala Land Reforms Act would apply to a case instituted prior to its coming into force. this court took the view that the suit had to be decided in accordance with the law in force at the time it was instituted. The second decision tint was referred to is *S Mano Mani v. The Labour Court and another* (1969 KLR. 742). In that case the facts were as follows:-A workman was dismissed from service. He was subsequently reinstated imposing on him a lesser punishment of withholding increment for one year. He thereupon filed an application u/s 33 (c)(2) of the Industrial Disputes Act claiming arrears of salary and allowance. During the pendency of that application Section 33 (c) (2) was amended. this court held that the workmen's rights have to be decided in accordance with the provisions of Section 33 (c) (2) as it stood on the date when the proceedings were initiated. The next decision that was referred to is *collector v. Habib-Ullah-Din* (A.I.R. 1967 J&K 44) That dealt with the effect of the amendment to the Land Acquisition Act. On the date the award was passed in the case, the law provided for payment of interest at 6% per annum. By the subsequent amendment the interest was reduced to 4% per annum, So the question that arose for consideration was whether the reference court was to award the interest at 6% per annum or at the reduced rate which came in subsequently. The Full Bench held that the interest should be awarded at 6% per annum as it stood before the amendment as on the date of the acquisition of the property. IN *Gopalakrishnan Nair v. Padntavathy Amma* (1970 KLT 888) a Division Bench of this court, considered the scope of Section 125 (3) of the Kerala Land Reforms Act. this court took the view that Section 125 (3) is not to apply to pending cases. In *Hotel Mgharani Pvt. Ltd. v. Corporation of Calicut* (1986 KLT 922) the effect of the amendment to Rub 23 (1) of the taxation rules under the Municipal Corporations Act came up for consideration Proposal to enhance the property tax with effect from 1-10-1979 was made. The owner of the properly objected to it and filed a revision before the Commissioner on 5-10-79. The Commissioner passed orders on that revision on 24-4-80. Thereupon an appeal was filed before the Standing Committee on 6-5-1980. Rule 23 (1) was amended with effect from 17-12-79 making it obligatory to pay the property tax based on the assessment prevailing in the previous year for maintaining the appeal. The question that came up for consideration was whether the appeal filed without paying the tax is maintainable or not. this court held "Since the proceedings for revision of tax were started before the amendment, I feel that the amended provision has no application in this case."

3. In all the decisions referred to above, the authority which was to dispose of the matter continued to have the jurisdiction to deal with the matter. Whether it be the civil court, the labour court, or the Municipal Council, it continued to exercise jurisdiction to proceed with the matter. The amendment imposed certain restrictions or varied the rights. The amendments did not take away or annul the jurisdiction. The question that was considered in all these cases was the effect of the restrictions or the variations of the rights. The court took the consistent view that the rights of the parties are to be adjudicated with reference to the circumstances or the provisions of law, which existed at the time of the initiation of the proceedings. These decisions, I am afraid, cannot apply to the facts of this case. At the time when the shop appeal was filed the petitioner bank was an establishment under the Kerala Shops and Commercial Establishments Act. Accordingly, the appellate authority had jurisdiction to direct the petitioner to pay compensation or to readmit the employee whose services were stated to have been improperly terminated. In other words, the appellate authority had the jurisdiction over the petitioner when the proceedings were initiated. By Ext P3 notification the appellate authority lost jurisdiction over the petitioner because the petitioner ceased to be an establishment under the Act, In *Tricky City Co. op. Bank v, Addl. Commr. For Workmen's compensation. Madras & another* (1957 (1) L.L.J. 642) the Madras High Court had to consider an identical situation. The learned Judge observed:

The learned counsel for the respondents urged that it was a vested right to appeal under S. 41 (1) that had accrued and was exercised by the second respondent in this case before the exemption granted u/s 6 of the Act came into play. It would be "more correct to call it a statutory right. The right to appeal to a named tribunal was not a common law right. The right to reinstatement in the service of the employer who had terminated the service of the employee could be traced only to S. 41 (3) of the Act, and that was again not a common law right, but only a statutory right. That right of reinstatement depended on the order passed under S 41 (3) and the right to pass that order again was only a statutory right. For the effective exercise of those rights in a given case, the provisions of the Act have to apply. If they ceased to apply, none of those rights could be claimed or exercised."

I am in respectful agreement with the above observations.

The Appellate Authority under the Act is a creation of the statute. The source of its power is Section 18 of the Act. It could exercise power over the petitioner so long as it continued to be an establishment under the Act. When the petitioner was exempted from the purview of the provisions contained in that Act, the appellate authority ceased to have any jurisdiction over the petitioner. Thereafter no order can be passed under the Act to bind the petitioner. It is admitted that the petitioner is a scheduled bank. By the Notification Ext. P3 scheduled banks were exempted from the purview of the Act with effect from 31-3-1982. That exemption is an unqualified one. Therefore the scheduled banks became

establishments other than those coming under the provisions of the Act from 31-3-1982. When scheduled banks are thus exempted, the first respondent, the appellate authority ceased to have jurisdiction over them. Therefore no order as against a scheduled bank could be passed by the first respondent after 31-3-1982. In Shop Appeal No. 71/78 no order was passed by the first respondent on any day prior to 31-3-1982. The order passed subsequent to 31-3-82 is without jurisdiction and it has only to be set aside.

The result, therefore is, the original petition is allowed. Exts P1 and P2 are quashed. I direct the parties to suffer their respective costs.