
(2008) 10 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (C) No. 1182 of 2002

The Hotel Oberoi Palm Beach Employees Union

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (2008) CLT 967 Supp

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Advocate : R.K. Bose, G. Bhol and J. Nayak, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This writ petition has been sfiled by the Hotel Oberoi Palm Beach Employees" Union challenging the order of the Industrial Tribunal, Bhubaneswar, dated 14.05.2002, passed in I.D. Case No. 36 of 1994, whereby the reference of the appropriate Government for adjudication of an industrial dispute has been answered against the Petitioner-union as not maintainable.

2. The management, opposite party No. 2, entered into a tripartite settlement on 16.7.1988, which was valid for a period of three years. Before expiry of the said period of three years, the Petitioner-union submitted a 12 point charter of demands to the management. Subsequently the issue was referred to the Conciliation Officer, Berhampur and on his intervention both the Petitioner-union and the management agreed to sign a fresh tripartite settlement, which was executed by the parties on 1.10.1991. Clause 23 of the said tripartite settlement prohibited the employees" union from raising any other issue or grievance either directly or indirectly having any financial burden on the management.

3. In the year 1992, the Petitioner-union raised a demand for adoption of a promotional system for the hotel employees, basing only on experience of the employees. As the management did not consider such demand of the Petitioner-

union, a dispute was raised by the said union vide its letter dated 22.10.1992, which was taken up for conciliation by the District Labour Officer, Berhampur. The conciliation proceeding having ended in failure, the State Government in the Labour & Employment Department referred the dispute u/s 10(1) read with Section 12(5) of the Industrial Disputes Act (I.D. " Act" for short) to the Industrial Tribunal, Orissa, Bhubaneswar, for adjudication. The terms of the reference were as follows:

Whether the demand made by the Hotel Oberoi Palm Beach Employees Union, Gopalpur for adoption of Promotion Policy for the employees employed in M/s Oberoi Palm Beach, Gopalpur is justified? If so, what should be the details ?

4. The said reference was registered as I.D. Case No. 36 of 1994 and the Petitioner-union submitted its statement of claim and the management-opposite party No. 2 filed its written statement. The management-opposite party No. 2 filed an application before the Industrial Tribunal for hearing of the issue of maintainability of the reference, as a preliminary issue before going for final hearing of the matter. The Petitioner-union filed its counter to the said application of the management and the Industrial Tribunal took up the matter for consideration and vide" order dated 14.05.2002 answered the reference against the Petitioner-union, as not maintainable. It is this order of the Industrial Tribunal dated 14.05.2002, which is under challenge in the present writ application.

5. On a perusal of the impugned order, it is seen that the management-opposite party No. 2 had raised the plea of maintainability of the reference on the ground that there being a tripartite settlement entered into between the management and the employees "union on 01.10.1991, which was valid for a period of three years, and during currency of the said tripartite settlement the employees" union having mischievously raised the dispute, violating the terms embodied in the said tripartite settlement, the reference made to the Industrial Tribunal is not maintainable.

6. The Industrial Tribunal on a scrutiny of the tripartite settlement dated 01.10.1991, entered into between the management-opposite party No. 2 and the Petitioner-union found that as per Clause 21 of the said tripartite settlement, the same would remain valid, operative and binding on the parties for a period of three years from 01.07.1991. In the said tripartite settlement it was agreed between the parties, as per Clause 23, that during operative period of the said tripartite settlement, the workman shall not raise either directly or indirectly any issue or demand having any financial burden on the management. The Industrial Tribunal further found from the conciliation failure report that the dispute has been raised by the Petitioner-union on 22.10.1992, which is very much within the period of operation of the aforesaid tripartite settlement. Accordingly the Tribunal came to hold that the demand raised by the Petitioner-union to adopt a promotional policy in respect of the employees" of Hotel Oberoi Palm Beach, during the validity of the tripartite settlement, is in violation of the terms of the

said tripartite settlement and accordingly proceeded to hold that the reference is not maintainable.

7. As regard the merits of the reference, the Industrial Tribunal came to find that the adoption of promotional policy by the management being not a condition of service and purely a managerial function, the management cannot be asked to frame such policy. Further as the question of grant of promotion to employees" in course of industrial employment is the prerogative of the management and for giving promotion to its employee, the management may select such employees for promotion, taking into account their merit, devotion to duties, efficiency and punctuality, the same cannot be subject matter of adjudication by the Industrial Tribunal under the provisions of the I.D. Act.

8. The formulation of a promotion policy by the management of an industrial establishment cannot be termed as a condition of service so as to be the subject matter of an industrial dispute capable of being adjudicated by a Tribunal under the provisions of the I.D. Act. Moreover what criterion is to be fixed with regard to promotion of employees, which will ensure smooth and efficient functioning of the establishment is undoubtedly the prerogative of the management and no direction in that regard can be given by the Tribunal. In this regard, the findings of the Industrial Tribunal cannot be faulted.

9. Considering the findings of the Industrial Tribunal as given in the impugned order and as discussed above, no impropriety or illegality can be said to have been committed by the learned Tribunal so as to warrant any interference by this Court. The writ application being devoid of merits, the same is accordingly dismissed.