(1993) 01 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No''s. 2094 and 2973 of 1988 D

Thomas Stephen and Co. Ltd. APPELLANT

Vs

The Secretary, U.T.U.C. Quilon RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17A, 19, 19(3), 19(6)

Citation : (1993) 01 KL CK 0029

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.V. Joseph, in O.P. No. 2094/88 and Philip Antony Chacko, in O.P. No. 2973/88, for the Appellant; M. Ramachandran and P. Ramakrishnan for 1st Respondent and Lalitha Nair, Government Pleader for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—In both the Original Petitions Ext P-2 Award of the second Respondent-Industrial Tribunal Quilon is challenged. Petitioners contend that the Maistries working in their factories are not regular employees, that they work only during temporary periods and that in an earlier case viz. I.D. 1 of 1983 their salary was raised while no relief was given to their claim regarding D.A.. etc., and so the tribunal was not justified in passing Ext. P-2 Award. It is also contended by the Petitioners that at any rate the second Respondent was not justified in passing the award with effect from 30th January 1985.

2. On a consideration of the evidence the second Respondent held that the Maistries are also entitled to get all benefits like other monthly paid staff in the companies i.e., basic pay, fixed D.A. variable D.A., leave amenities, etc., as claimed by the union. This Court cannot reappreciate the evidence and substitute its own finding in a proceeding under Articles 226 and 227 of the Constitution of India.

3. Contention of the Petitioners that the decision in I.D. 1 of 1983 would operate as res judicata in the present proceedings has to be considered. In I.D. 1 of 1983 the tribunal held that the Maistries are entitled to enhancement of Rs. 65 per month in their basic pay from 1st January 1983. The tribunal held that it is not in favour of changing the rate of D.A. indicated in the minimum wage notification. Petitioners maintain that in view of the award in I.D. 1 of 1983 Ext. P-2 Award cannot be sustained as the former Award operates as res judicata.

4. Section 19(3) of the Industrial Disputes Act provides that an Award shall remain in operation for a period of one year from the date on which the Award becomes enforceable u/s 17A. Of course it can be terminated by any party to it by giving notice as required u/s 19(6). First proviso is to the effect that the appropriate Government may reduce the period and fix such period as it thinks fit. Second proviso curtails the powers of the Government by making it clear that it cannot extend the period beyond one year at a time. It also specifically says that the total period of operation of any Award cannot be extended beyond 3 years from the date on which it came into operation. Sub-section (6) states that the Award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the Award to other party or parties intimating its intention to terminate the Award. Unlike a decree or order of a civil Court the Award under the Act cannot be considered to be conclusive between the parties as it is limited to the duration for which it remains effective and in force as provided u/s 19 of the Act. As Section 19 is categoric that the Award is of limited duration, it is futile to contend that findings in the Award would operate as res judicata in a subsequent Award.

5. The tribunal held that the Maistries are entitled to get the benefits as claimed by the union with effect from 30th January 1985. That finding requires modification as I hold that they are entitled to it only from the date of reference viz., 22nd April 1986.

The writ petitions are dismissed subject to the above modification.

