
(2003) 05 KL CK 0039
In the High Court Of Kerala
Case No : O.P. No. 9490 of 1993 (D)

Western Indian Plywoods Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-05-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 33B, 7, 7A

Citation : (2004) 1 ILR (Ker) 47 : (2004) 2 LLJ 950

Hon'ble Judges : J.B. Koshy, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : U.K. Ramakrishnan and P.V. Lohithakshan, for the Appellant; C. Vathsalan, G.P. for Respondent Nos. 1 and 3 and K. Raveendran, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—The petitioner is a company registered under the Companies Act. One of the unions (2nd respondent herein) representing 344 workers raised an industrial dispute claiming that 344 workers were denied employment for the period from February 18, 1991 to July 6, 1991. It was a period of strike. According to Union 344 workmen represented by them did not participate in the strike and they were willing to work, but they were denied work, especially because of the striking workers. According to them, the management also did not give them any protection to do the work. The following issue was referred for adjudication before the Labour Court, Kannur.

"Denial of employment to 344 workers for the period from February 18, 1991 to July 6, 1991."

2. The definite case of the workers is that they were denied employment from February 18, 1991 to July 6, 1991. Since the denial of employment was referred to the Labour Court for adjudication, a claim statement was filed by the union claiming that they were entitled to wages for the period from February 18, 1991

to July 6, 1991 as a consequential relief. The petitioner management filed a written statement refusing all claims, contentions and demands made by the 2nd respondent. Apart from the contentions on merit raised, the management raised a contention that the claim raised by the second respondent that they are entitled to wages during the period of alleged denial of work is not referred for adjudication and the Labour Court has no jurisdiction to adjudicate the issue regarding wages and hence reference itself is bad. The contention of the management is that the wages including the period and mode of payment is coming under III Schedule of the Industrial Disputes Act and since the establishment is employing more than 100 employees the issue regarding wages can be adjudicated only by the Industrial Tribunal (Section 7-A). The Labour Court can adjudicate only matter that comes under II Schedule (Section 7). After perusing copy of the statement filed by the Management the above union filed a petition to the Government and the Government consequently passed Exhibit P1 order transferring the dispute to the Industrial Tribunal, Kozhikode and also modifying the reference as follows:

"Whether the 344 workers whose names are shown in the list attached to the G.O. Rt. 1489/92/LBR dated June 9, 1992 are entitled to wages during the period February 18, 1991 to July 6, 1991 and if so what is the "quantum".

3. It is the contention of the petitioner that before transferring the case from Labour Court to the Industrial Tribunal, they were not heard. It is submitted that from Labour Court a dispute can be referred only to another Labour Court in view of Section 33-B(1) of the Industrial Disputes Act. According to the management, a dispute pending before the Industrial Tribunal can, be transferred to another Industrial Tribunal and from Labour Court to another Labour Court. But a dispute pending before the Labour Court cannot be transferred to the Tribunal as decided in *Achamma v. State of Kerala* 1979 KLT 187. The Government contended in paragraph 4 of the counter affidavit that in *Management of Senapathy Whitley Ltd. v. State of Karnataka* 1984 LIC 1890 it was held that the power of the appropriate Government u/s 33-B(1) includes the power to withdraw a case from a Labour Court and to transfer the same to a Tribunal and vice versa subject to the competence of the forum to adjudicate upon the matter concerned.

4. It was also contended that industrial dispute was transferred from Labour Court to Industrial Tribunal without notice to them. Hence Exhibit P1 transferring the dispute to Industrial Tribunal is illegal. Supreme Court in *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, held that while transferring the dispute from one Tribunal to another Tribunal notice should be given to parties to the dispute and a transfer order passed by the Government without notice to one party is violative of natural justice. It was contended by the union that no prejudice is caused to the management by transferring the dispute from a Labour Court, Kannur to the Industrial Tribunal, Calicut. But we are bound by the decision of the Apex Court. Since Exhibit P1 order was passed without notice to a party to the dispute, it is illegal and we set aside the same. In view of

the above judgment, whether the Government has got power to transfer a case from Labour Court to the Industrial Tribunal is not considered in this judgment.

5. It was also contended that the modification of reference order as was done here is beyond the jurisdiction of the Court. The question whether the Government can modify an issue referred for adjudication need not be considered in this case as we have already set aside Exhibit P1 order. Further, we are of the opinion that when issue regarding denial of work for 344 workmen for the period from February 18, 1991 to July 6, 1991 is referred for adjudication, if the Court finds that the management has denied work to them, question regarding payment of wages or granting any other relief is an incidental question. If dismissal of a workman is referred for adjudication, duty of the Tribunal is not only to consider the legality of the dismissal order but also to grant necessary relief which includes granting of either full or part of back wages. Likewise when denial of employment is referred for adjudication, the Labour Court has to consider the relief if any to be granted after finding whether there is denial of employment, if so whether it was justifiable etc. It is true that revision of wages, its mode of payment, period of payment and similar matters regarding wages has to be referred to Industrial Tribunal in view of Section 7-A and III Schedule of the Industrial Disputes Act. But payment of wages as a relief consequent to a finding regarding correctness of dismissal or denial of employment is entirely a different matter. Denial of employment is not a matter specified in the III schedule. Therefore, it can be adjudicated by the Labour Court in view of Section 7 of the Industrial Disputes Act and Item No. 6 of II Schedule. Under the original reference, the Labour Court is bound to consider (1) whether 344 workers mentioned in the reference order or any of them were denied employment by the management during the period specified in the reference (2) if they were denied of employment, whether such denial is fully or partly justified (3) whether workers are entitled to any relief (whether full or part of the wages for the above period or compensation is payable), depending upon the finding regarding denial of employment. Question whether they are entitled for payment of wages during the period of alleged denial of employment is only a consequential or incidental matter. (See : Union of India v. Prafulla Kumar, (1983) 1 LLJ 304 Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others, and Bhagwan Dass Chopra Vs. United Bank of India and Others, . The Labour Court should cover the entire reference in its award. Reference shall be construed liberally avoiding mere technicalities as held by the Apex Court in The Indian Express Newspapers (Bombay) Pvt. Ltd. and Another Vs. Employees' Union and Others, . In a reference to Tribunal or Labour Court, technical pleas should not be encouraged as held by the Apex Court in Workmen of Balmer Lawrie and Co. Vs. Balmer Lawrie and Co., and The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, . Since we have set aside Exhibit PI order, original reference to the Labour Court has to be adjudicated by it according to law. It is the contention of the management that in view of subsequent settlement, denial of employment

cannot be referred. It is a matter which requires evidence. All these questions are to be decided by the Labour Court itself according to law. We are only holding that modification of reference is not necessary on the facts of the case. When denial of work to certain workers for certain period is referred for adjudication, as a consequential relief whether they are entitled to wages during the period or they are entitled to any relief can be decided by the Labour Court. In *Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another*, , it was held that passing orders on preliminary objection and challenging the same only will delay and defeat the issue referred for adjudication. In this case the original reference was made in 1992 and on the basis of technical pleadings raised, Exhibit P1 order was passed in 1993 and now more than 10 years have elapsed. Therefore, the Labour Court shall dispose of the matter as expeditiously as possible, in any event, within six months from the date of receipt of a copy of this judgment. We also make it clear that the adjudication shall not be delayed by hearing preliminary issues. The entire issues raised should be decided and consolidated award should be passed as held by the Apex Court in *Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited*, and *S.K. Verma Vs. Mahesh Chandra and Another*, .

6. The Original Petition is allowed by setting aside Exhibit P1, and we direct the Labour Court, Kannur to pass the award after adjudicating the issues as per the original reference order as expeditiously as possible, in any event within six months from the date of receipt of a copy of this judgment. Since the Labour Court, Kannur is not made a party to the Original Petition, we direct the Registry to send a copy of this judgment to the Labour Court, Kannur immediately.