

(1993) 02 KL CK 0063

High Court Of Kerala

Case No: O.P. No. 4774 of 1992-R

Travancore Rayon Employees
Federation

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision: Feb. 4, 1993

Acts Referred:

- Kerala Relief Undertakings (Special Provisions) Act, 1961 - Section 4(1)

Citation: (1993) 2 LLJ 23

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

Bench: Single Bench

Advocate: M. Ramachandaran and A. Jayasankar, for the Appellant; M. Lalitha Nair and J.B. Koshy for Respondent 1, 3 Antony Dominic and Renjit Kumar for Respondent 2, for the Respondent

Final Decision: Allowed

Judgement

M.M. Pareed Pillay, J.

The petitioner challenges Exhibit P-2 award passed by the first respondent in I.D. No. 97 of 1990. Exhibit P-2 award was passed in a dispute between the petitioner and the second respondent. First respondent held that the provisions of the Industrial Disputes Act, 1947, cannot be applied to any of the matters concerning the management company in view of the exhibit P-1 communication issued by the third respondent. In Exhibit P-1, the State Government held that the provisions of the Industrial Disputes Act are not applicable as the second respondent (company) has been declared as a relief undertaking unit for the period up to June 11, 1991. In view of Exhibit P-1, the first respondent held that the dispute under reference cannot be competently adjudicated under the Industrial Disputes Act and accordingly the issue raised by the second respondent was answered in its favour.

2. Learned counsel for the petitioner submitted that the Kerala Relief Undertakings (Special Provisions) Act, 1961 (for short "the Act"), has no application so far as the dispute is concerned as it relates only to promotion of an employee. In other words, his contention is that no additional financial involvement is there with regard to the promotion of an employee as that employee gets promotion to a place which has become vacant as a result of the retirement of the incumbent who was holding the charge in that office and as promotion is a routine course of event in the matter of service of employees, no additional burden is imposed upon the management and so the Act cannot have any application.

3. Learned counsel for the second respondent pointed out that in view of Section 4(1) of the Act, the Industrial Disputes Act cannot have any application as the company is covered under the Kerala Relief Undertakings (Special Provisions) Act, 1961.

4. The preamble to the Kerala Relief Undertakings (Special Provisions) Act, 1961, shows that it has been enacted to make temporary provisions for industrial relations and other matters to enable the Government to conduct, or provide loan, guarantee or financial assistance for the conduct of certain industrial undertakings as a measure of preventing unemployment or of unemployment relief. Section 3 provides that the Government may at any time by notification in the Gazette declare that an industrial undertaking specified in the notification, whether started, acquired or otherwise taken over by the Government and carried on or proposed to be carried on by themselves or under their authority or to which any loan, guarantee or other financial assistance has been provided by the Government shall, with effect from the date specified for the purpose in the notification, be conducted to serve as a measure of preventing unemployment or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for the purposes of the Act. Sub-section (2) provides that notification under Sub-section (1) shall have effect for such period not exceeding two years as may be specified in the notification; but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time. All the periods in the aggregate should not exceed five years. Section 4 enables the Government to direct that in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3, all the provisions of the laws specified in the Schedule to the Act which involve any financial commitment or expenditure shall not apply (and such relief undertaking shall be exempt therefrom), or all or any of such provisions shall, if so directed by the Government, be applied with such modifications (which do not, however, affect the policy of the said laws) as may be specified in the notification. The section makes it clear that the above direction is notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provisions. In the Schedule, Industrial Disputes Act, 1947, is mentioned. Contention of the second respondent is that in view of Section 4 of the Act, the first respondent

was justified in passing Exhibit P-2 award.

5. Learned counsel for the petitioner pointed out that financial commitment is not involved in the matter of promotion of the employees and so the first respondent was not justified in finding the preliminary issue against the petitioner. Section 4(a)(i) makes the position clear that only the provisions specified in the Schedule to the Act which involve any financial commitment or expenditure shall not apply to the undertaking. As the claim of the workmen for promotion as per the adopted pattern will not create any financial involvement and as the preamble of the Act specifically indicates that the underlying idea behind the Act is to give financial assistance for the conduct of the undertaking as a measure of preventing unemployment or of unemployment relief and as a moratorium has been proposed in respect of the financial liability of the undertaking it is not possible to hold that the management can ignore the genuine aspirations of a workman to get his due promotion. Merely because the second respondent undertaking is covered by the Act it is not possible to hold that promotion of an employee would involve financial commitment or additional expenditure. Section 4(a)(i) can be invoked only in cases where application of any of the provisions of the Industrial Disputes Act would involve any financial commitment or additional expenditure to the undertaking. Even in a case where an undertaking is covered by the Act, the provisions of the Industrial Disputes Act would apply in matters concerning usual promotions which do not necessarily involve financial commitment or additional expenditure.

6. The first respondent was not justified in passing Exhibit P-2 award answering the preliminary issue against the petitioner. Exhibit P-2 award is quashed. The first respondent is directed to dispose of I.D. No. 97 of 1990 in accordance with law.