

(1985) 01 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 14 of 1985

Assam State Electricity Board	Vs	APPELLANT
Presiding Officer, Labour Court and Others		RESPONDENT

Date of Decision : 11-01-1985

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (1985) 1 GLR 240

Hon'ble Judges : K.M. Lahiri, Acting C.J.; T. Nandakumar Singh, J

Bench : Division Bench

Advocate : G.K. Talukdar, N.N. Saika, P. Prasad and M.C. Barthakur, for the Appellant; A.S. Bhattacharjee, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, A.C.J.

1. This application under Article 226 of the Constitution of India is directed against an order of the Presiding Officer, Labour Court, Gauhati, passed on 14.12.84 in Reference Case No. 24 of 1981, whereby the Labour Court has deferred decision of the preliminary issue to be heard along with the main issues involved in the Industrial dispute. We may make it clear that it is not a case in which the Labour Court has refused to determine a preliminary issue, but it is a case in which the court has deferred hearing of the issue to a future date.

2. The Government of Assam referred the industrial dispute to the Labour Court at Gauhati and the dispute was set out in the Schedule to the Reference as under:

SCHEDULE

- 1) Whether the management of A.S.E.B., Assam, Gauhati is justified in (sic) Smt. Anurudha Kar from services ?
- 2) If not, is she entitled to reinstatement or any other relief in lieu thereof?

3. The Reference was made in May, 1981. The Reference was registered as Reference Case No. 24 of 1981 in the Labour Court, Gauhati. Ultimately, on 24.12.84, the matter came up for hearing. At the hearing, an application was filed on behalf of the Management stating that a preliminary point was required to be determined before determination of the main issues. The preliminary issue, tit framed by the management, was to the effect that the State Govt. had no jurisdiction to refer the dispute to the Labour Court at the concerned workman was at all relevant time an employee of Meghalaya State Electricity Board. The Labour Court held that the dispute was referred in 1981 and pended before it for so many years, At no point of time earlier the management considered that it should be determined first before going into the merits of the case. Accordingly, the Labour Court held that the Preliminary issue should be decided along with the main issues raised in the Industrial dispute. The workman was present with witness and accordingly, the Labour Court awarded cost of Rs. 200/- against the Management, which was not ready on 14.12.84, fixing 11.1.85 for bearing of all the issues.

4. Delay in adjudication of a labour dispute may lead to misery and jeopardise industrial peace. The Tribunals including Labour Court entrusted with the task of adjudicating labour disputes should decide all the issues in disputes at the same time without trying some of them as preliminary issues. Nor should High Court in the exercise of its jurisdiction under Article 226 of the Constitution, stop proceedings before a Tribunal so that a preliminary issue may be decided by them. This is the law laid down by the Supreme Court in D.P. Maheswari v. Delhi Administration, 1983 Lab. IC 1629 : AIR 1984 SC 153. Their Lordships, inter alia, held that neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 should be allowed to be exploited by those who can well-afford to wait to the detriment of those who can ill-afford to wait by dragging the latter from Court to for adjudication of peripheral issues, avoiding decision on issues more vital to them. Their Lordships have further observed that the provisions of Articles 226 and 136 of the Constitution are not meant to be used to break the resistance of workmen in this fashion.

5. Indeed, if such threshold part-adjudication is really necessary and urgent and the issue can be expeditiously disposed of, in such a case the Tribunal/Labour Court may exercise the discretionary power to adjudicate the question expeditiously, However, if the decision on preliminary point leads to other woeful consequences and miseries to the workmen it should be better delayed. It is our experience that writ applications against such preliminary orders are pending for 9 to 10 years. However this may not be a ground for not deciding a healthy, strong and clear preliminary issues, which on the face of it shows patent lack of jurisdiction of the authority to refer the matter and the lack of jurisdiction of the labour Court to, decide the same. However, if the question is a mixed question is a mixed question of law and fact and it needs adducing of evidence we are of the opinion that the preliminary issue should be decided along with the main issue.

6. In the instant case the dispute is between a single workman and the Management. As such, the workmen concerned shall have to bear the burden of delay and it would be unfair and unjust to burden her with two proceedings and also to burden her for other proceedings arising out of the preliminary issues. It was not the case of the Petitioner that merely on production of the records the issue could be determined. It is not the case of the Petitioner before us as well. As such, when evidence is necessary to be recorded for the purpose of deciding the preliminary issue, it is highly desirable, and in fact necessary, that the preliminary issue should not be decided separately. The date of hearing is fixed today before the Labour Court. If the Management is up and doing it can produce the records and get a decision on all the issues by the Labour Court, In the instant case, the Labour Court has exercised discretion and deferred the preliminary issue to be heard along with the main issue. The discretion so exercised by the Labour Court is justified and cannot be said to be arbitrary or unreasonable, unjust or unfair.

7. In the above premises the impugned order to defer the preliminary issue to a latter date cannot be interfered by this Court exercising power under Article 226 of the Constitution. Further, it is not a case in which the Labour Court has refused to decide the preliminary issue raised by the Petitioner it has merely deferred the decision on it and against such an order, in our opinion, this Court cannot exercise its power under Article 226 of the Constitution. However, in view of the desire of the learned Counsel for the Petitioner to get a quick adjudication, which must be the earnest desire of the workmen concerned as well, we direct that the Labour Court shall dispose of the case within 3 months from the date of receipt of this order.

8. For the foregoing reasons, we dismiss the application in limine.

9. Send a copy of this order to the Labour Court.