

(2011) 02 DEL CK 0107
In the Delhi High Court
Case No : LPA 847 of 2010

Captain Harish Solanki

APPELLANT

Vs

Go Airlines India Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0107

Hon'ble Judges : Dipak Misra, C.J.;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Manvendra Verma and Bankey Bihari, for the Appellant; Darpan Wadhwa, for respondent No. 1, Ravinder Agarwal, CGSC and Nitish Gupta, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—Heard Mr. Manvendra Verma along with Mr. Bankey Bihari, learned Counsel for the Appellant and Mr. Darpan Wadhwa, learned Counsel for the Respondent No.1.

2. Calling in question the justifiability of the order dated 28th September, 2010 passed by the learned single Judge in Writ petition (Civil) No. 2587/2010, the present intra-Court appeal has been preferred. It is submitted by Mr. Manvendra Verma, learned Counsel for the Appellant that the learned single Judge has fallen into error by expressing the opinion with regard to maintainability of the application preferred u/s 33-C(2) of the Industrial Disputes Act, 1947 as well as the territorial jurisdiction, which are reflectable from paragraphs 14 and 16 of the order impugned as a result of which the adjudication process before the Labour Court is likely to be affected.

3. Per contra, learned Counsel for the Respondent No. 1 has submitted that the learned single Judge in paragraph 17 has quashed the order passed by the Labour Court on the foundation that there should not be piecemeal hearing of the dispute and all the issues should be tried together.

4. For the purpose of appreciating the contentions raised at the Bar, we think it appropriate to reproduce paragraphs 14, 16 and 17 of the order impugned. They read thus:

14. Thus, the aspects like Petitioner's registered office at Mumbai, the Petitioner carrying on business in Mumbai, the agreement signed in Mumbai, the salary was paid from Mumbai gives some part of cause of action in Mumbai also in addition to Delhi.

15. xxx

16. Lastly, With respect to correctness of the issue pertaining to maintainability, the same shall be examined along with the other issues which are to be answered by the learned Labour Court.

17. In view of this discussion, the position which emerges is that the present case is a fit case for exercising the jurisdiction under Article 226 as the impugned order suffers from procedural irregularity as well as error of law. Accordingly, this Court deems it fit to quash the order dated 8th February, 2010 passed by the learned Labour Court and directs the Labour Court to answer all the issues together in order to avoid any further delay and piece meal adjudication. The parties are directed to appear before the Labour Court on 18th October, 2010. The Labour Court is also directed to make endeavor to decide the issues as expeditiously as possible.

5. In our considered opinion, when the issue of territorial jurisdiction is kept open by the Labour Court, it was not necessary on the part of the learned single Judge to express any view in the manner it has been stated in paragraph 14. Mr. Wadhwa, learned Counsel for the Respondent No. 1 would submit that the learned single Judge has only observed that these are the factors to be taken into consideration. In our considered opinion, the issue of territorial jurisdiction would depend upon appreciation of evidence and the material brought on record and, therefore, nothing need to have been stated by the learned single Judge. As far as paragraph 16 is concerned, Mr. Verma, learned Counsel for the Appellant has submitted that the Labour Court has expressed the view that the application was maintainable on the basis of the Constitution Bench decision in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . Mr. Wadhwa, learned Counsel for the Respondent No. 1 has submitted that the Labour Court though has held the application to be maintainable but has kept the same open. He has further submitted that as the tribunal has really not decided the issue, and further the decision rendered in the *Central Bank of India* (supra) has been distinguished. Be that as it may, paragraph 16 would evince there has been no expression of opinion but an apprehension has been expressed by the learned Counsel for the Appellant that the same be construed as an opinion. As far as paragraph 17 is concerned, the order has been entirely quashed. In our considered opinion, the proper thing to do is to delete paragraphs 14 and 16 of the order impugned in entirety and direct the Labour Court to decide all the issues together. We also

observe that the issue with regard to maintainability, which has been determined by the tribunal, shall be treated as a prima facie opinion inasmuch as certain aspects may be brought on record which may have some effect in appreciating the ratio laid down in Rajgopalan (supra). We may hasten to clarify that we have not expressed any opinion whatsoever on the merits of the case. Needless to say, deletion of paragraphs 14 and 16 are only for the purpose that the Labour Court shall proceed to adjudicate the lis on merits. The appeal is allowed to the extent indicated above without any order as to costs.