

(1998) 11 AHC CK 0101
In the Allahabad High Court
Case No : C.M.W.P. No. 19294 of 1991

D.C.M. Shriram Industries Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6(2A)

Citation : (1999) 2 AWC 1221 : (1999) 81 FLR 211

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : Bharti Sapru, for the Appellant;

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—The employer filed an application in the adjudication proceeding pending before the Labour Court upon a reference of a dispute arising out of termination of the workman concerned in a disciplinary proceeding praying for deciding the additional issue as to whether the domestic enquiry held was valid and proper as a preliminary issue. By the Impugned order, the said prayer was rejected by the Labour Court and challenging the same this writ petition was filed.

2. Ms. Bharti Sapru, learned counsel for the petitioner-employer relied on the judgments in the case of M/s. D.C.M. Shriram Industries Ltd. v. State of U. P. and others. 1996 (72) FLR 713 ; Star Paper Mills Ltd., Saharanpw v. Presiding Officer and others 1987 (55) FLR 634 and The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . Reference was also made to the judgment of the Full Bench in the case of M/s. Swarup Vegetable Products Industries Ltd. v. Labour Court IInd, Meerut and others 1997 (77) FLR 547, for the purpose of distinguishing in the same in view of the law laid down by the Apex Court.

3. Mr. Y. K. Sinha, learned counsel for the respondent workman contended that such issue need not be decided as a preliminary issue and employer is required

to seek for opportunity to adduce evidence in support of its order. In support of such contention, reference was made to the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, ; *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, ; *State Bank of India Vs. R.K. Jain and Others*, ; *Rana Pratap Singh Vs. State of Uttar Pradesh*, and *M/s. Swarup Vegetable Products Industries Ltd. v. Labour Court IIInd, Meerut and others*, 1997 (77) FLR 547.

4. On behalf of the employer. strong reliance was placed on the judgment in the case of *Cooper Engineering Ltd. (supra)* for the purpose of contending that the validity of the enquiry has to be decided as a preliminary issue. A perusal of the said judgment shows that the question which fell for consideration in the said case, as formulated in the very first paragraph of the judgment, was whether when a domestic inquiry held by an employer is found by the Labour Court as violative of the principles of natural justice, there is any duty cast upon that Court to give an opportunity to the employer to adduce evidence afresh before it and whether failure to do so would vitiate its award. Again, in paragraph 9 of the judgment question under consideration was indicated as to whether it is the duty of the Tribunal to make known its decision to the parties on the jurisdictional aspect of the case so that the employer can avail of the opportunity to justify the dismissal based on the charge. The said judgment apparently was delivered deciding the aforesaid aspect and it was held as follows :

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

5. In view of the aforesaid, it appears that question involved in the case of *Cooper Engineering Ltd. (supra)* was not whether the validity of the domestic enquiry was to be decided as a preliminary issue or not. Therefore, the user of the expression "preliminary issue" does not mean that always the said question is to be decided as a preliminary issue.

6. This aspect of law came to be considered in various cases in different factual

backgrounds. The various judgments including the case of Cooper Engineering Ltd. (supra) dealing with the said branch of law have been referred to by the respective parties. Considering the same, I find that in the case of M/s. Swarup Vegetable Products Industries Ltd. (supra), the question under consideration is whether validity of domestic enquiry is to be decided as preliminary issue and, therefore, directly applicable in the present case. The Pull Bench in the aforesaid case took into consideration various judgments relevant for the purpose decided by the Apex Court as also by this Court. The ultimate finding of the Full Bench is as follows :

"Once a reference has been made to an Industrial Tribunal, then all the issues which arise, whether jurisdictional or merit, must be decided together. The process of adjudication by the Industrial Tribunal/Labour Court must be completed as expeditiously as possible, it is not obligatory on the Industrial Tribunal or Labour Court to frame a preliminary issue. Law does not enjoin the Tribunal to decide if the enquiry was fair and proper initially and then to grant an opportunity to the management if the finding went against it, to adduce evidence on the delinquency of the workmen and the punishment imposed. On the other hand the law casts a duty on the Industrial Tribunal/Labour Court to decide not only whether the domestic enquiry was fair and proper but also whether the punishment imposed by the employer was justified in the facts and circumstances of the case. The Industrial Tribunal/Labour Court should consider entire case in the light of the evidence adduced before it. The Industrial Tribunal/Labour Court should particularly bear in mind the provisions of Section 11A of the Central Act and Section 6 (2A) of the U. P. Act (U. P. Industrial Disputes Act) and remember that the main purpose of creating a forum for industrial adjudication is to avoid delay in disposal of proceedings."

7. In view of the above discussion and in view of the facts involved in the present case, I am of the opinion that the law discussed by the Full Bench as aforesaid fully governs the issue. Therefore, no interference is required on the present writ petition when the Labour Court has considered the matter and came to a finding that the question involved need not be decided as a preliminary issue. The anxiety expressed by various Courts of law for expeditious disposal also supports the said view. No material is available justifying an interference with the Impugned order.

8. The writ petition is, therefore, dismissed. There will be no order as to costs.