

(2010) 03 AHC CK 0237
In the Allahabad High Court

Dwarikesh Sugar Industries Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 136, 226, 236
Industrial Disputes Act, 1947 — Section 10, 33
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6(2A)

Citation : (2010) 3 AWC 2956 : (2010) 125 FLR 523 : (2010) 2 UPLBEC 1376

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—These two writ petitions were heard together and are being disposed of by a common judgment as jointly agreed by the learned Counsel for the parties. It was stated at the bar that identical questions of facts and law are involved in these petitions.

2. The petitioner, a public limited company is engaged in manufacturing and sale of cane sugar through one of its vacuum pan sugar factories at village Bundaki in district Bijnor. The respondent No. 2 was engaged as temporary clerk in Writ Petition No. 10682 of 2010 and as weighing clerk in another one. After holding departmental inquiry against each of them, their services were terminated. These workmen raised industrial disputes which have been referred for adjudication before the Labour Court, Rampur being Adjudication Case Nos. 12 of 2005, 15 of 2005 and 16 of 2005 against Lotan Singh, respondent No. 2 in the Writ Petition No. 10682 of 2010 and Gyan Prakash and Arun Kumar, the respondent Nos. 2 and 3 in the connected writ petition. All these adjudication cases are pending adjudication. An application giving rise to the present writ petition was filed by the petitioner for framing of the following two issues as preliminary issues:

1. Whether domestic inquiry conducted against the workman is not valid and if so its effect? and

2. Whether the employer has lost confidence in the workman? and if so its effect.

3. The said applications having been dismissed by the common impugned order dated 18th of December, 2009 these petitions have been preferred.

4. Shri Vijay Ratan Agrawal, learned senior counsel, assisted by Sri Rahul Sahai for the petitioner submits that the labour court was not justified in rejecting the said applications inasmuch as petitioner's case is that the domestic inquiry was conducted in accordance with the principles of natural justice and fair play and also in accordance with the provisions of the standing orders. Sufficient opportunity of hearing was afforded to the charge-sheeted workmen. The Enquiry Officer, after completing the domestic inquiry submitted his inquiry report. It has been found as a fact that the charge-sheeted workman is guilty of commission of acts and omission of fraud in pursuance of design of cheating and fraud with a view to cause huge financial losses to the sugar factory. It has been pleaded by the petitioner that before passing of the dismissal order, a fair and proper domestic inquiry inquiring about the charges against the charge-sheeted workman was conducted wherein the workman was found guilty. In the written statement filed on behalf of the workman, the legality and validity of the domestic inquiry is being challenged on the ground that the said domestic inquiry was not fair and proper and no opportunity to cross-examine the employer's witnesses was given and the services have been terminated illegally. In this fact situation, the learned senior counsel for the petitioner submits that the labour court should decide the question relating to the validity of the domestic inquiry first as a preliminary issue and, therefore, the labour court was not justified in rejecting the application filed on behalf of the Management, a copy whereof has been filed as Annexure-8 to the Writ Petition No. 10682 of 2010.

5. A counter-affidavit has been filed on behalf of the workman through Sri Vikrant Pandey, advocate. Sri Vikrant Pandey, advocate, the learned Counsel submits that the so-called inquiry conducted by the petitioner was of no use as it was conducted under the effect and pressure of the petitioner company therefore such an inquiry cannot be held valid, proper or legal. Elaborating the argument, he submits that the labour court has not committed any illegality in refusing to frame the two issues as proposed by the Management of the petitioner company by the impugned order. In this connection, reliance was placed by him on a Full Bench decision of this Court in the case of Swarup Vegetable Products Industries Ltd., Mansoorpur, Muzaffarnagar Vs. Labour Court-II, Meerut and another, and a single Judge judgment in D.C.M. Shriram Industries Ltd. Vs. State of U.P. and others,

6. Heard the learned Counsel for the parties and perused the record. The learned senior counsel for the petitioner has placed reliance upon the The Cooper Engineering Limited Vs. Shri P.P. Mundhe, Delhi Cloth and General Mills Co. Vs.

Ludh Budh Singh, The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, in support of the writ petition.

7. To buttress his argument that whenever a dispute with regard to the legality and fairness of a domestic inquiry is in dispute and the Management has reserved its right to adduce the evidence if it is held that the inquiry conducted by it was defective, the Tribunal or the labour court as the case may be should adjudicate upon the legality and validity of the domestic inquiry first, as a preliminary issue. Reference was also made to a recent judgment of a Constitution Bench of the Apex Court in Karnataka State Road Transport Corpn. v. Lakshmiddevamma and Anr. 2001 LIC 1777 . Finding a conflict in the decisions in Shambhu Nath Goyal Vs. Bank of Baroda and Others, and Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, the matter was referred to a Bench of more than three Judges. On reference, the Constitution Bench approved the ratio as laid down in the case of Shambhu Nath Goyal (supra). In the case of Shambhu Nath Goyal, it was laid down that employer has in law a right to adduce additional evidence in a proceeding before the labour court or Industrial Tribunal either u/s 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it.

8. In para 5 of the judgment it has been observed that in the case of Rajendra Jha (supra) the Court did not lay down any law contrary to the judgment of Shambhu Nath Goyal's case (supra). However, it was held that the law laid down by the Apex Court in the case of Shambhu Nath Goyal is the correct law on the point. The learned senior counsel for the petitioner referred various paragraphs of the said judgment such as 8, 11, 15, 16, 17 and 18 to show that the said judgment lays down the law that in such matters where validity of domestic inquiry is to be examined, the said issue should be decided as a preliminary issue. It may be noticed that the Apex Court has in a relied upon case, i.e., Karnataka State Road Transport Corporation (supra) has referred its earlier judgment in Delhi Cloth and General Mills v. Ludh Budh Singh (supra) and Cooper Engineering Ltd. v. P.P. Mundhe and Ors. cases.

9. It may be noticed that in the Full Bench decision of this Court, i.e., Swarup Vegetable Products Industries Ltd. (supra) relied upon by the learned Counsel for the respondents the following issues were referred for consideration by a larger Bench:

1. Whether the Labour Court/Industrial Tribunal have any statutory or legal obligation to decide any issue as preliminary issue while adjudicating an industrial dispute in accordance with procedure provided under Rules framed under U.P. Industrial Disputes Act?

2. Whether the High Court can in exercise of its jurisdiction under Article 226 of the Constitution mandate a Court or Tribunal to follow a procedure contrary to statutory Rules?

10. The Full Bench decision in the case of Swarup Vegetable Products Industries Ltd. (supra) considered the various judgments of the Apex Court including that of the relied upon judgments by the petitioner namely Cooper Engineering Ltd. v. P.P. Mundhe (supra), Shambhu Nath Goyal v. Bank of Baroda and Ors. (supra) and held as follows:

15. From the conspectus of views expressed by the Supreme Court in the aforementioned decisions, the position that emerges is that 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 the 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.

11. It specifically overruled its earlier Division Bench judgment in the case of D.C.M., Sriram Industries Ltd. v. State of U.P. and Ors. 1996 (72) FLR 713. wherein it was held that management can lead evidence to establish a charge against the workman only after the decision on the issue as to whether the domestic inquiry was fair and proper and, therefore, such issue should be taken as a preliminary issue. The said decision has been subsequently overruled.

12. In D.C.M. Shriram Industries Ltd. Vs. State of U.P. and others, , identical dispute was sought to be raised by the employer. This Court held that all issues be decided together and expeditiously and no interference is warranted under Article 226 of the Constitution of India.

13. In view of the aforesaid authoritative pronouncement by a Full Bench decision of this Court, no interference under Article 226 of the Constitution of India is called for.

There is no provision under the Act atleast none was pointed out to this Court by the petitioners' counsel which may command an Industrial Tribunal to decide

preliminary issue first. On the contrary the Apex Court has consistently held that in labour disputes, the High Court should not interfere against an order passed at the interlocutory stage of a proceeding.

14. In the case of D.P. Maheshwari Vs. Delhi Administration and Others, the Apex Court has held that there was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. It has been held that it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. The relevant portion is reproduced below:

There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may 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 Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequence. After all Tribunals like industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 236 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

15. Reference may also be made to S.K. Verma Vs. Mahesh Chandra and Another, In that case, Supreme Court commented that there appears to be three preliminary objections which have become quite the fashion to be raised by all employees. Firstly, there is no industry. Secondly, there is no industrial dispute. Thirdly, the workman is "no workman."

16. The attention of the Court was also invited to National Council for Cement

and *Building Materials v. State of Haryana* (1996) 3 SCC 306, wherein the Court deprecated the practice of the management to raise preliminary issues with a view to delay adjudication of industrial disputes.

17. In our considered opinion, in the present case, it cannot be said that the courts below have committed any error of jurisdiction in not deciding the issue as to the maintainability of claim-petitions as preliminary issue. It is well-settled that generally, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues.

18. Before more than hundred years, the Privy Council in *Tarakant v. Puddomoney* (1866) 10 MIA 476, favoured this approach.

19. Speaking for the Judicial Committee, Lord Turner stated:

The courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the courts below should as far as may be practicable, pronounce their opinions on all the important points.

(Emphasis supplied)

20. The above principle has been consistently followed. Supreme Court dealing with the provisions of Order XIV, Rule 2 (prior to the amendment Act of 1976), in *Major S.S. Khanna Vs. Brig. F.J. Dillon*, stated:

Under Order XIV, Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues, in a suit should be tried by the Court, not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of the suit.

(Emphasis supplied)

21. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated:

This rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits,

with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the court of first instance for trial on the pther issues. This causes delay. It is considered that this delay should be eliminated by providing that a Court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.

(Emphasis supplied)

22. In view of the above discussion, no interference is called for. Both the writ petitions are hereby dismissed summarily. No order as to costs.