

(2002) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7255 of 2002

Gohana Co-operative Marketing-cum-Processing Society Ltd. APPELLANT
and Another

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court and RESPONDENT
Others

Date of Decision : 16-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 LLJ 1105

Hon'ble Judges : Swatanter Kumar, J;Mehtab S. Gill, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—We had heard the learned counsel for the petitioner at some length. Challenge in this petition under Article 226 of the Constitution of India is to the order, dated March 20, 2001, Annexure P1 to the petition, vide which the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, dismissed an application filed by the management for disposing of the reference on the basis of principles of resjudicata.

2. The contention of the management before the Labour Court was that the workman had earlier filed a suit challenging termination of his services in the Civil Court. The learned Special Judge, GOHANA, vide judgment and decree, dated May 27, 1991, passed in Civil Suit No. 22 of 1988 held that there was no illegality committed by the management in terminating the services of the workman. It also held that the civil Court had no jurisdiction and decided the said issue in favour of the defendant in the suit. This judgment and decree was challenged by the workman in appeal. The learned Additional District Judge, Sonapat, vide judgment and decree, dated January 13, 1995, dismissed the appeal maintaining the findings recorded by the learned trial Court on all issues.

3. Thereafter the workman raised an industrial dispute and filed the statement of

claim, which was referred by the appropriate Government to the Labour Court at Rohtak, The workman filed the statement of claim to which written statement was filed by the management and also an application was filed for dismissing the reference on the principles of res judicata as the workman had availed the remedy before the civil Court.

4. The basic contention of learned counsel for the petitioner is that the findings recorded in relation to legality and otherwise of termination by the civil Courts have attained finality as the judgment of the learned First Appellate Court has not been challenged by any of the parties to the lis. The workman could not have invoked the special jurisdiction under the provisions of Industrial Disputes Act.

5. It is true that exercising its right under the doctrine of election, the workman could elect a remedy available to him under the civil law or the special law. The workman did invoke the jurisdiction of the civil Court and, thus, elected a remedy. The workman having elected the remedy must face the consequences of his election and result of election must be taken to its logical end. The most material factor in the present case is that while deciding issue No. 3 in the suit, the learned trial Court held that it had no jurisdiction to entertain and decide the suit. The Appellate Court had affirmed its finding and held as under:

"In the net result, I conclude that the civil Court had no jurisdiction to grant the relief prayed for in this case. The suit before the civil Court was not maintainable. The appropriate remedy before the appellant was to approach the Labour Court or the redressal of his grievance."

The above finding of both the Courts was accepted by the management. Once the civil Court held that it had no jurisdiction to entertain the suit as the suit was not maintainable, then it could hardly record any findings on the merits of the case. We are intentionally not discussing this issue, in any further elaboration to avoid prejudice to any of the parties in the proceedings pending before the Labour Court. The prima facie conclusion arrived at by the Labour Court that the reference was not bad on account of being barred by principles of res judicata is a finding which is correct and does not call for any interference by this Court.

6. The learned counsel for the petitioner placed reliance upon the judgment of the Honb"le Apex Court in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, wherein it was said that the jurisdiction of the civil Court is alternative leaving it to the election of the suitor concerned to choose his remedy. This principle of law cannot be disputed, but it has no application in the facts and circumstances of the present case. In any case this Court cannot comment upon the judgment of the civil Court as it is not in challenge before us. On the contrary, even the management has accepted the judgment of the civil Court and did not prefer any appeal or other remedy available in law against the said judgment.

7. For the reasons aforesaid, we see no reasons to interfere. Dismissed in limine.