

(2009) 06 BOM CK 0112

In the Bombay High Court

Case No : O.O.C.J. Appeal No. 486 of 2008

Hindustan Unilever Ltd.

APPELLANT

Vs

Hindustan Lever Employees Union and Another

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Citation : (2009) 122 FLR 1071 : (2009) 4 LLJ 814 : (2009) 6 MhLj 612

Hon'ble Judges : R.S. Mohite, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : P.K. Rele, instructed by Sanjay Udeshi and Co, for the Appellant;
Meera Doshi, for the Respondent

Judgement

1. By this appeal, the appellant challenges the order made by the learned single Judge of this Court in Writ Petition No. 1861 of 2008 dated September 23, 2008. That petition was filed by the appellant challenging Part I of the Award made by the Labour Court. By that Award the Labour Court has held that the departmental inquiry held against the respondent was not valid and proper. The learned single Judge, from the order impugned it appears that, dismissed the petition relying on the observation of the Supreme Court in its judgment in the case The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . Without going into the merit of the finding recorded by the Labour Court in Part I of the Award, the learned Counsel appearing for appellant submits that the learned single Judge while declining to entertain the petition, has not considered the problems that were pointed out by the petitioner, in leading evidence before the Labour Court because the incident is about 20 years old and according to the petitioner the whereabouts of the witnesses are not known.

2. We have heard the learned Counsel-appearing for Union of India. In our opinion, before declining to entertain the petition on the ground that the petitioner can challenge Part I of the Award in case Part II of the Award goes against the petitioner, the learned single Judge should have applied his mind to the doubts expressed by the petitioner about his ability to lead evidence in the

matter due to expiry of 20 years. In our opinion, if the employer is right in contending that because of passage of time he is not able to lead evidence then inability of the employer to lead evidence is bound to result in recording finding against him also in Part-II of the Award. The learned single Judge should have considered whether the finding recorded by the Labour Court that the enquiry is not proper, is correct or not. In case the learned Judge had found that the finding is correct then the petition should have been dismissed and not because the correctness of that finding is to be examined only after Part II of the award is made. It was also open to the learned single Judge to go into the reasons given by the petitioner for his inability to lead evidence before the Labour Court. In case, the learned single Judge had found that the petitioner is in a position to lead evidence even after expiry of 20 years then and then only the petition could have been rejected on the ground that the correctness of the finding that the enquiry is not proper, can be examined after Part II of the award is passed.

3. Taking overall view of the matter therefore, in our opinion, the learned single Judge was not justified in rejecting the petition in limine. The learned single Judge, in our opinion, should have admitted the petition for final hearing and after considering all relevant aspects should have passed final order. Hence, in our opinion, the following order would meet the ends of justice:

The order dated September 23, 2008 passed in Writ Petition No. 1861/2008 is set aside. That writ petition is admitted for final hearing. Hearing of that petition is expedited. The learned single Judge dealing with the Writ Petitions is requested to hear the petition as expeditiously as possible. The petitioner shall be at liberty to apply for appropriate interim relief before the learned single Judge.