

(2000) 09 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 10620 of 1993 and W.M.P. No's. 16217 and 16218 of 1993

Jambunathan B.M.

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 18-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17

Citation : (2001) 91 FLR 684 : (2001) 3 LLJ 1266

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for a writ of certiorarified mandamus to call for the records of the order dated February 19, 1993, of the first respondent in I.A. No. 93 of 1993 in I.A. No. 43 of 1991 in W.J. No. 6 of 1984 and to quash the same and to direct the first respondent to decide the issue relating to jurisdiction as the first issue along with other issues while disposing of the entire case after a full-fledged trial and to pass such further or other orders and thereby render justice.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein be has narrated all the facts and circumstances that forced him to file the present writ petition and requested this Court to allow the writ petition as prayed for. Per contra, though no counter-affidavit has been filed on behalf of the respondents, the matter was contested by the second respondent and learned counsel appearing for the second respondent pleaded that the writ petition may be dismissed for want of merits.

3. Heard the arguments advanced by learned counsel appearing for the

respective parties. I have perused the contents of the affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by learned counsel appearing for the respective parties during the course of their arguments. I have also perused the various decisions relied on by learned counsel appearing, for the respective parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration is, as to whether there are any valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner herein was appointed by the second respondent herein, i. e., the UNI, as a working journalist from June 23, 1972. He has been an active trade union member and the management did not take kindly to his union activities and transferred him from Madras to Bangalore with effect from July 10, 1974. At Madras, he was a sub-editor and was transferred to Bangalore in the same capacity, with mala fide intention, which he was unaware of. As it is the practice of UNI to promote a working journalist on transfer, hoping that he would be given a higher post of chief sub-editor with promotion at Bangalore, he went there. But the management posted over him as chief sub-editor there, a person who was junior to him in service. So the union at Bangalore raised an industrial dispute. During the pendency he was again transferred to Madras with effect from September 7, 1980, after six years, which again should be with a promotion as per the practice. On transfer to Madras, he was assigned and was discharging the duties which relate to a senior correspondent in Group II of Class I establishment and this post should have been given by reason of his promotion on transfer to Bangalore from the post of subeditor to chief sub-editor and on further transfer to Madras with another promotion to this post of senior correspondent. At Madras, the duties of senior correspondent were properly assigned taking into account his transfers and promotions but no orders of promotion to this post was given, and he was not paid salary of the post, which was Rs. 750-30-900-70, etc., as per the Shinde Award and from October, 1980, Rs. 1,200-75-1500-80, etc., as per the Palekar Award. He was paid only Rs. 696 basic. Meanwhile, in the industrial dispute pending before the Labour Court at Bangalore, a settlement was reached and it provided, "Mr. Jambunathan will be promoted to the next higher grade with effect from October 1, 1981." But this was not done. He should have been placed in Group I of the Palekar Award, i.e., the post of special correspondent, the next higher post to senior correspondent, with effect from October 1, 1981. Its scale of pay is Rs. 1,335-95-1715, etc., as per the Palekar Award. They have not paid him this salary. On October 15, 1982, they issued an order placing him who was in grade II in the grade which is equal to II-A, i.e., senior reporter, a step lower instead of placing him in the higher grade of I-B, i.e., special correspondent. So he had to claim the difference between the wages payable and paid. His claim fell on deaf ears. So he filed an

application u/s 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, to the Secretary, Department of Labour. The management filed a reply to it. The Government of Tamil Nadu, in exercise of its powers under Sub-section (2) of Section 17 of the Act 45 of 1955, referred the dispute to the first respondent for adjudication, by its order G.O. Ms. No. 1494, dated July 5, 1984, and it was numbered as W.J. No. 6 of 1984. He has filed his claim statement dated September 11, 1984, stating, inter alia, that he was entitled to be paid the arrears of wages as claimed in the order of reference. He had also filed, as an annexure, a statement showing the amounts due to him which was as on August 9, 1983, Rs. 9,700.05. The second respondent-management filed counter denying his claims, including transfers being coupled with promotions, the posts which were held by him by virtue of his discharge of duties of those posts, etc. The trial was commenced and the case was adjourned from time to time and it is the case of the petitioner herein that with a view to protract the proceedings and to harass him, the second respondent filed an application I.A. No. 42 of 1991 for leave to file additional counter, raising a non-existent and untenable issue relating to jurisdiction. It is clear that if the application for deciding the jurisdiction is decided, either party will file a writ petition and the matter will be stuck for decades. This application for leave to file additional counter was filed belatedly, seven years after the claim statement was filed 6 1/2 years after the counter was filed 2 1/2 years after the trial had commenced and long after he closed his evidence. But it was allowed on August 16, 1991. Thereafter, there had been a writ petition before this Court and after disposal of the same, he filed a reply statement to the additional counter filed by the management, led evidence, marking documents relating to the jurisdictional issue and concluded his evidence. Therefore, the petitioner requested this Court to decide the issue relating to jurisdiction as the first issue while disposing of the case after a full-fledged trial, so that in the event of the Labour Court coming to the conclusion that it had the jurisdiction to entertain the W.J., it could pass an award on merits. So he filed an application in I.A. No. 93 of 1993 praying the Labour Court "to determine whether the issue relating to jurisdiction is to be decided, now as a preliminary issue or later as the first issue while passing the award". This was opposed by the respondent, arguments were heard and an order was passed on February 19, 1993, directing that I.A. No. 43 of 1991 should be taken up for deciding the issue relating to jurisdiction as the preliminary issue and not as the first issue while disposing of the case. According to the petitioner, this order of the Principal Labour Court in I.A. No. 93 of 1993 in I.A. No. 43 of 1991 in W.J. No. 6 of 1984 and dated February 19, 1993, is arbitrary, illegal and is liable to be set aside.

6. Challenging the impugned order, it is contended by the petitioner herein that there is no application of mind by the Court, that the order contains no reason at all, that it is merely a summary of the contentions of both the sides and that it states no reason for rejecting his counsel's contention or for accepting the

contention of the respondent except stating that deciding the preliminary issue will not affect either party. It is also claimed by him that the management is evading the examination of their witness on one flimsy pretext or the other, and if the management examines its witness, the case will be over in one week and there can be a full-fledged award on the merits. Further, according to him, the mala fide intention on the management in filing the application to take up the issue relating to jurisdiction as a preliminary issue and not as the first issue while disposing of the W.J. on merits, is only to prolong the proceedings for decades, which is quite clear. It is also his case that if this issue is decided, either party will take up the matter to the High Court and then to the Supreme Court and, finally, if it is held that the Labour Court did have the jurisdiction and the matter should be decided on merits, the case would be remanded to the Labour Court where evidence has to be taken with the management examining its witnesses and the petitioner leading contra evidence, if necessary. After the Labour Court finally passes an award, there will be another round of litigation, going up to the Supreme Court.

7. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims and counter-claims made by the rival parties the following are the admitted facts: There had been dispute between the parties with regard to the promotion, etc., which ended in W.J. No. 6 of 1984 wherein the petitioner herein filed a claim statement and the management filed counter. Thereafter, there had been delay in the proceedings of the trial and, in the meantime, the management filed I.A. No. 43 of 1991 for deciding as a preliminary issue, the said issue relating to jurisdiction. Thereafter, the petitioner filed an application in I.A. No. 93 of 1993 praying the Labour Court to determine whether the issue relating to jurisdiction is to be decided, now as a preliminary issue or later as the first issue while passing the award. This was opposed by the respondent, arguments were heard and an order was passed on February 19, 1993, directing that the said I.A. No. 43 of 1991 should be taken up for deciding the issue relating to jurisdiction as the preliminary issue. Aggrieved by the said order, the present writ petition has been filed.

8. It is significant to note that in the impugned order the Labour Court has held that deciding the jurisdiction of the said Court over the matter as a preliminary issue will not affect both the parties in any way and it also opined that it would not be proper for the Court to go into a matter in which it has no jurisdiction and, hence, it rightly decided to decide the Jurisdiction issue first. The main objection raised for the same by the petitioner herein is that the same will only prolong the proceedings for decades since if this issue is decided either party will take up the matter to the High Court and then to the Supreme Court and, finally, if it is held that the Labour Court did have the jurisdiction and the matter should be decided on merits, the case would be decided on merits, the case would be remanded to the Labour Court where evidence has to be taken with the management examining its witnesses and the petitioner leading contra evidence, if necessary and after the Labour Court finally passes an award, there will be another round

of litigation going up to the Supreme Court. There is no force in the said contention of the petitioner. Because when a question arises as to whether the particular Court has jurisdiction to try the said matter or not, it should be decided first before going into the merits of the case. This is what happened in this case and that, therefore, I do not see any illegality or infirmity or arbitrariness in the said order/stand of the Labour Court. Another significant aspect in this case is, although the petitioner expressed grievance over the delay of the disposal of the matter and the several rounds of litigation up to the Supreme Court, it is to be noted that this writ petition has been filed only by him aggrieved over the decision of the Labour Court over the jurisdictional issue and the present writ petition is pending before this Court for the past so many years. Therefore, in such circumstances, I do not see any merit whatsoever in the various contentions raised by the petitioner herein challenging the impugned order of the Labour Court.

9. In support of the writ petition, the petitioner herein has filed the following decisions:

1. Indian Oil Corporation Ltd. v. State of Bihar 1981 Lab IC 1384.
2. National Council for Cement and Building Materials Vs. State of Haryana and Others, .
3. The Workmen and Others Vs. Hindustan Lever Ltd., .
4. D.P. Maheshwari Vs. Delhi Administration and Others,
5. S.K. Verma Vs. Mahesh Chandra and Another, .

10. All the above decisions deal with the expediency of the cases and with regard to the raising of frivolous preliminary issues, etc., and in any of these decisions the subject-matter is not with regard to the issue of jurisdiction. That being so, no help is coming forth from these decisions to the petitioner herein to advance his case further.

11. Per contra, on behalf of the respondents, the following decisions were relied on:

1. The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, wherein it has been held thus:

"Employer can move High Court at initial stage of proceedings before Industrial Tribunal regarding jurisdiction of Industrial Tribunal and normally such question to be decided by the Tribunal itself in the first instance."

2. Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., wherein it has been held thus:

"If the Bench of two Judges in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , found themselves unable to agree with the law laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ,

they could have referred Jeet Ram's case, (supra), to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a co-ordinate Bench of the same Court in Motilal Padampat Sugar Mills" case (supra)."

12. Among these decisions, the one in Express Newspapers Private Ltd. v. Their Workmen, (supra) squarely applies to the facts of the case on hand.

13. Therefore, for all the aforesaid reasons and, in the facts and circumstances of the case also, in view of my above discussions, with regard to the various aspects of the case, and also in the light of the various decisions relied on by the parties, I am of the clear view that the petitioner herein has failed to make out any case in their favour and that, therefore, there is no need for any interference with the order impugned in this writ petition. Thus, the writ petition fails and the same is liable to be dismissed for want of merits.

14. In the result, the writ petition is dismissed. No costs. Consequently, W.M.P. Nos. 16217 and 16218 of 1993 also are dismissed.