

**(2001) 03 RAJ CK 0021**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 5109 of 1992**

Management, Rambagh Palace Hotel

APPELLANT

Vs

Judge Labour Court, Jaipur and Another

RESPONDENT

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**Date of Decision : 13-03-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 136, 226, 227  
Industrial Disputes Act, 1947 — Section 25

**Citation :** (2002) 1 RLW 151 : (2001) 4 WLC 638 : (2001) 3 WLN 672

**Hon'ble Judges :** J.C. Verma, J

**Bench :** Single Bench

**Advocate :** Manoj Sharma, for the Appellant; P.V. Calla, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Verma, J.

(1). The labour dispute in regard to termination of service of respondent No. 2 Mithu Lal is still pending before the Labour Court for the last 17 years for final adjudication. Primarily for the reason that stay had been granted by this Court against the decision of preliminary issue in regard to legality of domestic enquiry held by petitioner management against the workman; the main dispute is still pending.

(2). The respondent workman was dismissed from service in August, 1986. He raised the industrial dispute vide Annexure-5 and vide Annexure-7 dated 12.3.90 the dispute was referred to Labour Court for adjudication on the point of termination of service of workman. The workman challenged the order of termination on the point of domestic enquiry as well to the effect that the enquiry held by the management was unfair and not legal or against the principles of natural justice. This objection of petitioner was heard by Labour Court and vide order 9.6.92, copy of which is attached as Annexure-10. The Labour Court had returned the finding that the enquiry as held by the petitioner

was not in accordance with law and stood vitiated. As is required under law the petitioner management was directed to lead fresh evidence in support of allegation for proving the charge. The petitioner management instead of fighting the case in Labour Court on merits, filed present writ petition challenging the impugned order Annexure-10, given on preliminary issue. The proceedings of Labour Court were stayed by this Court.

(3). The fact remains that the actual dispute of workman in regard to legality of termination of service of workman has not been adjudicated upon as yet. Counsel for petitioner submits that even though in normal course, the writ petition is not maintainable on the decision of preliminary issue, but if the principle issue itself establishes the right of party in that situation according to petitioner the writ petition is still maintainable.

(4). Per contra, the counsel for respondent relies on the judgment in case of D.P. Maheshwari vs. Delhi Admn. & Ors. (1) and The Cooper Engineering Ltd. vs. P.P. Mundhe (2).

(5). The Apex Court in case of the Cooper Engineering Ltd. (supra) has held that in regard to illegality or defective domestic enquiry pleaded in labour dispute, such question if decided as preliminary issue, and on the decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court or not; if it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. The Hon"ble Supreme Court had cautioned that there would 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 final award. It shall also be legitimate for the High Court to refuse to intervene at that stage. It was observed as under:

"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 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."

(6). In case of D.P. Maheshwari (supra) the Hon"ble Supreme Court has held that the Tribunals entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in disputes at the same time without trying some of them as preliminary issues. Nor the High Court in exercise of their jurisdiction under Article 226 of the Constitution should stop the proceedings before the Tribunal so that a preliminary issue may be decided by them. It was held as under:-

"It is also worthwhile remembering that the nature of the jurisdiction under Article 226 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."

(7). From the reading of the judgment in case of D.P. Maheshwari (supra), it shall now be clear that it is not at all necessary for the Labour Court to frame any issue as preliminary issue or to decide any issue as Preliminary Issue. The Apex Court had mandated that Labour Court should decide all the issues together. The reasons for such dictum is apparent as one or the other party, who is aggrieved of the decision on preliminary issue, can cause the delay in getting the industrial dispute adjudicated upon by approaching the High Court under Article 226 and 227 of the Constitution of India, and, therefore, it is mandatory that all the issues including those issues of jurisdiction of Labour Court must be decided along with main dispute and even if such issue is decided as preliminary issue, the High Court may not entertain the writ petition in view of the judgment of Apex Court in case of D.P. Maheshwari (supra).

(8). I find merit in the submission of counsel for respondent. The Labour Court had only vitiated the enquiry as preliminary issue. The petitioner had a right to lead the evidence in support of the allegations in charge sheet. Despite the fact that Supreme Court has cautioned in both the cases above that the challenge in High Court would unnecessarily result in dragging the litigation, in the present case the petitioner has been successful in stalling the proceedings of Labour Court for about 10 years despite the settled law annunciated in the year 1975 and again in the year 1982 in above said cases.

(9). The Tribunal had only given finding on the preliminary issue, whenever the case is finally decided, the petitioner could have been challenged if so advised alongwith the final adjudication of dispute instead of peacemeal litigation. The Industrial Dispute Act is welfare legislation for resolving the dispute and not for dragging the parties for protacted litigation specially the working class for which expedience, easier remedy has been provided under the Industrial Disputes Act.

(10). Agreeing with the counsel for respondent and in view of the law laid down by the Apex Court in above said cases, I am not inclined to interfere in the writ petition and the same is dismissed.

(11). However, before parting with the judgment, it is the case where necessary direction is required to be issued to Labour Court to decide the dispute finally positively within six months from the date of receipt of the certified copy of the order by the concerning Labour Court. The parties shall cooperate for resolving the dispute pending before the Labour Court.

(12). For the reasons mentioned above, the writ petition is dismissed.