

(2001) 03 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3843 of 1995

Modern Woolens Mills Ltd.

APPELLANT

Vs

Judge, Labour Court, Jaipur and Another

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

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

Citation : (2002) 1 RLW 216 : (2002) 2 WLN 427

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

Bench : Single Bench

Advocate : Virendra Agrawal, for the Appellant; P.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Verma, J.

(1). The petitioner Modern Woolen Mills Ltd. (hereinafter to be referred as "employer") has filed this writ petition against the interim order dated 7.2.95 (Annex.4) passed by the Labour Court in the reference of termination of service of respondent No. 2 Kailash Tiwari on 15.9.88, which reference was made in the year 1990 with the reference order to the fact whether the termination order dated 5.9.87 of workman was justified or illegal or not? Copy of the statement of claim and the reply has been filed. It was the objection of the employer before the Labour Court that no termination order was passed against the workman and the workman himself had left the job amounting the abandonment, therefore, the reference was not in accordance with the pleadings of parties and the reference ought to have been to the effect whether the workman had abandoned the job or not?

(2). On the objection taken by the employer, the Labour Court vide order dated 7.2.95 had observed on the contention of the employer that the workman had abandoned the job, and, therefore, no Industrial dispute could be raised; the

reference itself was bad. The Labour Court has observed that in view of the pleadings of parties, the reference was in regard to termination of service and if it is found that workman himself had abandoned the job, the appropriate order can be passed in this regard.

(3). Against such interim order, the petitioner employer has preferred the writ petition, which is pending right from 1995 and even the petitioner was able to get the proceeding before the Labour Court stayed. Meaning thereby, the termination of the workman in the year 1987, reference of which was made in the year, 1990, is still pending for the last 13 years and yet is to be adjudicated upon.

(4). Learned counsel for the petitioner states that a reading of the terms of reference itself would show that the termination is implied and as such the reference so made was bad.

(5). Reliance has been placed on the decision of Bombay High Court in case of *Sheshrao Bhaduji Hatwar v. P.O., First Labour Court and Ors.* (1). Reliance has also been placed on the judgment in case of *D.P. Maheshwari v. Delhi Admn. and Ors.* (2).

(6). In the case of *M/s. India Tourism Development Corporation, New Delhi v. Delhi Administration, Delhi and Ors.* (3) had held that where the real dispute between the parties was whether there was a lock-out or closure in the establishment and the Government referred the dispute by assuming that there was a lock-out, the order of reference was liable to be interfered with as the Labour Court could not travel beyond the reference and decide the question as to whether there was a lock-out. It was held that the case of the management was of closure and, therefore, whether it was a case of closure or lock-out was a real dispute which can more appropriately be determined in industrial adjudication. It was held that the Tribunal could not have enlarged the scope of the dispute. A direction was given to the State Government to make another order of reference in the light as per the submissions of the parties.

(7). The Full Bench of Delhi High Court related to the question of lock-out or closure which involves different results and consequences on the decision, if either of the contention is accepted; this case has no relevancy in the case in regard to termination of service.

(8). *Sitaram Vishnu Shirodkar v. The Administrator, Government of Goa and Ors.* (4), was a case of Bombay High Court. The defence was in regard to termination of the services of workman. On the contrary the case of the management was that the workman had absented from duty. The Government had made a reference about the legality of the termination of service of the workman. The reference proceeded under the basis that there was termination of service. It was held by the Court that the matter in regard to abandonment could not have been taken by the Tribunal, however, above-said case had again come for consideration before the Division Bench of " Bombay High Court in the case of

Sheshrao Bhaduji Hatwar v. P.O. First Labour Court and Ors. (supra) as discussed above. It was held that the observations made in the case of Sitaram Vishnu Shirodkar (supra) were per inquerium as the decision of various Supreme Court judgments on the point were not brought to the notice of the Court.

(9). Reliance has also been placed by the respondent on the decision of Apex Court in the case of The Cooper Engineering Ltd. v. P.P. Mundhe (5), wherein it was 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."

(10). 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 astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues."

(11). 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 the issue 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).

(12). After hearing learned counsel for the Parties and going through various authorities, I respectfully agree with the D.B. judgment of the Bombay High Court in the case of Sheshraq Bhaduji Hatwar (supra) and do not find any fault with the impugned order of the Labour Court.

(13). The parties shall be at liberty to lead their evidence in regard to the respective claim of the defence. The term "termination" involves determining of service either by the Act of the employer or even by the act of employee. In the case of service having been put to end by either of the party, the employer is entitled to plead in the reference made against or in regard to termination that the termination was not effected by him or it was an act of voluntary abandonment or resignation or any such other plea and the Labour Court is bound to go into the defence of the employer in this regard. In case it is proved by the employer that the employee had abandoned the job himself, the law will take its own course and so is the position if the employer proves the termination to be valid or justified and legal.

(14), The present dispute was referred in the year, 1990 of the alleged termination of the year 1987-88. Already 13 years have passed from the date of the alleged termination. Despite holding of the Hon"ble Supreme Court in D.P. Maheshwari v. Delhi Admn. and Ors. (supra), and case of Cooper Engineering (supra) the interim order had been challenged in the High Court specially when it was a case where the Labour Court was competent to go into the matter of defence raised by the employer and had also observed that the employer could prove the case of abandonment before the Labour Court. At the most, even if the plea of the employer is accepted, as challenged in the writ petition, there would not be any material change in the result as in that situation, the reference still can be made to the effect and in regard to termination or abandonment or both. It would not make any material difference when specially the Labour Court had authorised the employer to prove his defence as pleaded. In my opinion, the present case squarely falls within the observations made in D.P. Mahesh-wari's case (supra) and Cooper Engineering's case (supra) by the Apex Court and the respondent workman has been unnecessarily dragged against the interim order passed by the Labour Court and had delayed the proceeding before the Labour Court for another 10 years. The Hon"ble Supreme Court had deprecated the practice of challenging the order passed on preliminary issues before the High Court and has already mandated; that against the preliminary issues decided by the Labour Court at interim stage, the High Court under Article 226 of the Constitution of India shall not ordinarily entertain the petition; but despite the

fact, the petitioner had delayed the proceedings for another 10 years.

(15). For the reasons mentioned above, I do not find any justification as to accept any of the contention of the petitioner and the writ petition is dismissed with a cost of Rs.5,000A.

(16). The matter is pending before the Labour Court for last more than 10 years. It is expected of the Parties as well from the Tribunal that the industrial dispute shall be now decided within six months from the receipt of the certified copy of the order by the concerning Labour Court.