

(2014) 09 MAD CK 0089

In the Madras High Court

Case No : C.R.P. (PD)(MD) No. 1840 of 2013 and M.P. (MD) No. 1 of 2013

National Horticultural Research and Development Foundation
(NHRDF)

APPELLANT

Vs

P. Murugesan

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(4), 2(A)

Citation : (2014) 09 MAD CK 0089

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Judgement

N. Kirubakaran, J.—The Civil Revision Petition has been filed by the Management against the order of dismissal of its application filed to decide the maintainability of the petition filed by the respondent under Section 2(A) of the Industrial Disputes Act, as a preliminary point at the first instance before embarking upon the merits of the case.

2. The respondent herein is a workman under the petitioner and his initial appointment was made as a Technical Assistant in Dindigul Office, on 19.08.1983. Thereafter, he was transferred to Kurnool District, Andhra Pradesh, as a Technical Officer by an order dated 15.06.2009. Subsequently, on 17.08.2009, the respondent was transferred to EC Varanasi. Since the respondent did not join the duty, after issuing a charge memo, a domestic enquiry was conducted and thereafter he was dismissed from service by an order dated 21.07.2010. The respondent filed a petition before the Assistant Commissioner of Labour (Conciliation) Dindigul and a failure report of the Conciliation Officer was issued under Section 12(4) of the Industrial Disputes Act, on 30.11.2009. Since, the Conciliation failed, the respondent filed a petition under Section 2(A) of the Industrial Disputes Act, seeking the relief to take the dispute for adjudication to set aside the domestic enquiry pending and pass awards of reinstating him with full back-wages, continuity of the service with

other consequential benefits. In the said petition, the petitioner herein filed a counter statement and the matter is pending.

3. At that stage, an application has been filed in I.A. No. 95 of 2012, questioning the maintainability of the petition filed by the petitioner under Section 2(A) of the Industrial Dispute Act. The said petition was dismissed by the Labour Court. Challenging the same only, the present Civil Revision Petition has been filed by the Management.

4. The case of the petitioner is that there is no Branch Office of the petitioner at Dindigul and therefore, there is no jurisdiction. Moreover, the respondent was transferred from Kurnool to Varanasi and the transfer order was passed in Nasik. The respondent did not join in the transferred place. Therefore, the charge memo was issued. On the basis of the enquiry, the respondent was dismissed from service. Hence, the cause of action does not arise within the jurisdiction of Dindigul and if at all, it is only at Kurnool or Nasik. Even the Conciliation Officer as well as the Labour Court do not have jurisdiction to proceed with the matter. The petitioner relied upon various judgments with regard to the jurisdiction, which are as follows:

- a) S. Padmanabham and Another Vs. Industrial Tribunal-II and Others, .
- b) The Management of Best and Crompton Engineering Limited Vs. The Presiding Officer, I Additional Labour Court, Madras and T.V. Samy, .
- c) 2010 (2) TLNJ 626[Civil] (R.M. Kannappan(deceased) and others -vs- The Deputy Commissioner of Labour Madurai and others).

5. On the other hand, the respondent who appeared in person, would submit that on the date of the complaint dated 28.07.2010, the petitioner's original office had been functioning at Dindigul and even today, the petitioner is having the properties to an extent of ten acres of lands for research purpose at Kombai village, Pannaipatti Branch Post Office. The initial appointment as well as the termination order was received at Dindigul and therefore, the Labour Court has got jurisdiction. The Industrial Dispute can be raised at the place where the order of termination was received or in the place of initial appointment; the Conciliation Officer has given the findings on the jurisdictional issue. In those circumstances, the Labour Court has got jurisdiction. With delay, the Miscellaneous petition has been filed to stop the proceedings.

6. Heard the learned Counsel appearing for the petitioner and the respondent who appeared in person.

7. The Industrial Dispute was raised by the respondent as early as on 13.12.2010 and a notice was sent to the petitioner/Management fixing the first hearing as on 28.01.2011 and after taking 16 adjournments, belatedly the maintainability petition has been filed. Therefore, the petition has been filed only to delay the proceedings. As far as the question of jurisdiction is concerned, as rightly pointed out by the Labour Court, the petitioner was initially appointed in

Dindigul and the Regional Office was situated within the Dindigul District and the respondent has also filed a Conciliation petition, in which the petitioner had also participated.

8. Moreover, after entertaining the Industrial Dispute only, the Office of the petitioner was shifted from Dindigul to Coimbatore and therefore, it cannot be a ground for lack of jurisdiction. The Research Station of the petitioner is also within the said jurisdiction and there are about ten acres of land for research purpose at Kombai Village, Pannaipatti Branch Post Office. All these above facts, would show that the Labour Court has got jurisdiction as the cause of action arises within the jurisdiction.

9. As already observed, the petitioner has belatedly filed a petition to decide the jurisdiction only to scuttle the proceedings. Before the Conciliation Officer, the petitioner participated in the Conciliation and having participated in the Conciliation proceedings, the petitioner cannot be heard to say that the Conciliation Officer has got no jurisdiction, though the petitioner as a last point, in paragraph "5" of the petition filed before the Conciliation Officer, raised the jurisdiction issue. All these points were rightly taken into consideration by the Labour Court and rightly dismissed the maintainability petition.

10. As seen from the records, the petitioner already filed a counter statement on 03.01.2013 and the matter is in part - heard stage. In these circumstances, the present application for maintainability is not sustainable. Moreover, the issue which has been raised in preliminary issue, namely, the jurisdiction, can be adjudicated even at the time of disposal.

11. As held by the Honourable Supreme Court in the matter of D.P. Maheshwari Vs. Delhi Administration and Others, , a peace meal adjudication is not possible and all the issues are to be adjudicated at once. The peace meal adjudication is discouraged only to avoid the multiplicity of proceedings and for early disposal of the matter. It is not as if the petitioner is without any remedy. As pointed out above, the issue can also be raised at the time of final disposal itself. A part of cause of action also gives right to the party to approach the Court in the said jurisdiction as held by the Honourable Supreme Court in S.L.P. ? No. 19549 of 2013 in Nawal Kishore Sharma -vs- Union of India and others dated 07.08.2014 as well as in Bikash Bhushan Ghosh and Others Vs. Novartis India Limited and Another, . The same view has been followed in the National Council for Cement and Building Materials Vs. State of Haryana and Others, .

12. Though as many as 32 judgments have been relied upon by party in person, the following judgments are relevant to this case:

(i) The Honourable Division Bench of this Court in Ramesh S. Vs. Tamil Nadu Petro Products Ltd., Manali Express Highway and Another, ., stated in paragraph "12" as follows:

"12. We must also observe that the Industrial Disputes Act, is one of the

principal statutes intended to promote industrial peace even while securing the just interest of labour. The interests of labour can hardly be said to be secured, it is left to the employer who has a head office in one State to transfer the employee to a distant part of the country where it has a branch office, thereafter proceed to terminate his service, and then contend that the employee must be made to run across the country to have his dispute adjudicated. It is not possible for us to conclude that the Parliament intended such a result to ensue, even by a process of interpretation of the provisions of the Act."

(ii) The Management cannot question the jurisdiction of the Court unless the Management suffers only prejudice. In the same judgment, it has been held that the communication of order of termination itself may give rise to the cause of action. Similar view was expressed by the Honourable Division Bench in M/s. Perfect Automotive Components, New Delhi and M/s. Pricol Lubricants (India) Pvt.Ltd. New Delhi, -vs- M/s. Premier Instruments & Controls Ltd., Madras in O.S.A. Nos. 377 and 378 of 2001 dated 22.08.2008.

(iii) The Honourable Supreme Court in National Engineering Industries Ltd. Vs. State of Rajasthan and Others, held that the Industrial Tribunal is the creation of Statute and it gets jurisdiction on the basis of reference and it cannot go into the question of validity of the reference.

(iv) In D.P. Maheshwari Vs. Delhi Administration and Others, , the Honourable Apex Court deprecated the practise of raising preliminary objection one way or other by the Management just to prolong the litigation.

13. The aforesaid judgments would categorically state that the jurisdiction issue cannot be decided as a preliminary issue and it can be adjudicated at the time of final disposal itself. Part of cause of action arises at Dindigul where the Head Office has located when the respondent approached the Conciliation Officer and shifting of Head Office to Coimbatore, thereafter, cannot oust the jurisdiction. Thirdly, the dismissal order was served upon the respondent at Dindigul and therefore, cause of action is available and the Tribunal rightly dismissed the petition filed by the petitioner and therefore the revision fails and the same was dismissed. Consequently, the connected Miscellaneous petition is also dismissed. No costs.