

(2005) 03 AHC CK 0232

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13094 of 2005

Northern India Textile Research Association

APPELLANT

Vs

Presiding Officer, Industrial Tribunal (V) and H.D. Sharma

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Uttar Pradesh Industrial Disputes Act, 1947 — Section 23, 4K, 6(2A), 6E, 6E(2)

Citation : (2005) 5 AWC 4945 : (2005) 105 FLR 283

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.A. Murtaza, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Syed Ali Murtaza, learned counsel for the petitioner and Learned Standing Counsel for the respondent No. 1.

2. Petitioner the Northern India Textile Research Association Section-23 Raj Nagar, Ghaziabad through its Director Dr. J.V. Rao has filed this writ petition against the order passed by the Industrial Tribunal (V) Meerut dated 4th December, 2004 in Misc. Case No. 7 of 1988 (Northern India Textile Ghaziabad v. Shri H.D. Shrama). The said order of the Industrial Tribunal reads as follows:

"Parties Present.

Fixed 10.1.05 for disposal of issue No. 6."

(The petitioner has made statement that the date for decision of issue no.6 has since been postponed).

3. On behalf of the petitioner it is contended that in view of the Full Bench Judgment of this Court reported in Swarup Vegetable Products Industries Ltd., Mansoorpur, Muzaffarnagar Vs. Labour Court-II, Meerut and another, , the Labour Court is not justified in framing a preliminary issues, it should decide all the

issues simultaneously. Therefore, fixing If date for deciding one single issue is bad.

4. Relevant facts for decision of the present case are as follows:

Respondent No. 2, Sri H.D. Sharma was employed as Duplicating Machine Operator-cum-Clerk in the petitioner's industry. He is alleged to have been served with a charge-sheet dated 19th November, 1986. Workman submitted his reply to the same on 20th November, 1986. It is alleged that domestic enquiry was conducted and after receipt of the enquiry report dated 31st March, 1987, the Director, Northern India Textile Research Association issued an order dated 27th April, 1987 dismissing the workman from service. However, the employers before enforcing the said order of dismissal moved an application u/s 6-E(2)(b) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) inasmuch as there was another industrial dispute pending between the workman and employers being Reference Case No. 53 of 1986 before the Labour Court. The Labour Court on the aforesaid application being made by the employers after exchange of pleadings between the parties framed six issues (as per paragraph 16 of the writ petition), which read as follows:

- "1. Whether the enquiry conducted by the employers was fair/proper?
 2. Whether the Director had gone through the enquiry record, report and previous record? If not its effect?
 3. Whether the punishment order was passed in accordance with the Principle of fair play and natural justice? If not, its effect?
 4. Whether the charge sheet contained vague charges? If so, its effect?
 5. Whether the Enquiry Officer and the punishing authority were biased?
 6. Whether the application is liable to be rejected for Non-compliance of the provisions of Section 6-E(2)(b) in so far as one month's full wages were not paid to the O.P. at the time of passing the order of dismissal?
5. Labour Court for the purposes of deciding the aforesaid issue No. 6 had passed an order dated 4th December, 2004 wherein it had fixed 10th January, 2005 for disposal of issue No. 6. It is this order, which is under challenge in the present writ petition.

Learned counsel for the petitioner submits that in view of the full Bench Judgment of this Court referred to above, the Labour Court while deciding the reference under the U.P. Industrial Disputes Act is obliged under law to consider entire case in the light of the evidence adduced by the parties and has no authority to frame any preliminary issue or to decide any issue as a preliminary issue and therefore, the order dated 4th December, 2004 fixing a date for disposal of issue No. 6 only is illegal and runs contrary to the judgment of the Full Bench of this Court referred to above. It is prayed that the Labour Court may be required to decide the entire application of the employers u/s 6-E(2) (b) of

the Act and to decide all the six issues framed at the time of final disposal of the application u/s 6-E (2) (b) of the Act.

6. I have heard learned counsel for the parties and have gone through the records. .

7. The contention raised on behalf of the petitioner does not appear to be legally correct. Section 6-E of the Act reads as follows:

"[6-E. Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings.- (1) During the pendency of any conciliation proceeding before a Conciliation officer or a Board or of any proceedings before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of Such proceeding, of

(b) for any misconduct connected with the dispute, discharge , or punish, whether by dismissal or otherwise any workman concerned in such dispute save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of, any such proceedings in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings, or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that Workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

8. A bare reading of the aforesaid Section would establish that during the pendency of any proceedings under the Industrial Disputes Act before the Conciliation Officer or before the Labour Court/Industrial Tribunal between the same employer and employee, the employers may in accordance with the standing orders applicable, discharge or punish the workman whether by dismissal or otherwise, provided the workman has been paid wages for one month and an application has been made by the employer to the authority before which the proceedings are pending for approval of the action taken by the employer.

9. Thus for invoking the power u/s 6-E(2)(b) following two conditions, namely

(a) the workman has been paid wages for one month and (b) the application seeking approval or the tribunal/court (before which the proceedings the proceedings in respect of earlier reference had already pending), has been moved, are mandatory. It is therefore, apparent that an application u/s 6-E(2)(b) of the Act for obtaining approval of the Labour Court would be legally maintainable only if the employer had paid wages for one month before making an application seeking approval of the Labour Court.

10. The Labour Court would not be required to adjudicate upon any application u/s 6-E(2)(b) of the Act On merits, if the workman has not been paid his wages for one month. The question of approval of the punishment, which may be impeded u/s 6-E(2)(b) upon the workman would arise only if the wages of one month have been paid to the workman. Therefore, there is no doubt that application u/s 6-E(2)(b) can be adjudicated upon by the Labour Court only if there has been a payment of one month's wages to the workman concerned and in absence of compliance of the aforesaid mandatory requirement, the Labour Court tosses the jurisdiction to decide the application u/s 6-E(2)(b) of the Act.

11. In such circumstances the Labour Court after framing six issues : rightly fixed a date for decision of issue No. 6 before deciding the application, filed by the employers u/s 6-E(2)(b) on merits. Such an act of the Labour Court cannot be said to be illegal in any manner. If issue no. 6 is answered against the employers, the Labour Court will not be required to adjudicate upon the merits of the application filed by the petitioner-employer nor the Labour Court would be required to consider the objections raised by the respective parties in respect of the action taken. The Labour Court cannot be said to have committed any illegality or infirmity in deciding the same before the proceeding to decide the application on merits as the said issue would determine the jurisdiction of the Labour Court itself to entertain the application u/s 6-E(2)(b) or not.

12. So far as the Full Bench Judgment of this Court referred to above relied upon by the learned counsel for the petitioner is concerned; the same is clearly distinguishable, inasmuch as in the said judgment the Labour Court was considering a reference u/s 6(2-A) of the Industrial Disputes Act, namely, whether an order of dismissal, removal or discharge of workman was justified. The Full Bench of this Court has specifically taken note of Section 6(2-A) of the U.P. Industrial Disputes Act, which conferred a power upon the Labour Court/ industrial tribunal to decide the reference as made at the earliest in order to bring an industrial dispute to an end, so that there may be only a piece at the earliest possible and further to modify the punishment, which may have been imposed by the employers even after following the procedure as may be prescribed. It is in this back ground that the Full Bench of this Court has held that Labour Court while deciding the dispute pertaining to the dismissal, removal or discharge u/s 6(2-A) of the Act, has necessarily to decide all the issues together. Reference para-16 of the aforesaid Full Court Judgment, which reads as follows:

"From the conspectus of views expressed by the Supreme Court in the aforementioned decisions, the position that emerges is that once a reference has been made to an Industrial Tribunal, then all the issues which arise, whether jurisdiction or merit must be decided together. The process of adjudication by the Industrial Tribunal/Labour Court must be completed as expeditiously as possible. It is not obligatory on the Industrial Tribunal or Labour Court to frame a preliminary issue. Law does not enjoin the Tribunal to decide if the enquiry was fair and proper initially and then to grant an opportunity to the management if the finding went against It to adduce evidence on the delinquency of the workmen and the punishment imposed. On the other hand, the law casts a duty on the Industrial Tribunal/Labour Court to decide not only whether the domestic enquiry was fair and proper but also whether the punishment imposed by the employer was justified in the facts and circumstances of the Case. The Industrial Tribunal/Labour Court should consider the entire case in the light of the evidence adduced before it. The Industrial Tribunal/Labour Court should particularly bear in mind the provisions of Section 11-A of the Central Act and Section 6 (2-A) of the U.P. Act (U.P. Industrial Disputes Act) and remember that the main purpose of creating a forum for industrial adjudication is to avoid delay in disposal of proceedings. Viewed in this angle, we hold the Division Bench of this Court in the Case of D.C.M. Shriram Industries Ltd., was not right in holding that the management, can lead evidence to establish the charges against the workman only after decision on the issue whether domestic enquiry was fair and proper and, therefore, such issue should be taken as a preliminary issue. It is, accordingly, overruled. The Decision of the single Judge in M/s Star Paper Mills Ltd. (supra) is also overruled. The decision of the single Judge in the case of Vikram Cotton Mills (Supra) has our approval.

13. In the opinion of the Court the legal position laid down by the Hon'ble Supreme Court in the judgment reported in (1983) 4 Supreme Court Cases 293 (D.P. Maheshwari v. Delhi Administration) relied upon by the learned counsel for the petitioner, has also no application, so far as the proceedings u/s 6-E(2)(b) are concerned; and therefore, the aforesaid judgment of Hon'ble Supreme Court is totally distinguishable. Similarly reliance placed by learned counsel for the petitioner upon the judgment of this Court reported in 1999 (2) A.W.C., 1221 (D.C.M. Shri Ram Industries Ltd. v. State of U.P. and Ors.) which is also clearly distinguishable in the facts of the present case inasmuch as the said judgment of this Court is also with reference to the proceedings initiated u/s 4-K of the Act, which already noticed hereinabove, are entirely different proceeding vis-a-vis the proceedings which are referable to Section 6-E(2)(b) of the Act. The jurisdiction of the Labour Court to decide the application for grant of approval u/s 6-E(2)(b) is dependent on payment of one month wages to the workman concerned. It is needless to point out that the Tribunal constituted under the Industrial Disputes Act is a statutory tribunal and is obliged to act within the four corners of the legal provisions, which have been made applicable for the entertainment of various applications under the Act.

14. At this stage it is contended on behalf of the petitioner that necessary payment as contemplated by Section 6-E(2)(b) of the proviso has already been made to the workman. No opinion of the Court is required to be expressed in respect of the said contention as it is always open to the petitioner to lead such evidence as he maybe advised before the Labour Court at the time of disposal of issue no. 6.

15. In view of the aforesaid the writ petition is dismissed.