

(2012) 07 DEL CK 0573
In the Delhi High Court
Case No : Writ Petition (C) 8886 of 2004

R. Muthuswamy

APPELLANT

Vs

The Management of M/s Bhor Industries Ltd.

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2012) 07 DEL CK 0573

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : V. Sudeer, for the Appellant;

Judgement

P.K. Bhasin, J.—The petitioner-workman has in this writ petition under Article 226 of the Constitution of India challenged the award of the labour Court whereby the industrial dispute which had been raised by him concerning the termination of his services by the respondent herein and which had been referred for adjudication to the labour Court, has been decided against him. The petitioner-workman was employed originally by M/s Kamlakshi Finance Corporation Ltd., a sister concern of the respondent herein, in the year 1985. Sometime in the year 1995 his services were taken over by the respondent-herein and as per the petitioner's case that was done because M/s Kamlakshi Finance Corporation Ltd. had closed its operations with effect from 1st April, 1995. The respondent had issued him a fresh appointment letter on 25th April, 1995 and he was posted at Pune. However, there his services were terminated on 10th April, 1996. Feeling aggrieved, the petitioner had approached the labour authorities in the Government of National Capital of Delhi with a grievance that his services had been illegally terminated. The appropriate authority, in turn, referred the dispute about the legality of the termination of his services to the Labour Court for adjudication.

2. Before the Labour Court the petitioner-workman had filed his statement of

claim alleging that his services had been terminated illegally. The respondent had resisted that claim inter alia on the grounds that he was not a "workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947 and further that the Labour Court at Delhi had in any case no territorial jurisdiction to adjudicate the dispute since at the time of termination of the services of the petitioner-workman he was posted at Pune (Maharashtra).

3. The labour Court framed the following issues for its decision:

- i) Whether the claimant is not a workman as defined u/s 2(s) of I.D. Act?
- ii) Whether this Court has no territorial jurisdiction as alleged in preliminary objection-II in W.S.?
- iii) Whether workman accepted full and final settlement amount as alleged in preliminary objection no. IV in W.S.?
- iv) To what relief, if any, is the workman entitled against the Management in terms of the Reference?

4. Thereafter evidence was adduced by the petitioner-workman in support of his case but the respondent-management chose neither to adduce any evidence in support of its defence nor to participate in the trial from the stage of its evidence.

5. In the final award passed by the Labour Court it held that it had no territorial jurisdiction to adjudicate the dispute in respect of the termination of the services of the petitioner-workman since he was posted at Pune at the time of termination of his services and further that since only regional office of the respondent was in Delhi and not registered office no reference could be validly made by the Government of NCT of Delhi. After holding so, the Labour Court decided not to give any findings on the remaining issues which it had framed and accordingly no relief could be obtained by the petitioner-workman from the Labour closed.

6. Feeling aggrieved, the petitioner-workman approached this Court by filing the present writ petition.

7. Notice of this writ petition was given to the respondent-management and though it entered appearance in the matter through its counsel but thereafter he did not appear to argue when the petition was taken up for hearing.

8. The point which arises for consideration of this Court is whether the Labour Court was justified in closing the case after deciding only one of the four issues framed by it for its decision and answer to this question is to be found in a judgment of the Supreme Court in "D.P. Maheshwari vs. Delhi Administration & Others", (1983) 4 SCC 293, wherein the Supreme Court had disapproved the piece-meal decision on various points of disputes between the employers and industrial workmen. This is what was observed by the Supreme Court in the opening para itself of its judgment:-

It was just the other day that we were bemoaning the unbecoming devices

adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the high Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are, constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down....

9. In view of the aforesaid observations made by the Hon'ble Supreme Court way back in the year 1983 the Labour Court was not at all justified in giving its conclusions only on one issue and leaving other issues untouched even though evidence had been adduced by the petitioner-workman on all aspects of the matter. In case this Court comes to the conclusion that the findings of the Labour Court on the issue of territorial jurisdiction are not correct then the matter shall have to be remanded back to the Labour Court for decision on other issues. The Labour Court then can once again decide to give its findings not on the merits of the dispute but only on the issue whether the petitioner was a workman or not since if it is held that he was not an industrial workman then also the Labour Court can decide not to go to the merits of the dispute. Again the workman shall have to come to this Court to challenge the award and if again this Court reverses that award the matter shall have to be remanded again for decision of the Labour Court on merits of the dispute between the parties. Similarly, if the decision of the Labour Court goes against the management it can also challenge

that decision. That way there will be no likelihood of the litigation coming to an end and the case will continue to keep on shuttling from one Court to another and that would result in "woeful consequences" about which the Supreme Court was seriously concerned in D.P. Maheshwari's case(supra) and those consequences have to be avoided. In case the Labour Court had given its findings on all the issues this Court would have examined the correctness of those findings in one go and taken the appropriate decision in this petition which cannot be done now. Therefore, this is a fit case where the matter should be remanded back to the Labour Court, not for a fresh trial, but only for inviting its findings on the remaining issues so that this Court can decide all the points together and not in piece-meal. This matter is accordingly sent back to the Labour Court with a direction to it to give its findings on the remaining issues also on the basis of evidence already adduced during the trial. Those findings shall then be sent to this Court after hearing the workman as well as the management, if its representative appears on his own, and then on receipt of those findings this Court would consider the petition on merits and no view is being expressed about the findings of the Labour Court on the issue of territorial jurisdiction. The Labour Court shall return its findings to this Court within a period of four months from 31st August, 2012, which is the date on which the matter shall be taken up by the Labour Court after remand. The Registry shall send back the Labour Court's record and the same shall also be returned back to this Court along with the findings which shall be given pursuant to the aforesaid direction and thereafter the writ petition shall be listed again before the Court.