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(2001) 08 PAT CK 0031

In the Patna High Court

Case No : L.P.A. No. 880 of 2001

Riga Sugar Co. Ltd. — APPELLANT

Vs

The Presiding Officer, Labour Court and Another — RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0031

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.

2. This appeal is directed against the order dated 24.7.2001 passed by the learned single Judge in C.W.J.C. No. 4783 of 2001 dismissing the writ application filed by the Appellant whereby he has challenged the order dated 2.2.2001 passed by the Labour Court, Muzaffarpur in Reference Case No. 12/99 rejecting the prayer of the Appellant for deciding the question as to whether domestic enquiry was fair or not as preliminary issue.

3. In view of the point involved in this case, it is not necessary to state the facts in detail. Reference was made before the Industrial Tribunal u/s 10(1)(c) of the Industrial Disputes Act. Thereafter, the Appellant filed an application to decide the question of fairness of the domestic enquiry as a preliminary issue which has been rejected by the impugned order.

4. learned Counsel appearing for the Appellant submitted that the question of fairness of domestic enquiry as preliminary issue should have been decided for the reason that under the law the Tribunal has to decide the said question before proceeding to decide the matter on merit. In support of his submission, he relied upon the judgment of the Constitution Bench of the Apex Court in the case of Karnataka State Road Transport Corporation v. Smt. Lakshmidevamma and Anr. 2001 (3) ST 652.

5. In our view, the said judgment of the Constitution Bench of the Apex Court relied upon by Mr. Gupta, learned Counsel for the Appellant is not relevant for

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deciding the point involved in this appeal. In that case, question was as to whether the employee has to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either u/s 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service at the earliest stage by making proper application or can make an application at any time before conclusion of the proceeding. The Apex Court has held that such request has to be made at the earliest or at the time of filing written statement which has been held by it in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others,

6. In the case of D.P. Maheshwari v. Delhi Administration AIR 1984 S.C. 153, the Apex Court held that all the issues should be decided at the same time and some of the issues should not be decided as preliminary issue. It is necessary to quote paragraph-1 of the said judgment which runs as follows:

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 jeopardize 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. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate

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while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate power 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. In view of the law laid down in D.P.Maheshwari''s case (supra), learned single Judge rightly held that issue of fairness of domestic enquiry should not be decided as preliminary issue.

8. In the result, there is no merit in this appeal and the same is accordingly dismissed.

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