
(2010) 05 AHC CK 0375
In the Allahabad High Court
Case No : C.M.W.P. No. 27889 of 2010

Smt. Radhika Devi

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 136, 226

Citation : (2010) 4 AWC 4098 : (2010) 125 FLR 1092

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—By means of the present writ petition, the petitioner has sought a writ of mandamus directing the respondent Nos. 1 and 2 to decide the objections of the petitioner first before final adjudication of the claim petition.

2. It appears that a claim petition W.W.C. No. 1 of 2005, Smt. Gyanmati and Ors. v. Smt. Radhika Devi and Anr. is pending before Workmen's Compensation Commission. Therein validity of the proceeding which also touches the merit of the case. The petitioner wants that these objections be decided first.

3. No such direction can be issued as the proceedings before the Workmen's Compensation Commissioner are summary in nature and should be disposed of expeditiously. It is desirable, as has been said by the Apex Court time and again that all the issues should be decided simultaneously.

4. In the case of D.P. Maheshwari Vs. Delhi Administration and Others, the Apex Court has held that 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. It has been held that 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. The relevant portion is reproduced below:

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 the detriment of those who can ill afford to wait by dragging the later 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 journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is 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 too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

5. Reference may also be made to *S.K. Verma Vs. Mahesh Chandra and Another*, In that case, Supreme Court commended that there appears to be three preliminary objections which have become quite the fashion to be raised by all employees. Firstly, there is no industry. Secondly, there is no industrial dispute. Thirdly, the workman is "no workman".

6. The attention of the Court was also invited to *National Council for Cement and Building Materials v. State of Haryana* (1996) 3 SCC 306, wherein the Court deprecated the practice of the management to raise preliminary issues with a view to delay adjudication of industrial disputes.

7. In our considered opinion, in the present case, it cannot be said that the court's below have committed any error in jurisdiction in not deciding the issue as to the maintainability of claim-petitions as preliminary issue. It is well-settled that generally, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues.

8. Before more than hundred years, the Privy Council in *Tarakant v. Puddomoney*

(1866) 10 MIA 476, favoured this approach.

Speaking for the Judicial Committee, Lord Turner stated:

The courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the courts below should, as far as may be practicable, pronounce their opinions on all the important points.

9. The above principle has been consistently followed. Supreme Court dealing with the provisions of Order XIV, Rule 2 (prior to the amendment Act of 1976, in *Major S.S. Khanna v. Brigadier F.J. Dillion* (1964) 4 SCR 409, stated:

Under Order XIV, Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court; not to do so., especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of the suit.

10. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated:

This rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a Court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.

11. In view of the above discussion, no case for interference under Article 226 of the Constitution of India has been made out. The petition is dismissed.