
(2006) 10 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 353 to 355, 358, 367 to 373, 375, 376, 381 to 384, 386 to 397, 400, 401, 403, 407 to 409 of 2006

Vikram Cement

APPELLANT

Vs

Hemant Kumar Jain

RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Madhya Pradesh Industrial Relations Act, 1960 — Section 2(13)

Citation : (2006) 4 MPLJ 570

Hon'ble Judges : Shahi Kant Kulshreshtha, J; S.K. Seth, J

Bench : Division Bench

Advocate : A.K. Chitale, with Girish Patwardhan, for the Appellant; S.H. Moyal, for the Respondent

Judgement

S.K. Kulshreshtha, J.

These appeals are directed against the order dated 6th February, 2006 of the learned Single Judge, passed Writ Petition No. 815/2006 and the connected petitions namely; 816, 833, 834, 835, 836, 837, 839, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865 and 866, all of 2006. Since the appeals have been preferred against the common judgment aforesaid, this Order shall govern the disposal of the abovesaid appeals also.

The appellant floated a Scheme of V.R.S. in the year 2001 and 2002. It is alleged that the petitioners in these petitions, after obtaining the benefit of VRS, assailed the termination of their service before the Labour Court, u/s 31(3) on the ground, inter-alia, that they misled/coerced to accept the voluntary retirement and, therefore, they should be reinstated with full back wages from the date of their termination to the date of reinstatement. The Labour Court framed a number of issues in view of the pleadings of the parties, out of which Issue Nos. 4, 4(a), 4(b) and 4(c) were framed on the point whether there has been

cessation of the relationship of master and servant between the parties and whether the applicant before the Labour Court, was an employee within the meaning of section 2(13) of the M.P. Industrial Relations Act. Issue was also framed on the point whether the employees were estopped from filing the application, whether the application was maintainable under sections 31(3), 61 and 62 of the M.P.I.R. Act; and, whether the application was barred by limitation.

The controversy between the parties relates to Issue No. 4, 4(a) and 4(b) as the employer seeks an order that these Issues should be tried as preliminary issue. The Labour Court, by its order dated 14-3-2005 (Annexure P/4), rejected the application. Aggrieved by the said rejection, the employer approached the Industrial Court in Appeal, but the Industrial Court also dismissed the appeal by order dated 8-8-2005 (Annexure P/5). It observed that Issue No. 4, 4(a), 4(b) and 4(c) raised mixed question of facts and law, and, therefore, it was not possible to try these Issues are preliminary issue. The employer, therefore approached this Court by filing Writ Petition under Article 227 of the Constitution of India. This Writ Petition was dismissed by the learned Single Judge by order dated 6th February, 2006. Learned Single Judge was also of the opinion that the issue raised was not purely an issue of law which could be decided without a proper trial. The parties then approached the Supreme Court against the order of learned Single Judge, but on coming into force of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005, the Supreme Court by its order dated 1-9-2006, in view of the above enactment, declined to entertain the petition under Article 136 and the SLP was dismissed with liberty to the petitioner to approach the High Court. Interim protection granted by the Hon"ble Supreme Court was, however, continued for a period of two months. The Supreme Court also observed that the question of maintainability of the intra-Court appeal could be decided by the High Court in accordance with the law. The order of the Supreme Court has been filed by the appellant as Annexure A/4. In adherence to the orders passed by the Supreme Court, these appeals have been filed.

Learned senior counsel submitted that although the petition before the High Court was filed under Article 227 and the Writ Court has also treated the petition as under Article 227, it is not the label but the substance of the petition that is conclusive of the Article under which the High Court was approached. Learned Counsel submits that on a fair reading of the petition, it becomes transparent that the petition was also under Article 226 of the Constitution. We have gone through the petition. It would be advantageous to reiterate that the Labour Court passed a judicial order, against which the Industrial Court dismissed the appeal by a judicial order and since these two Courts are amenable to the power of superintendence of this Court, granted by Article 227 of the Constitution of India, we are unable to concede to the suggestion that the petition and the judgment impugned, should be treated to be under Article 226 of the Constitution of India against which this appeal is maintainable. The M.P. Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005, bars an appeal against an interlocutory

order or against an order passed in exercise of the supervisory jurisdiction under Article 227 of the Constitution. Under these circumstances, the maintainability of these appeals, under the provisions of the said Adhiniyam of 2005, is barred. No doubt, the appeals could not have been filed against an order passed by the learned Single Judge, under Article 227 of the Constitution.

Be that as it may, since the Learned Counsel has also addressed the Court on the facts on which the relief is claimed, we may observe that the Labour Court, Industrial Court and the learned Single Judge have observed that the Issue Nos. 4, 4(a), 4(b) and 4(c) are mixed issues of law and facts and, therefore, cannot be tried as preliminary issues. Even if these issues are considered in the light of the decision in *D. P. Maheshwari vs. Delhi Administration and Ors.*, AIR 1984 SC 153, we find that the Apex Court has strongly deprecated the practice of trying issues as preliminary issues in labour matter. The observation contained in the said judgment are extracted hereinbelow.

Tribunals entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in disputes 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 the Supreme 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 the 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 workman in this fashion. Tribunal 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.

Under these circumstances also, we find that no case for trial of Issue No. 4 and the connected issues, as preliminary issue, has been made out.

Learned Counsel has further submitted that the respondent - employee is estopped from challenging the V.R.S. and seeking reinstatement as the employee has already pocketed the money and received the other benefits in accordance with the said Scheme. Since the employees who have approached the Labour Court are claiming that by deceitful means or coercion they were made to accept the voluntary retirement and received the benefit thereunder, it would be equitable to direct that any employee who wants to maintain a petition u/s 31(3) of the M.P.I.R. Act against the said VRS and to seek reinstatement, should return the benefits received, to the employer, subject to the condition and undertaking as offered by the Learned Counsel for the appellant, that in the event the Labour Court directs refund of the amount and other benefits to the employee concerned, the same would be restored to the employee with interest at the rate

of six per cent per annum. It is made clear that the Labour Court shall decline to proceed with the application of the employee who does not refund the amount to the employer as hereinabove directed. The Learned Counsel for the respondent has no objection to the benefit being refunded to the employer during the pendency of the case before the Labour Court subject to the result of the case.

It is also apt to direct that on refund of the amount by the employees within two months from the date of this order, the Labour Court shall proceed expeditiously in the matter and endeavour to decide the cases within six months thereafter. With the above observation, all the aforesaid appeals are disposed of with no order as to costs.

This order be retained in Writ Appeal No. 353/2006 and a copy each be placed in the record of other connected appeals.