

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.18963/2006**

Date of Decision : 15.5.2009

THE MANAGEMENT OF M/S TEXMACO LTD. Petitioner

Through: Mr.M.Y.Khan, Advocate

Versus

THE SECRETARY (LABOUR) & ANR. Respondents

Through: Nemo.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in the instant writ petition has challenged the order dated 28.11.2006 passed by the learned Labour Court-19 in LCA Nos.224/2006 to 232/2006. By virtue of the aforesaid order, the learned Labour Court has decided the preliminary issue framed in all these LCAs, which reads as under”

“Whether the claim filed by the workman is maintainable Under Section 33(C) of the I.D. Act?”

2. Briefly stated the facts of the case are that the respondents /workmen were allegedly working with the petitioner company and it was directed to be closed w.e.f. 30.11.1996 by the orders of the Supreme Court in **M.C.Mehta Vs. UOI** in WP(C) No.4677/1985 on the basis that it was falling in the category 'H' of the industries. On 4.12.1996, the Supreme Court on IA 36/96 being filed in the same writ modified the order so far as clause 9(d) was concerned. The clause directed compensation are of two kinds to be paid: (i) for those employees whose employers were not intending to relocate their industries and wanted to close down (ii) who were ready to relocate the industries in both cases of employees, the compensation was one year's salary apart from retrenchment compensation. But vide order dated 04.12.1996 the compensation for those employees whose employer did not relocate their industries was enhanced to six years wages payable to the workmen in place of one year and the Hon'ble Court has clarified that the industries which have been relocated the original Clause 9(d) which is giving one year compensation as by way of shifting bonus will apply.

M/s Birla Textile Mills is functioning at relocated place at Baddi (Himachal Pradesh) which was taken over by M/s Chambal Fertilisers & Chemicals Ltd. and the aforesaid mill became the

unit of M/s Chambal Fertilisers & Chemicals Ltd. for administrative and managerial purposes. However, the terms of employment of all the employees were to remain the same as it was the unit of M/s Texmaco Ltd. Hence, all the employees who have joined their duties after the closure of mill at Delhi have been given continuity of service and other compensation as per the order of the Hon'ble Supreme Court when they joined at relocated place. The respondents No.2 to 10 served a demand notice and claimed six years wages by misinterpreting the original Clause 9(d) and modified vide order dated 04.12.1996.

3. The respondent/workman had filed their claim for calculation of their monetary benefit in terms of Supreme Court's direction alleging that the petitioner had not relocated and closed its activity in the city of Delhi and therefore, they were entitled to six years wages as compensation. While as the petitioner /Management filed reply to the statement of claim contesting the same on the basis of which a preliminary issue in the following terms was framed:

“Whether the claim filed by the workman is maintainable under Section 33(C) of the I.D. Act?”

4. It is this preliminary issue which has been decided by the learned Labour Court holding that the claim of the respondent /workman is maintainable and yet giving an opportunity to the petitioner /Management to raise all the defences available to it during the proceedings in the case.

5. The petitioner feeling aggrieved by the aforesaid impugned order preferred the present writ petition by clubbing the order passed on 28.11.2006 in almost nine LCAs. The proceedings of the LCAs have been stayed on 4th January, 2007 and have continued to remain so for almost a period of two years.

6. The contention of the learned counsel for the petitioner is that it was not open to the Labour Court to interpret the order of the Supreme Court and thereby calculate the money which was payable to the petitioner under Section 33-C (2) of the Industrial Disputes Act.

7. This contention of the counsel for the petitioner was disputed by the counsel for the respondent /workman on the ground that a claim petition under Section 33-C (2) of the Act is maintainable provided there is a recognition or prior adjudication with regard to the monetary benefit to be given to the workman and since in the present case there is a recognition in terms of the

orders of the Apex Court with regard to the monetary benefit to be given to the respondent /workman, therefore, the claim petition itself was maintainable.

8. I have carefully considered the submission.

9. I am of the view that the learned Labour Court instead of deciding the said issue as a preliminary issue and giving liberty to the petitioner /Management to raise all defences on the merits of the case ought to have decided the preliminary issue along with the main issue rather than deciding the issues in a piecemeal manner. It has been observed so by the Apex Court on account of the fact that essentially these Labour Tribunals have been formed for the expeditious disposal of the matters and by deciding the preliminary issue, one of the parties which invariably would be the Management, it would file an appeal or a writ petition get the stay against the order of the Labour Court or the proceedings and thereby delay the expeditious disposal of the main matter which will put undue strain on the financial capacity on the workman. This mode exhausts the patience of the workman who is broken to compel him to submit to the dictates of the Management. It will be apt to reproduce the observation of the Apex Court in ***D.P.Maheshwari Vs. Delhi Administration*** AIR 1984 SC 153, observed as under:-

“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 tribunals, particularly those entrusted with the task 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 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 while that under Article 136 is primarily 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 of special tribunals at interlocutory stages and on preliminary issues.”

9. Keeping in view the aforesaid observations of the Apex Court, I feel that the learned Labour Court has fallen into error by deciding the preliminary issue and yet giving an opportunity to the petitioner to raise all such defences available to it on merits of the case. I accordingly, set aside the order dated 28.11.2006 passed by the learned Labour Court and direct the Labour Court to decide all the issues including the preliminary issue regarding the maintainability of the claim of the respondent /workman in one consolidated manner so as to cut short the delay. The parties are directed to appear before the learned Labour Court on 29.5.2009.

10. Needless to say that expression of any opinion herein shall not be deemed to be an expression on the merits of the case and the learned Labour Court shall decide the matter including the preliminary issue afresh without being influenced by any observation passed by this Court in the present order.

11. With these directions, the present writ petition is disposed of.

V.K.SHALI, J.

MAY 15, 2009
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