

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

**Reserved on : 15.05.2023
Pronounced on: 18.05.2023**

LPA No.66/2022
CM No.4170/2022

Sudhir Power Ltd.

.....**Appellant(s)/Petitioner(s)**

Through: Mr. C.M. Koul, Sr. Adv., with Ms
Renuka Bharti, Advocate

versus

Union Territory of J&K and others**Respondent(s)**

Through: Mr. Dewakar Sharma, Dy. A.G. for 1
to 4.

Mr. Anil Gupta, Advocate, for 5 to 10.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

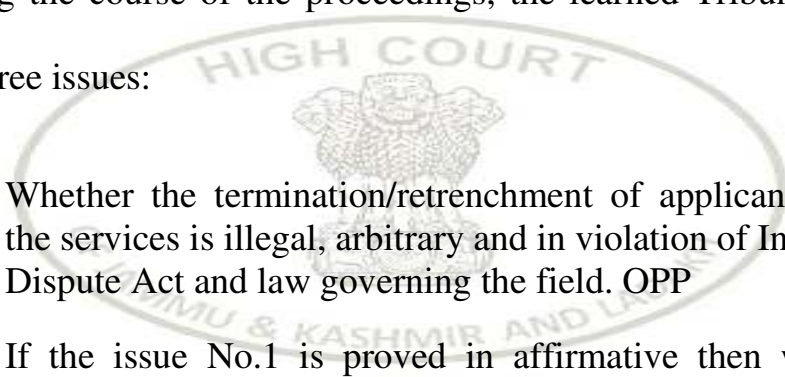
Tashi Rabstan - Judge

1. This Letters Patent Appeal is directed against the judgment dated 07.05.2022 passed by the learned Single Judge in WP(C) No.235/2021, whereby the learned Single Judge dismissed the writ petition filed by the appellant herein, i.e, Sudhir Power Ltd.

2. The facts, as gathered from the writ file, are that in the year 2018 an FIR came to be registered against respondents 5 to 10 herein on the allegation of alleged attack upon Senior Manager (HR) in the premises of the industrial unit of appellant. It is averred that thereafter Challan came to be filed against these

respondents before the Court of learned Chief Judicial Magistrate, Samba, wherein respondents 5 to 10 are facing trial. It is averred in the appeal that meanwhile the management of the industrial unit also conducted detailed inquiry and, ultimately, on being found guilty the services of respondents 5 to 10 came to be terminated. Respondents 5 to 10 questioned the order of termination of their services before the learned Industrial Tribunal/Labour Court, Jammu/Srinagar.

3. During the course of the proceedings, the learned Tribunal framed the following three issues:

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- “1. Whether the termination/retrenchment of applicants from the services is illegal, arbitrary and in violation of Industrial Dispute Act and law governing the field. OPP
 2. If the issue No.1 is proved in affirmative then whether applicants are entitled for back wages and other benefits. OPP
 3. Relief.”

4. Therefore, on the motion of appellant herein, following additional issues were also framed by the learned Tribunal:

- “4. Whether the above titled petition filed under Industrial Dispute Act, 1947 would lie at this stage in the face of pendency of criminal challan against the petitioners. OPR
5. Whether the present application already filed can further be carried on when the result of aforesaid criminal trial is yet to come? OPR”

5. Thereafter, another application was filed by the appellant herein for treating Issues 4 & 5 as preliminary issues on the grounds that as per the mandate of Order XIV Rule 2 of the CPC, these issues are required to be considered as preliminary issues. However, the learned Tribunal dismissed the application vide order dated 23.10.2020.

6. The appellant challenged the order dated 23.10.2020 before the Writ Court and the learned Single Judge too dismissed the petition on 07.05.2022. Hence, the present appeal.

7. After having heard learned counsel appearing for the parties and perused the file, we are of the considered opinion that the judgment delivered by the learned Single Judge is well reasoned and needs no interference. A perusal of Order XIV Rule 2 clearly reveals that only those issues can be treated as preliminary issues where the court lacks the jurisdiction, or, where there is a bar to the suit created by any law. The learned Writ Court has rightly held that both the issues lack the essentials for being treated as preliminary issues. Further, the judgments cited by the learned counsel for appellant too are clearly distinguishable and are of no help to the appellant herein.

8. Viewed thus, we do not find any merit in the appeal and the same is, accordingly, dismissed along with connected CM. The judgment of learned Single Judge is, thus, upheld.

Jammu
18.05.2023
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No