

Neutral Citation No. - 2023:AHC-LKO:76092-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 883 of 2023

Appellant :- Chief Engineer (District) Prashashan , Lko. And Another

Respondent :- Presiding Officer Labour Court , Lko. And Another

Counsel for Appellant :- Manish Kumar Tripathi, Sudheer Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

(C.M. Application No.1 of 2023 : Application for condonation of delay)

- (1) Heard Shri Manish Tripathi, learned Counsel representing the appellants and Shri V.P. Nag, learned Additional Chief Standing Counsel representing the State/respondent no.1.
- (2) This *intra Court* appeal has been filed by the appellants beyond the period of 526 days.
- (3) Having gone through the averments made in the affidavit filed in support of the application seeking condonation of delay and in absence of any objection, this Court is satisfied that delay has sufficiently been explained.
- (4) The application is, accordingly, **allowed** and delay in filing the special appeal is hereby **condoned**.

(Order on Memo of Appeal)

- (5) This *intra Court* appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 has been filed by the appellants, assailing the judgment and order dated 22.07.2020

passed by the learned Single Judge, whereby Writ-A No. 11330 of 2020 filed by the respondent no.2 seeking to quash the order/show cause notice dated 10.02.2020 passed by the Labour Court, Lucknow in Adjudication Case No. 49 of 2013, has been dismissed with liberty to the respondent no.2/writ petitioner to file reply against the show cause notice before the Labour Court.

(6) On a preliminary objection being raised by the learned Additional Chief Standing Counsel representing the State/respondent No.1 that instant Special Appeal is not maintainable in view of the provisions of Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 particularly when the order under challenge in the writ petition before the learned Single Judge is the order passed by the Labour Court, learned Counsel for the appellants did not give any satisfactory reply.

(7) Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 deals with Special Appeal, which reads as under :-

"[5. Special appeal :- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or

purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act] of one Judge.]"

- (8) The impugned judgment/order dated 22.07.2020 passed by the learned Single Judge is in respect of an order made by the Labour Court. The Labour Court passed the said order, in pursuance of a reference made to it under Uttar Pradesh Industrial Disputes Act, 1947. The Labour Court exercises its jurisdiction under U. P. Industrial Disputes Act, 1947, which is relatable to Entry 24 List II to the VII Schedule of the Constitution of India. The Entry 24 List II of the VII Schedule reads as under :-

"24. Industries subject to the provisions of 2 [entries 7 and 52] of List I"

- (9) The order of the Labour Court, assailed before the learned Single Judge, falls within the ambit of the phrase "Judgment, order or award" in Rule 5 of Chapter VIII, of the High Court Rules, 1952 of a Tribunal constituted under a legislation referable to List II Schedule 7 of the Constitution of India. The bar to the special appeal contemplated under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, is clearly attracted to the facts of this case.

(10) A Full Bench of this Court, while determining the issue of maintainability of a special appeal, against an order of a learned Single Judge in **Sheet Gupta Vs. State of U.P. and Others**, reported in AIR 10 All 46 (FB) has held as under :-

"14. Having given our anxious consideration to the various plea raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court. However, such special appeal will not lie in the following circumstances :-

1. The judgment passed by one Judge in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court;

2. the order made by one Judge in the exercise of revisional jurisdiction;

3. the order made by one Judge in the exercise of the power of Superintendence of the High Court;

4. the order made by one Judge in the exercise of criminal jurisdiction;

5. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(i) the tribunal,

(ii) Court or

(iii) statutory arbitrator

made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act. with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

6. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

*(i) the Government or
(ii) any officer or
(iii) authority,*

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India."

(11) In view of the aforesaid, we are of the view that the instant appeal is not maintainable.

(12) The Special Appeal stands **dismissed** accordingly.

(Om Prakash Shukla, J.) (Attai Rahman Masoodi, J.)

Order Date :- 9.11.2023

Anand Sri./Ajit/-