

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1775 OF 2016

Bhagwan Jagannath Nitnaware

.. Petitioner

Versus

The Union of India and another

.. Respondents

Mr. R. G. Panchal for the Petitioner

**Mr. A. V. Bukhari, Senior Advocate i/by A. M. Nathani for the
Respondent No.2.**

CORAM : R.M. SAVANT, J.

DATE : 18th AUGUST 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 08.07.2016 passed by the Learned Presiding Officer, CGIT-2, Mumbai, by which order, the application filed by the Petitioner Exh.69 for deciding issue No.1 as a preliminary issue came to be rejected. A reference came to be made to the CGIT by order dated 01.09.2015 issued by the Ministry of Labour, Government of India. The schedule to the said order sets out the scope of the reference. The said schedule is reproduced hereinunder for the sake of ready reference :-

“Whether National Institute of Engineering (NITIE) is
“industry” within the meaning of Section 2(j) of the Act ?
(2) Whether the applicant namely Shri. Bhagwan

Jagannath Nitnaware is workman within the meaning of section 2(s) of the Act? (3) If it is so, whether the termination of applicant from services is lawful and justified and (4) If not, to what relief the applicant is entitled to ?”

A reference came to be numbered as CGIT-2/48 of 2015. In the said reference, the following issues were framed :-

- “1. Whether National Institute of Industrial Engineering is 'industry' within the meaning of Sec 2(j) of the Industrial Disputes Act ?
2. Whether the Second party workman namely Shri Bhagwan Jagannath Nitnaware is workman within the meaning of Sec 2(s) of the Act ?
3. Whether the termination of Second party Shri Bhagwan Jagannath Nitnaware from service is lawful and justified ?
4. Whether the domestic enquiry held against the Second party is vitiated due to non-remittance of subsistence allowance ?
5. Whether the departmental or disciplinary enquiry held against second party is vitiated due to non-compliance of the principles of natural justice ?
6. Whether the removal of services of second party workman from the employment from the first party employer vide office order dated 27 May 2013 is in breach of provisions of law ?
7. What relief the second party workman is entitled to ?
8. What order ?”

Thereafter an additional issue came to be framed on 13.06.2016 which reads thus :-

“If it is so, whether the first party employer proves the charges leveled against the Second Party Workman by leading oral evidence before this Hon'ble CGIT ?”

2 The instant application Exh.69 came to be filed by the Petitioner thereby seeking the relief that issue No.1 be decided as a preliminary issue and to restrict his cross-examination to the said issue. The said application came to be rejected by the Learned Presiding Officer by the impugned order dated 08.07.2016. The rejection is on the ground that in a Writ Petition wherein an order came to be passed directing a reference to be made, no such direction to decide issue No.1 as a preliminary issue was issued. The said Writ Petition was filed by the Petitioner challenging his removal wherein a statement came to be made on behalf of the Respondents that he would be covered by the provisions of the Industrial Disputes Act. The Learned Presiding Officer further observed that it is clear from the order passed by this Court that a detailed inquiry is necessary to deal with the challenge in respect of the domestic inquiry and consequential order of termination based upon the same. As indicated above, the Learned Presiding Officer has by the impugned order rejected the application seeking the relief that issue No.1 of the issues framed be decided as a preliminary issue.

3 The Learned Counsel appearing on behalf of the Petitioner Mr. R. G. Panchal would seek to raise contentions as regards the merits of the matter by referring to the antecedent facts prior to the Reference being made to the CGIT. The Learned Counsel sought to raise contentions which would impinge upon the said issue Nos.1 and 2.

4 It is not necessary for this Court to enter into the said arena having regard to the fact that issues have been framed by the Learned President of the CGIT and the said issues would undoubtedly be tried. The proceeding is also at the stage of the cross-examination of the Petitioner. The question is whether the issue No.1 could be tried as a preliminary issue.

5 In my view, having regard to the controversy raised, it would be just and proper that all the issues are tried together so that the parties know where they stand. A useful reference could be made to the judgment of the Apex Court reported in **1983 LAB. IC 1629** in the matter of **D. P. Maheshwari Vs. Deli Admn. and others.** The following excerpt from the said judgment is eloquent in so far as trying of preliminary issues is concerned. The same is therefore reproduced hereinunder for the sake of ready reference :-

“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 Art. 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 Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 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. Art. 226 and Art. 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 Art. 226 is supervisory and not appellate while that under Art. 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 by special tribunals at interlocutory stages and on preliminary issues.”

The Apex Court has therefore observed that the Tribunals entrusted with the task of adjudicating labour disputes should decide all issues in disputes at the same time without trying some of them as preliminary issues as the

delay may lead to misery and jeopardise industrial peace. Hence, having regard to what has been held by the Apex Court in *D. P Maheshwari's* case (*supra*) the order passed by the Presiding Officer, CGIT cannot be taken exception to. The alternative prayer sought by the Petitioner also cannot be acceded to as the Petitioner's removal from service has taken place long back on 17.05.2013. No case for interference is therefore made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]