

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.2646 of 2006

1. Deputy Director, Basic Seed Multiplication and Training Center, Boirdadar, Distt. Raigarh (C.G.)
2. Joint Director, Basic Tasar Silkworm Seed Organization Central Silk Board, Satyam Commercial Complex, IV Floor, Link Rd., P.B.No.15, Bilaspur (C.G.)
3. Central Silk Board, Government of India, Ministry of Textiles, Keyraybo Complex, Post Box No.6025, 5th Floor, BTM Layout, Madiwala, Bangalore 2560068 (Karnatak)

All, through Assistant Director (Deputy Director Incharge), Basic Seed Multiplication & Training Center, Central Silk Board, Boirdadar, Raigarh (C.G.)

---- Petitioners

Versus

1. The Presiding Officer, Labour Court, Raigarh (C.G.)
2. Padman, S/o Basudev, Caste Teli.
3. Kartik Ram, S/o Nanki, Caste Khadiya.
4. Gurbaru, S/o Dhansingh, Caste Kanwar.
5. Soakilal, S/o Sidar, Caste Kanwar.
6. Benu, S/o Kekru, Caste Gond.
7. Kanahiya Lal, S/o Pursottam, Caste Teli.
8. Ullesh Kumar, S/o Deriha, Caste Adhariya.
9. Jeevan, Parasram, Caste Mali.
10. Puran, S/o Chhattarsai, Caste Khadiya.
11. Nehrulal, S/o Abheram, Caste Gond.
12. Premlal, S/o Udhavram, Caste Koltta.
13. Mangal, S/o Dhasiya, Caste Khadiya.
14. Bharat, S/o Shri Madhu, Caste Gond.
15. Angad, S/o Dhasiya, Caste Gond.

16. Santuram, S/o Baishakhu, Caste Khadiya.
17. Sukru, S/o Behra, Caste Saura.
18. Digari, S/o Chandan, Caste Raut.
19. Bodhram, S/o Murlidhar, Caste Raut.
20. Bairagi, S/o Dhasiya, Caste Gond.
21. Milap, S/o Rajaram, Caste Chamar.
22. Ramprasad, S/o Prahalad, Caste Pobiya.
23. Dayasagar, S/o Prahalad, Caste Raut.
24. Dukhlal, S/o Dayasagar, Caste Adhariya.
25. Kuthlu, S/o Panchram, Caste Karra.
26. Anil, S/o Dhurau Ram, Caste Bhooiya.
27. Bisikeshan, S/o Punau, Caste Raut.
28. Sadashiv, S/o Panchram, Caste Gond.
29. Shyamlal, S/o Jogi, Caste Gond.
30. Ramesh Kumar, S/o Behra, Caste Saura.
31. Sunuram, S/o Kankar, Caste Gond.
32. Loknath, S/o Purshottam, Caste Gond.
33. Santosh Kumar, S/o Minketan, Caste Teli.
34. Fagulal, S/o Bahadur, Caste Kumhar.
35. Ravi, S/o Jaysingh, Caste Karra.
36. Ishwar, S/o Motichand, Caste Kewait.
37. Uttam Kumar, S/o Rudra, Caste Kewait.
38. Gonand, S/o Chhattarsai, Caste Khadiya.
39. Dashrath, S/o Nakul, Caste Saura.
40. Saitram, S/o Bahadur, Caste Dhobi.
41. Sukhram, S/o Nankun, Caste Raut.

- 42. Premnand, S/o Fakir, Caste Bholiya.
- 43. Dhannauram, S/o Budhwa, Caste Urawan.
- 44. Buduram, S/o Nanki, Caste Khadiy.
- 45. Ramsingh, S/o Murlidhar, Caste Urawan.
- 46. Parmanand, S/o Kuswa, Caste Raut.
- 47. Dino, S/o Fakhir, Caste Bholiya.
- 48. Bundram, S/o Mansai, Caste Kanwar.
- 49. Dorilal, S/o Harishchandra, Caste Saura.

All R/o Gram Boirdadar, Distt. Raigarh, Tahsil & Distt. Raigarh (C.G.)
---- Respondents

For Petitioners: Mr. Vinay Harit, Senior Advocate with Mr. K.P.S.
Gandhi, Advocate.
For Respondents No.2 to 49: -
Mr. Pradeep Saksena, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/11/2017

1. Learned Senior Counsel appearing for the petitioners would submit that the petitioner Board is not an industry covered under the provisions of the Chhattisgarh Industrial Relations Act, 1960, therefore proceeding drawn by the Labour Court is without jurisdiction and without authority of law and the Labour Court is absolutely unjustified in deciding the preliminary issue against the petitioners.
2. Learned counsel appearing for respondents No.2 to 49 would oppose the writ petition.
3. I have heard learned counsel for the parties.
4. The Labour Court has decided the preliminary issue against the

petitioners. It is well settled law with regard to industrial adjudication that all the issues have to be decided, if framed, finally at the conclusion of trial.

5. The attitude of the employer to protract the Industrial Disputes Act, 1947 in the name of preliminary issue has been considered by the Supreme Court way back in the year 1983 in the matter of **D.P. Maheshwari v. Delhi Administration and others**¹ and it has been observed pertinently by the Supreme Court the attitude of the employer in para 1 as under: -

“It was just the other day² that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under [Article 226](#) of the Constitution and to this Court under [Article 136](#) of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. 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 [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

1 (1983) 4 SCC 293

2 See (1983) 4 SCC 214

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 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 journeyings 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 by special tribunals at interlocutory stages and on preliminary issues.”

6. Likewise, in the matter of **S.K. Verma v. Mahesh Chandra and another**³, the Supreme Court has clearly held that raising of preliminary objection is fashion on the part of the employer by observing as under: -

“2. There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope

3 (1983) 4 SCC 214

that public sector corporation will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures.”

7. The Supreme Court in the matter of **Ramesh Chandra Sankla and others v. Vikram Cement and others**⁴ quoted the decisions rendered by it in **D.P. Maheshwari** (supra) and **S.K. Verma** (supra) with approval and also relied upon the matter of **National Council for Cement & Building Materials v. State of Haryana**⁵ wherein Their Lordships have deprecated the practice of the management to raise preliminary issues with a view to delay adjudication of industrial disputes, and held in paragraphs 75, 76, 77 and 79 as under: -

“75. In our considered opinion, in the present case, it cannot be said that the courts below have committed any error of jurisdiction in not deciding the issue as to the maintainability of claim petitions as preliminary issue. It is well settled that *generally*, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues. Before more than hundred years, the Privy Council in *Tarakant Bannerjee v. Puddomoney Dossee*⁶ favoured this approach. Speaking for the Judicial Committee, Lord Turner stated: (Moo IA p. 488)

“... The courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. *It is much to be desired, therefore, that in appealable cases the courts below should, as far as may be practicable, pronounce their opinions on all the important points.*”

(emphasis supplied)

The above principle has been consistently followed.

76. This Court dealing with the provisions of Order 14 Rule 2 (prior to the Amendment Act of 1976) in **Major**

4 (2008) 14 SCC 58

5 (1996) 3 SCC 206

6 (1866) 10 Moo IA 476

S.S. Khanna v. Brig. F.J. Dillon⁷, stated: (AIR pp. 502-03, para 18)

"18. ... Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit."

(emphasis supplied)

77. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order 14 (before the amendment), the Commission stated:

"This Rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue, the decision of the court on that issue is reversed, the case has to be remanded to the court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a court must give judgment on all issues, excepting, of course, where the court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force."

(emphasis supplied)

79. In the case on hand, the contention of the workmen is that the acceptance of the scheme was not with free consent, and even otherwise they were not given all the benefits to which they were entitled under the scheme. Therefore, they continued to remain employees of the Company. The Labour Court felt that the controversy raised by the workmen can only be decided in the light of the evidence before it. The said

⁷ AIR 1964 SC 497 : (1964) 4 SCR 409

decision has been confirmed by the Industrial Court as well as by the learned Single Judge. We find no illegality in this approach which deserves interference under [Article 136](#) of the Constitution. We, therefore, see no substance in the contention of the Company.”

8. Their Lordships finally held in paragraph 78 that the provisions of the Code do not *stricto sensu* apply to “industrial adjudication”, even under the Code, after the Amendment Act, 1976, the normal rule is to decide all the issues together in a civil suit.
9. In view of the above analysis, the Labour Court is absolutely unjustified in trying the issue, whether the petitioner Board is covered by the schedule industry under the Chhattisgarh Industrial Relations Act, 1960, as preliminary issue. Therefore, the impugned order is set aside. The petitioners are at liberty to raise the plea in the written statement and on the basis of that, the Labour Court can proceed further. If the plea is raised, the Labour Court will consider the said plea at the time of final disposal of the application.
10. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge