

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 200 of 2016**

Chief Executive Officer, Bharat Aluminum Company Limited (BALCO),
Balco Nagar, Korba, Tahsil and District Korba (CG).

---- Petitioner

Versus

1. Rajendra Kumar Solanki S/o S/o Bhanwar Lal Solanki, Aged About 60 Years R/o Abhas Automobile-5, Madhav Club Complex, Railway Station Road, Freegunj, Ujjain, Tahsil And District Ujjain (Madhya Pradesh).
2. Labour Court, Korba, Tahsil and District Korba, (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Sachin Singh Rajput, Advocate.
For Respondent No.1	:	Shri Govind Ram Miri and Shri KR Nair, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/02/2017

1. The present petition has been filed assailing the order dated 27.08.2016 passed by the Labour Court, Korba, in Case No.11/IDA/2015/R. Vide the said impugned order the court below has rejected the application filed by the petitioner for deciding the preliminary objection of the maintainability of the claim put forth by the respondent No.1.
2. The relevant facts for adjudication of the present case is that, the respondent No.1 was indisputably an employee of the petitioner. His services were terminated on 03.10.1997. The termination was on account of respondent being convicted in a criminal case. The termination was without enquiry. The said order of conviction was

ultimately set aside by this High Court vide order dated 24.01.2014. Thereafter, the respondent No.1 has raised a dispute with the Labour Court, Korba, stating that since the order of conviction has been set aside, the order of termination passed earlier be declared as void and he would be entitled for all consequential benefits. The efforts made for reconciliation at the office of Assistant Labour Commissioner failed. Thereafter, a reference was made to the Labour Court Korba on 27.05.2015 wherein the issue raised was whether the termination of the respondent No.1 was bad in law, if yes, to what relief he would be entitled.

3. The reference having been registered, notices were issued. The parties to the dispute entered appearance on 20.07.2015. The petitioner herein appeared before the Labour Court. The statement of claim on behalf of the respondent No.1 was filed on 24.08.2015. Thereafter, the matter was being adjourned for the written submission to be filed on behalf of the respondent No.1. Subsequently, on 20.02.2016 the preliminary objection was filed by the petitioner before the Labour Court questioning the maintainability of the dispute.
4. According to the petitioner, the services of the respondent No.1 stood terminated w.e.f. 03.10.1997 thereafter a departmental appeal was preferred which also stood rejected on 16/17.05.2000 and that till he has raised the present industrial dispute, he has never questioned the termination anywhere and as such the dispute has been instituted at a very belated stage. Not challenged the termination order at the first instance, the respondent No.1 be estopped from challenging the same now. It was also the contention of the petitioner that the respondent

No.1 in the intervening period has crossed the age of 60 years which is the age of superannuation in the petitioner's establishment and as such he would not be entitled for any relief. The said preliminary objection which was raised by the petitioner has been rejected by the court below vide impugned order holding that the said objection could be raised by the petitioner in their written submission and the same would be formulated and can be decided while considering the case on merits and the court has ordered for filing of written submission of the petitioner which is under challenge.

5. Counsel for the petitioner relied upon the decision of Supreme Court in case of Prabhakar Vs. Joint Director, Sericulture Department & Another, reported in 2015(10) SCALE-114 and also the case of Nedungadi Bank Ltd. Vs. K.P. Madhavankutty, reported in AIR 2000 SC 839.
6. Learned counsel for the respondent submits that the present petition is totally misconceived and is nothing but a delaying tactics adopted by the petitioner as the petitioner's interest have not been put to jeopardized in any manner by rejection of the said application as the court below has ordered that they may still take these objections in their written statement and the court shall consider and decide the same while deciding the case on merits. Therefore, the present petition deserves to be dismissed. He relied upon the decision of Supreme Court in case of National Council for Cement & Building Materials Vs. State of Haryana and Others, reported in 1996 (3) SCC 206 as also the case of D.P. Maheshwari Vs. Delhi Administration, reported in 1983 (3) SCC 293.

7. Having considered the rival contentions put forth on either side and on perusal of records, this court is of the opinion that the case in hand is squarely covered by the decision of the Supreme Court in case of National Council for Cement (Supra) wherein the Supreme Court referring to the decision rendered in case of D.P.Maheshwari (Supra) as also the case of S.K. Verma Vs. Mahesh Chandra, reported in 1983 (4)SCC 214 has held that in a reference case, the preliminary objection are not to be decided at the preliminary stage as it would further delay the adjudication of the reference itself.
8. The petitioner has been granted liberty to raise these objections along with their written statement and the court shall thereafter frame issues in this regard and shall deal with it while deciding the case on its merit. While deciding with the same, if the preliminary objection so raised by the petitioner are decided in his favour, then, the court need not to answer the other issues which are framed. This is the reason precise why the impugned order has been passed by the labour court.
9. In view of the same, this court is of the view that there is no illegality or infirmity on the part of the labour court while rejecting the application and the present petition accordingly stands rejected.
10. Needless to mention that the petitioner shall still be at liberty of raising these objections in their written submission which shall be dealt with by the court below while answering the issue on its merits.

Sd/-
(P.Sam Koshy)
Judge