

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1598 OF 2016
(DENA BANK & ANR...VS..CHINTAMAN JANBAJI WANJARI)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.D.Khati, advocate for Petitioners.
Shri V.P.Marpakwar, advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : MARCH 23, 2017.

Heard.

The petitioner-employer has challenged the order passed by the Industrial Tribunal on the preliminary point, whether the departmental enquiry held against the respondent-employee is legal and proper? By the impugned order, the Industrial Tribunal has concluded that the departmental enquiry held against the employee is illegal, improper and not in accordance with the principles of natural justice. The Industrial Tribunal has recorded that the employer has not pleaded that it be granted opportunity to prove the charges against the workman before the Tribunal. In view of the judgment passed by this Court in Writ Petition No.6228 of 2005 in the earlier round, the Tribunal has granted opportunity to the employer to prove the charges levelled against the respondent-employee.

Shri V.P. Marpakwar, learned advocate appearing for the respondent-employee, relying on the judgment given in the case of *D.P.Maheshwari vs. Delhi Administration*,

reported in (1983) 4 SCC 293, has submitted that it would not be appropriate for this Court to interfere in the matter at this stage and if at all the reference is decided by the Industrial Tribunal in favour of the respondent-employee, it would be open for the employer to assail the legality of the order which is challenged in this petition.

The relevant observations of the Hon'ble Supreme Court in the judgment given in the case of *D.P. Maheshwari* (supra) are as follows :

“It was just the other day 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 jeopardize 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 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.”

Considering the proposition laid down by the Hon'ble Supreme Court, I find that the submissions made on behalf of the respondent-employee are required to be accepted.

Though the learned advocate for the petitioners-employer has argued that the impugned order is illegal as the Industrial Tribunal has not considered that the explanation

given by the respondent-employee is an afterthought and is brought on record subsequently, in view of the proposition laid down in the judgment given in the case of *D.P. Maheshwari* (supra), I am not inclined to entertain the petition.

All the points raised by the petitioners-employer are left open for consideration at appropriate stage, if occasion arises.

With the above observations, the petition is **disposed**. In the circumstances, the parties to bear their own costs.

JUDGE

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