

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

Writ Appeal Nos.114 and 138 of 2006

DATED:31-08-2017

Between:

M/s. HMT Limited
Lamps Unit, Balanagar, Hyderabad
Rep. by its General Technical Manager (L) ... Appellant

And

Labour Court-III
4th Floor, Chandra Vihar
M.J. Road, Hyderabad
and another ... Respondents

COUNSEL FOR THE APPELLANT: Mr. D. Ravishankar Rao

COUNSEL FOR RESPONDENT NO.1: G.P. for Labour (TS)

COUNSEL FOR RESPONDENT NO.2: Mr. A.K. Jayaprakash Rao



THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

These writ appeals arise between the same parties and out of a common writ petition. Hence, they are heard and being disposed of together. W.A. No.138 of 2006 is filed against order dt.15.7.2005 in W.P. No.1198 of 1999 and W.A. No.114 of 2006 is filed against order dt.7.11.2005 in W.P.M.P.No.30099 of 2005 in the aforesaid writ petition.

2. The services of respondent No.2 were terminated following a domestic enquiry by the appellant – management. Assailing the said order of termination, respondent No.2 has raised I.D. No.811 of 1993 before respondent No.1 – Labour Court. Respondent No.2 has pleaded that the domestic enquiry got vitiated on account of non-payment of subsistence allowance. Respondent No.1 upheld the said plea and decided to hold enquiry by itself by permitting both parties to adduce evidence.

3. Assailing the said decision of respondent No.1, the appellant filed W.P. No.1198 of 1999. The said writ petition was dismissed on 15.7.2005 on the ground that the issue raised in the writ petition was covered by the judgment in *Assistant General Manager (Admn.), M/s.Hyderabad Engineering Industries v. Chairman, Hon'ble Addl. Industrial Tribunal - cum- Addl. Labour Court.*¹ On behalf of the appellant W.P.M.P. No.30099 of 2005 was filed for recalling the order dt.15.7.2005. By order dt.7.11.2005 the learned single Judge closed the application with the clarification that the order passed in the aforesaid writ petition will not preclude the appellant management from agitating the issue while challenging the award passed by the Labour Court, if necessary. Feeling aggrieved by both these orders, the appellant filed these appeals.

¹ 2004 (2) ALD 720

4. At the hearing, Mr. D. Ravishankar Rao, learned counsel for the appellant, submitted that the order of the Labour Court is wholly perverse and that therefore the same is liable to be set aside.

5. Mr. A.K. Jayaprakash Rao, learned counsel for respondent No.2, submitted that a person aggrieved by a preliminary order is not entitled to question the same by filing a writ petition pending adjudication of the industrial dispute by the Labour Court. In support of his submission, he has placed reliance on several judgments of the Supreme Court, including the judgment in *Cooper Engineering Ltd v. P.P.Mundhe*², *S.K. Verma v. Mahesh Chandra*³, *D.P. Maheshwari v. Delhi Administration*⁴ and *National Council for Cement & Building Materials v. State of Haryana*⁵. He has further submitted that after dismissal of the writ petition, the appellant – management has filed a Memo seeking permission to adduce evidence. That accordingly, in pursuance of the permission granted by the Labour Court, one B.R. Naik Nabare was examined as M.W.1 on 19.1.2006. He has placed a certified copy of the deposition of M.W.1 at the hearing, a perusal of which supports his contention. However, it is evident from the said deposition that cross-examination of the witness was deferred at the request of the counsel for respondent No.2 herein. The appellant has filed these appeals after M.W.1 has given his evidence before the Labour Court.

6. The learned counsel for the appellant has placed reliance on a judgment of a learned single Judge of this Court in *Management of Glaxo India Ltd., Madras v. Presiding Officer, Labour Court, Guntur*⁶ to buttress his submission that the writ petition is maintainable against a preliminary

² (1975) 2 SCC 661

³ (1983) 4 SCC 214

⁴ (1983) 4 SCC 293

⁵ (1996) 3 SCC 206

⁶ 1992 (1) AnWR 468 = (1993) I-LLJ 62 (AP)

order. He submitted that in the said judgment the learned Judge has referred to various judgments of the Supreme Court, including the judgments in *Cooper Engineering Ltd.* (2 supra) and *D.P. Maheswari* (4 supra), on which the learned counsel for respondent No.2 has placed reliance, and held that no embargo was placed by the Supreme Court on the maintainability of writ petition against a preliminary order.

7. In *Cooper Engineering Ltd* (2 supra) a three Judge Bench of the Supreme Court held as under:

“We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

In *Management of Glaxo India Ltd.* (6 supra), relied upon by the learned counsel for the appellant, the learned single Judge of this Court held that the Supreme Court has not laid down as a rule that preliminary orders of Labour Courts and Tribunals cannot be questioned in writ petitions. With due respect to the learned single Judge, we are unable to agree with the said view, in view of the authoritative pronouncement of the Supreme Court in *Cooper Engineering Ltd.* (2 supra) that there will be no justification for any party to stall the final adjudication of the dispute by

the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. Thus, preponderance of judicial opinion appears to be that while there cannot be any prohibition for a party on approaching the High Court on the decision made by the Labour Court on the preliminary issue, the Supreme Court did not find any justification in questioning such orders when it is open to them to question those orders along with the award, if they felt aggrieved thereby.

8. We, therefore, feel that there was no necessity for the appellant to question the preliminary order as it was open to it to question the award itself including the preliminary order after disposal of the I.D. This is precisely what the learned single Judge observed and permitted the parties to adduce evidence before the Labour Court. We are pained to note that an industrial dispute of the year 1993 is kept pending for nearly 24 years in the garb of the management questioning the preliminary order. We cannot imagine the prejudice that respondent No.2 must have suffered on account of prolongation of the I.D. for such a substantially long time.

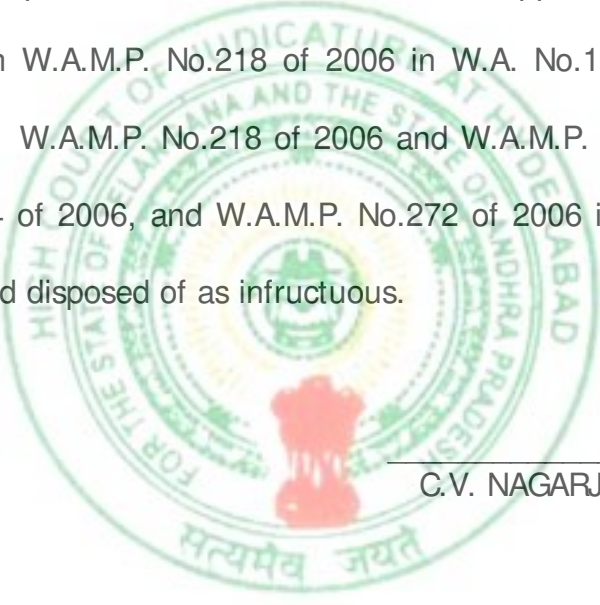
9. The learned counsel for the appellant submitted that the issue of jurisdiction is also involved as no part of the cause of action has arisen within the jurisdiction of respondent No.1 – Labour Court and therefore the said respondent has no jurisdiction to entertain the I.D. In our opinion, all these issues can be raised by the appellant before this Court in a proceeding that may be instituted against the award in the event the appellant felt aggrieved by the same.

10. Having regard to the fact that M.W.1 has already let in his evidence in chief examination, we do not find any reason to stall the enquiry at this

stage. The learned counsel for the appellant expressed an apprehension that due to efflux of time after M.W.1 was examined in chief, he may not be available now. In such an event, the appellant is permitted to file a Memo seeking permission of respondent No.1 to produce any other witness in the place of M.W.1 and also adduce further evidence. Since enormous delay has occurred in disposal of the I.D., respondent No.1 is directed to dispose of the same as expeditiously as possible, and not later than three months from the date of receipt of a copy of this order.

11. Subject to the above directions, the writ appeals are dismissed.

As a sequel to dismissal of the writ appeals, interim order dt.02.2.2006 in W.A.M.P. No.218 of 2006 in W.A. No.114 of 2006 shall stand vacated. W.A.M.P. No.218 of 2006 and W.A.M.P. No.1441 of 2006 in W.P. No.114 of 2006, and W.A.M.P. No.272 of 2006 in W.A.No.138 of 2006 shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

31-8-2017

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