

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.23225, 23721, 23724, 23726,
23727 and 23830 of 2015

COMMON ORDER:

Heard Mr.V.Narasimha Goud for petitioners, Mr.C.Sidhar for 1st respondent in the writ petitions/erstwhile employee of Mahalaxmi and Company, an outlet of Bharat Petroleum Corporation Limited and the Assistant Government Pleader for Labour for 2nd respondent.

The petitioner in batch of writ petitions is one Prashanth Kashikar, one of the partners of Mahalaxmi and Company. The petitioner challenges order dated 17.03.2015 in I.A.No.10 of 2014 in S.No.4 of 2012 etc., pending on the file of 2nd respondent.

The counsel appearing for parties have stated that the circumstances leading to the filing of Shops & Establishments Appeals and filing of interlocutory applications, pending consideration of appeals are substantially similar, except with the change of name of workman/employee in respective cases. Therefore, the counsel have treated W.P.No.23225 of 2015 as lead case for referring to the averments etc. and have further stated that reference to the averments in this case would be sufficient for disposing of batch of writ petitions.

The petitioner prays for Writ of Certiorari to call for the record leading up to and inclusive of order dated 17.03.2015 in I.A.No.10 of 2014 in S.No.4 of 2012, quash the same and accept the prayer of petitioner made in I.A.No.10 of 2014 that the 2nd respondent has no

jurisdiction to entertain S.No.4 of 2012 under the A.P.Shops and Establishments Act, 1988 (for short 'the Act').

The petitioner is one of the partners of 3rd respondent, a dealer selling the products of BPCL. The licence of 3rd respondent was cancelled by BPCL. On account of the orders passed by BPCL, the retail outlet run by 3rd respondent was closed. The 1st respondent was working as Cashier/Employee in 3rd respondent Firm. The 1st respondent filed appeal under Section 48(1) of the Act praying for setting aside the oral termination order, dated 16.10.2012 as illegal and also reinstate the 1st respondent into service with full back wages, continuity of service together with all attendant benefits etc.

The Managing Partner of 3rd respondent-Firm filed counter affidavit opposing the prayer with legal and factual objections. For the present, it is sufficient to advert to one of the objections of Managing Partner of 3rd respondent is that there is no termination of services of 1st respondent or any employee for that matter, but on account of expiry of licence, a direction was issued for closure of the outlet, the operations were abandoned because the 3rd respondent was doing business in licensed products. At the first instance, the petitioner and the Managing Partner of 3rd respondent Firm assert to have filed a Memo to take up preliminary issue namely whether severance of relationship is on account of closure of the outlet operations or on account of alleged oral termination referred by the employees. The 2nd respondent, in the considered view of

this Court, rightly declined to pass orders on the Memo filed by the petitioner or 3rd respondent. Thereafter, the petitioner filed interlocutory application, which is taken on file as I.A.No.10 of 2014 for the following prayer :-

“... pleased to decide the preliminary issue of maintainability of the application filed under Section 48(1) A.P.S.C., Act, 1988 in the interest of justice and fair play.”

The employees filed counter opposing consideration of preliminary issue and one of the objections raised is that in the case on hand, having regard to the defence taken by 3rd respondent Firm, the substantive defence of the Firm is that there is no termination of service but closure of operation and before the petitioners are given opportunity to lead evidence, taking up preliminary issue and deciding the issue on closure of business, is illegal and causes hardship.

The 2nd respondent through the order impugned in the writ petition held as follows :-

“The main appeals i.e., S.No.4 of 2012 to S.No.11 of 2012 are filed by the respondents/ appellants under Sec.48(1) of the Act praying this Authority to set aside the illegal and oral termination order dated 16.10.2012 and to give a direction to the respondents therein to reinstate them into service with full back wages, continuity of service and all other attendant benefits and also award costs and interest from the date of termination till the date of reinstatement.

It is the case of the petitioners/ respondents 1 and 3 in these I.As is that at no point of time, they terminated the services of the respondents/ appellants and since no termination order has been issued, the appeals filed by the respondents/ appellants under Sec.48(1) of the Act is not maintainable. It is also the case of the

petitioners/ respondents 1 and 3 that as per the directions of the Hon'ble High Court of Andhra Pradesh, the petrol pump was closed.

The respondents/ appellants have denied the plea of the petitioners/ respondents 1 and 3 that in pursuance of the orders of the Hon'ble High Court, the petrol pump is closed.

The issue whether the petitioners/ respondents have terminated the services of the respondents/ appellants or not cannot be decided at this stage. Both the contesting parties have to lead their evidences by producing necessary documentary evidence in support of their respective contentions. Already the respondents/ appellants have filed their chief affidavits in the main appeals and the appeals are coming up for marking of the documents by the respondents/ appellants herein and at this stage, the petitioners/ respondent Nos.1 and 3 have filed the present I.As. The respondents/ appellants have to be given an opportunity to prove their case and likewise the petitioners/ respondent Nos.1 to 3 have to disprove the case of the respondents/ appellants. Further, I am of the opinion that the petitioners/ respondents 1 and 3 do not suffer any injustice by deciding the present cases on merits filed by poor employees of the petitioners/ respondents 1 to 3.

Under these circumstances, the present I.As filed by the petitioners/ respondent Nos.1 and 3 are dismissed and the main appeals are posted to 24/ 7/ 2015 for marking of the documents by the appellants in the main case."

Hence, the writ petitions.

Mr.Narasimha Goud contends that either the writ petitioner or the 3rd respondent Firm is relying on the orders passed by this Court, which *prima facie* go to show that it is a case of discontinuation of operations by 3rd respondent Firm, but not termination of service as sought to be projected by employees. According to him, this aspect goes to the very root of jurisdiction of 2nd respondent ought to be decided and the petitioner and/or 3rd respondent ought not

to be subjected to an avoidable ordeal of enquiry before 2nd respondent.

Mr.V.Narasimha Goud does not stop his submissions with the illegal or failure of exercise of jurisdiction by 2nd respondent, but makes serious attempt to persuade this Court on the consequential prayer made in the writ petition i.e., 'pleased to hold that the 2nd respondent authority has no jurisdiction to entertain SENO.4 of 2012 under the Act.' In other words, his attempt is to persuade this Court to record a finding on alleged severance of relationship is due to closure of outlet or termination by R-3-Firm and issue prohibition to 2nd respondent.

Learned counsel has drawn the attention of the court not only to the findings recorded against the petitioner or 3rd respondent, but has also stated that the consequential prayer if considered by this Court, at this stage of the matter, the same would amount to this Court now adjudicating the dispute, which is pending before the 2nd respondent. He alternatively contends that the statutory authority-2nd respondent though was not inclined to frame preliminary issue and decide at this stage of the matter, but at least to ensure decision on all issues between the parties, the 2nd respondent is under obligation to frame an issue on the pleas raised by petitioner or 3rd respondent firm i.e., whether the outlet operations of R-3 were closed resulting in severance of relationship between employee and employer.

Mr.C.Sidhar objects to the maintainability of both interlocutory application and also the writ petition. According to him, the pleadings of both employee and employer are to be read in its entirety, and the petitioner, in a matter where the contest is on the termination of service or closure of outlet, ought not to insist upon framing a preliminary issue and decision by 2nd respondent. He reports no objection, if appropriate issue on the stand taken by employer is framed by 2nd respondent and enquiry is conducted. He places reliance on *D.P.MAHESHWARI Vs. DELHI ADMINISTRATION AND OTHERS*¹ to contend that the filing of interlocutory applications particularly to decide preliminary issues and thereafter challenging that orders under Article 226 are deprecated by the Apex Court and he has no objection for framing issues those are warranted for decision by the 2nd respondent, including the issue insisted upon by petitioner-3rd respondent. He draws the attention of the Court to the reasoning of 2nd respondent for disposing these applications and contends that this Court, if accepts the prayer of petitioner for any purposes, the consideration by this Court would result in irreparable injury and hardship to employees. He prays for dismissing the writ prayers.

I have heard the learned counsel and perused the record.

The circumstances leading to the filing of appeal before 2nd respondent and also the present applications for framing

¹ (1983) 4 Supreme Court Cases 293

preliminary issue and deciding the same are already referred and for brevity, this Court does not propose to refer to them once again.

I have perused the appeal filed by employee and also counter filed by the Managing Partner of 3rd respondent Firm.

The parties have placed averments together with supporting documents on their respective pleas.

This Court is of the view that either for considering whether there is alleged oral termination or there is severance of relationship on account of closure of the outlet, the pleadings or evidence on both the issues is going to be same and similar or overlapping. Under those circumstances, the request of petitioner to frame preliminary issue and decide that in the considered view of this Court causes hardship and prejudice to the employees, who have filed appeals under the Act before 2nd respondent. The issue no doubt as stated by the Firm is required to be framed by 2nd respondent.

This Court is not persuaded by the submissions of petitioner to frame preliminary issue, take up trial and decide the preliminary issue. The first contention of petitioner is not accepted and accordingly rejected.

Mr. Narasimha Goud has fairly stated that, if the prayer sought is considered, it would amount to adjudicating the dispute pending before the 2nd respondent in appeal. In view of rival submission and deliberation on the aspect of framing preliminary issue, this court is of the view that the request for framing and

deciding preliminary issue ought to be avoided. As held by the Apex Court in *D.P.MAHESHWARI's case* (supra), the 2nd respondent ought not to have taken up all the I.As., pass orders and kept the appeals pending for several years. Instead the 2nd respondent by using its discretion and jurisdiction, ought to have framed the issue, which is insisted upon by the Management, a schedule given for the matter and dispose of the very appeal within reasonable time which furthers the object of the Act. Therefore, this Court is of the view that the 2nd respondent frames an issue on whether the outlet is closed or not, tries this issue along with the other issues framed at the instance of employees and disposes of the appeals, as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order.

The parties, if do not co-operate for proceeding with the disposal of appeals, the 2nd respondent is given liberty to record reasons and proceed to dispose of the appeals on merits within the time stipulated by this Court.

With the above observations, the writ petitions are disposed of. The orders impugned in the writ petitions are confirmed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 09-04-2018
Prv

