

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.2955 OF 2001 & 5271 OF 2009

COMMON ORDER:

1. Since the issue raised in both the petitions is one and the same, both the writ petitions are heard together and are being disposed of by this common order.
2. W.P.No.2955 of 2001 is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.219 of 1998 on the file of the 2nd respondent-Labour Court, Visakhapatnam, and to quash the award dated 23.10.2000 passed therein.
3. W.P.5271 of 2009 is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with M.P.No.43 of 2005 on the file of the Labour Court, Visakhapatnam, and to quash the order dated 16.12.2008 passed therein.
4. The petitioners in W.P.No.2955 of 2001 are the respondents in W.P.No.5271 of 2007. For the sake of convenience, the status of the parties arrayed in W.P.No.2955 of 2001 and the facts therein are discussed hereunder.

5. Heard Sri Saluri Ramesh and Sri P.B. Vijay Kumar, learned Counsel for the petitioners and Sri N. Ashwani Kumar, learned Counsel for the respondent-workman.

6. It is the case of the petitioners that the 1st respondent-workman was appointed as junior supervisor in the petitioner-company's Branch at Visakhapatnam on 4.7.1970. The petitioner-company sent the workman to abroad also to take care of the company's work. The 1st respondent-workman discharged his duties entrusted to him independently. Due to the exigencies of the petitioner-company, the 1st respondent was being transferred from one place to another according to the necessity and the demand of the company. The 1st respondent-workman is in the habit of absenting himself and he applies leave after availing the same. However, lenient view was taken by the petitioner-company, and the leave was being granted. While he was working at Visakhapatnam, he was transferred to Jharsuguda in Orissa State vide order dated 28.7.1997 and he was directed to report for duty within seven days. The 1st respondent-workman instead of joining at the place of transfer submitted a representation to the Director requesting for transfer to Mangalore, which could not be acceded to in the exigencies of the work. Challenging the said order of transfer, the 1st respondent filed O.S.No.1602 of 1997 before the II Additional District Munsif, Visakhapatnam. But the

Civil Court did not grant any relief as prayed by the workman. Thereafter, the workman was relieved by the Branch Office at Visakhapatnam on 14.8.1997 in pursuance of the letter dated 13.8.1997. The 1st respondent-workman received the said order. But he neither handed over the charge at Vishakhapatnam office nor did he report for duty at Jharsuguda office as directed. Therefore, the petitioner-company has no other alternative to treat him as deemed to have been relieved with effect from 14.8.1997 from Visakhapatnam office. The 1st respondent-workman did not carry out the instructions of the company. Then, the petitioner issued a show cause notice dated 24.10.1997 to comply with the directions of the petitioner or else disciplinary action would be initiated against the 1st respondent-workman. Thereafter, the petitioner placed the workman under suspension with effect from 12.1.1998 and ordered for domestic enquiry. The enquiry was conducted. But the workman did not participate in the enquiry. Left with no other option, ex parte enquiry was conducted. After receipt of enquiry report on 11.5.1998, the 1st respondent-workman was given another opportunity to join. Since there was no response from the 1st respondent, the petitioner-company dismissed him from service with effect from 15.9.1998. Full and final settlement of all his dues was also communicated to the workman vide letter dated 17.9.1998. Aggrieved by the dismissal order, the 1st respondent-workman filed I.D.No.219 of

1998 before the Labour Court. The Labour Court vide order dated 23.10.2000 modified the order of dismissal to that of stoppage of one increment with cumulative effect and ordered for reinstatement of the workman into service, with a direction to the workman to join at the place of his transfer i.e., at Jharsuguda within one month from the date of receipt of the order, failing which, he shall not be entitled for reinstatement. The Labour Court further held that the management shall consider the request of the workman for retransfer to Visakhapatnam or Mangalore after the workman joins at his new station, and that if the workman fails to report for duty at Jharsuguda within one month he will not be entitled to back wages or continuity of service. Challenging the award passed in the above I.D., the Management filed W.P.2955 of 2001. On 22.2.2001, while admitting the writ petition, this Court granted interim suspension of the order of the Labour Court. Subsequently, this Court modified the said interim order granting interim stay subject to the condition of the petitioner-company complying with Section 17-B of the Industrial Disputes Act.

7. While so, the 1st respondent-workman sent a letter to the petitioner-company informing that he would join the duty on 9.2.2001 at Jharsuguda. Accordingly, the workman reported to duty at Jharsuguda. But he was not permitted to join on the

ground that no instructions were received from the head office. Then, the workman filed a petition before the Labour Court seeking execution of the award. But the same was returned. Thereafter, the workman filed a petition in M.P.No.43 of 2005 under Section 33(c) (2) of the Industrial Disputes Act for recovery of wages from 1.1.1998 to 30.4.2005 due from the petitioner-company. The said petition was dismissed on the ground that the workman did not go to Jharsuguda to join the duty. Aggrieved by the same, the workman filed W.P.No.5271 of 2009.

8. The learned Counsel for the petitioner-company contended that the notices were served on the respondent-workman at Mangalore and enquiry was conducted at Calcutta Head office, and the order of dismissal was issued at Calcutta, and no part of cause of action has arisen in the State of A.P. and the Labour Court ought not to have entertained I.D. preferred by the workman as it lacks territorial jurisdiction. To strengthen his arguments, the learned Counsel for the petitioner-company relied upon the judgment of the Hon'ble Supreme Court in ***Workmen of Sri Ranga Vilas Motors(P) Limited vs. Sri Rangavilas Motors (P) Limited and others***¹ wherein the Hon'ble Supreme Court held as follows:

¹ AIR 1967 SC 1040

“Therefore, the appeal must succeed unless the Company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. Mr. O. P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and,, that- the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at 'Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is : Where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in **Indian Cable Co. Ltd., Vs. Its Workmen ((1962) 1 Lab LJ 409 (SC))** held as follows:

"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C. J., observed in **Lalbhai Tricumlal Mills Limited V. Vin [1956] 1 L.L.J. 557, 558 (AIR 1955 Bom 463 at P.464) :**

‘But What we are concerned with to decide is: where did the dispute substantially arise ? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the labour court. But applying the well-known tests of jurisdiction, a Court, or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the -subject-matter of the dispute substantially arises within jurisdiction.’

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under S.10 of the Act".

Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government.

He also relied upon the judgment of this Court in W.P.No.17858 of 1998 dated 4.11.2008, wherein this Court held as follows:

“It is no doubt true that the Division Bench judgment of the Madras High Court in **L.V. Veeri Chettair** (AIR 1971 Mad 155), and this Court in **A.V. Vinod Kumar** 2007(5) ALD 445, do indicate that receipt of notices would constitute a part of cause of action within the territorial jurisdiction of a High Court. The fact, however, remains that the Full Bench judgment of the Kerala High Court in **Nakul Deo Singh** 1999(3) KLT 629, has been referred to with approval by the Supreme Court in **Musaraf Hossain Khan** 2006 CrI.L.J. 1683, wherein it is categorically laid down to the contrary. A judgment of a High Court being referred with approval by the Supreme Court would necessitate High Courts to follow the said decision. Consequently, it must be held that no part of the cause of action has arisen within the territorial limits of this Court. On this ground alone, the writ petition is liable to be and is, accordingly, dismissed. However, in the circumstances, without costs.”

Further, the learned Counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **Dhodha House Vs. S.K. Maingr²** wherein it was held as follows:

It is trite law that a judgment and order passed by the court having no territorial jurisdiction would be nullity.

In **Kiran Singh and Others Vs. Chaman Paswan and Others** [AIR 1954 SC 340], this Court observed :

"It is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.”

² (2006) 9 SCC 41

He relied upon the other judgment of the Hon'ble Supreme Court in ***A.St. Arunachalam Pillai Vs. M/s Southern Roadways Limited and another***³ wherein it was held as follows:

“In our opinion, although the respondent had submitted to the jurisdiction of the Regional Transport Officer and had not in his petition under Art.226 in the High Court taken the objection that officer had no jurisdiction to vary the conditions of a permit, the High Court acted rightly in allowing the respondent to urge that the Regional Transport Officer had no jurisdiction to vary the conditions of a permit. It was not until the decision of the High Court in Writ Appeal No. 107 of 1955 that it became the considered view of that Court that the Regional Transport Officer had no jurisdiction to make any such variation. When the law was so declared by the High Court it could not reasonably be said that the High Court erred in allowing the respondent to take this point although in its petition under Art.226 the point had not been taken. This was obviously because the decision of the High Court in Writ Appeal No. 107 of 1955 had not been given at the time of the filing of the petition, Since the question went to the root of the matter and it involved the question whether the Regional Transport Officer had jurisdiction to vary the conditions of a permit the High Court, faced with a Division Bench decision of its own on the matter, could not very well refuse permission to the respondent to rely on that decision in support of its petition questioning the validity of the order of the Government of Madras made under S.64A of the Act.

He relied upon the judgment of this Court in ***S. Padmanabham Vs. Industrial Tribunal-II, Hyderabad and others***⁴ wherein it was held as follows:

³ AIR 1960 SC 1191

⁴ 2009(1) ALD 133 (DB)

“Applying the principles laid down by the Supreme Court in the above decisions, and having regard to the situs of employment and the fact that dismissal orders emanated at Sirpur-Kaghaznagar, we are of the considered opinion that the situs of employment of the workman would be the criterion for raising ID and as such, Industrial Tribunal-cum-Labour Court, Godavari Khani, has jurisdiction to adjudicate the industrial dispute, but not the Industrial Tribunal/Labour Court at Hyderabad. Further, it is to be noticed that the Industrial Tribunal has already held that the domestic enquiry is valid probably with the consent of both the parties, which in our view is not correct, as the consent of both parties does not confer any jurisdiction on the court concerned.

9. Relying upon the above judgments, the learned Counsel for the petitioners contended that the Labour Court has no jurisdiction to entertain the I.D and therefore, the award passed by the Labour Court is liable to be set aside.

10. Learned Counsel for the 1st respondent-workman contended that the Labour Court has rightly passed the award and that the objection of territorial jurisdiction was not taken before the Labour Court nor in the writ petition, and without there being any pleading, the petitioner cannot find fault with the order of the Labour Court. He further contended that the workman had given a letter to the petitioners to permit him to join the duty at Jharsuguda, but they informed that they have challenged the award of the Labour Court by filing W.P.No.2955 of 2001 and they further informed about the status of the writ petition and about the interim suspension of the order of the Labour Court subject to the condition of the petitioner-company complying with Section 17(B) of the

Industrial Disputes Act. He further contended that the said interlocutory order passed by this Court was vacated on 8.4.2005 and then, the workman filed M.P.No.43 of 2005 before the Labour Court and that the Labour Court erroneously dismissed the said M.P. on 16.12.2008, aggrieved by which, the workman filed W.P.No.5271 of 2009, and that there are no merits in W.P.No.2955 of 2001, and it is liable to be dismissed as no grave irregularity or illegality pointed out by the petitioner-company in the order passed by the Labour Court in I.D.No.219/1998.

11. This Court having considered the rival submissions made by the parties is of the view that the petitioner-company has not raised the issue of territorial jurisdiction before the Labour Court. In fact, the petitioner-company participated in the proceedings before the Labour Court. When the award was passed in favour of the workman, the petitioners challenged the same before this court by filing W.P.No.2955 of 2001 and in the said writ petition also they have not raised about the issue of territorial jurisdiction. When specific plea was not raised, it is difficult for the Labour Court to adjudicate the matter on the aspect of territorial jurisdiction. Such plea was not taken by the petitioners before the Labour Court and this Court, only at the time of arguments a plea of territorial jurisdiction is raised. The issue of territorial jurisdiction cannot be raised as that of

inherent lack of jurisdiction. The Labour Court at Visakhapatnam has inherent jurisdiction to examine whether the petitioners have rightly dismissed the workman or not. The issue of territorial jurisdiction will have to be examined when only specific plea is raised before the Labour Court. Since the petitioners have not raised plea of territorial jurisdiction before the Labour Court at Visakhapatnam, the labour Court has rightly adjudicated the case filed by the respondent-workman under Section 2-A(2) of the Industrial Disputes Act and passed the orders by duly taking into account that the petitioners have participated during the adjudication process. Unless and until, it is pointed out by either of the parties about the territorial jurisdiction, the labour Court cannot examine the issue of territorial jurisdiction on its own without there being a pleading to that effect. In the instant case, the petitioners were transferred from Visakhapatnam to Jharsuguda and the respondent-workman filed suits before the competent Civil Courts at Visakhapatnam and thereafter, filed I.D.No.219 of 1998 before the labour Court, Visakhapatnam as though Visakhapatnam Labour Court has jurisdiction. The Labour Court had no other option except to adjudicate the case on merits as it has inherent jurisdiction to examine whether the petitioner-management has rightly dismissed the respondent-workman or not. Therefore, this Court is of the view that the issue of territorial jurisdiction cannot be equated to that of

inherent lack of jurisdiction. The labour Court at Visakhapatnam had inherent jurisdiction and since the petitioners have not raised the issue of territorial jurisdiction before the labour Court or in the present writ petition, this Court cannot non-suit the orders passed by the labour Court in favour of the respondent-workman only because of the oral arguments advanced in the present case. In my considered view, the petitioners cannot be permitted to raise the same for the first time in the writ petition, that too in the arguments without a plea to that effect in the pleadings in the writ petition. This Court has to consider the legality and validity of the award passed by the Labour Court on the basis of the material that was made available for consideration. This Court may have to judiciously review the award passed by the Labour Court and decide as to whether it suffers from any error apparent on the face of the record. However, the question raised in this regard is not res integra. In the absence of any pleading with regard to territorial jurisdiction, the Labour Court has rightly passed the award in I.D.No.219 of 1998. Apart from that, the petitioner-company could not point out grave irregularity in the award passed by the Labour Court. In the absence of the same, this Court cannot interfere with the award passed by the Labour Court, more so, when it exercised its power under Section 11(A) of the Industrial Disputes Act.

12. Accordingly, W.P.No.2955 of 2001 filed by the petitioner-company is dismissed. W.P.No.5271 of 2009 filed by the workman is allowed by setting aside the order of the Labour Court in M.P.No.43 of 2005 dated 16.12.2008. The respondent-workman is entitled for all the benefits in pursuance of the order of the Tribunal in I.D.No.219 of 1998 with all consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated: 28th December, 2018
nn



THE HON'BLE SRI ABHINAND KUMAR SHAVILI



WRIT PETITIONS Nos.2955 OF 2001 & 5271 OF 2009

28.12. 2018

nn