

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.8622 of 2014

ORDER:

This writ petition is filed seeking a Writ of Prohibition, restraining/prohibiting respondent No.1 i.e. Chairman-cum-Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad from proceeding with I.D.No.42 of 2013 pending on the file of respondent No.1, filed under Section 2-A(2) of the Industrial Disputes Act, 1947 by respondent No.2.

2. Heard Sri S.Ramesh, counsel for petitioners, Government Pleader for Labour, appearing for respondent No.1 and Sri S.S.Prakasam, counsel appearing for respondent No.2.

3. It has been contended by the petitioners that the 1st petitioner-Company is incorporated under the Companies Act and the 2nd respondent was appointed as a Machine Operator by a Company called EID Parry (India) Ltd., during August, 2003. Upon amalgamation of said EID Parry (India) Ltd. with the 1st petitioner-Company on 01.12.2003, the services of 2nd respondent were to be continued with the 1st petitioner-Company without interruption. The 2nd respondent was promoted as Senior Officer (Accounts) in the officer grade during July, 2006 and he was transferred to Aurangabad and has been discharging his duties at Aurangabad. As the officers of the 1st petitioner-Company were not satisfied with the performance of 2nd respondent, several e-mails and letters dated 01.07.2010,

12.05.2011, 16.07.2012 and 27.07.2012 were issued to the 2nd respondent to improve his performance and efficiency, as the 2nd respondent was unauthorisedly absent. When the 2nd respondent has not improved his performance inspite of issuance of letters to him, left with no option, the petitioners have terminated the services of 2nd respondent vide proceedings dated 9th October, 2013. It is contended by the petitioners that the said termination orders dated 9th October, 2013 were issued at Aurangabad, where, the 2nd respondent was discharging his duties. Challenging the said termination orders, the 2nd respondent, without disclosing that the termination orders were issued at Aurangabad, had filed I.D.No.42 of 2013 under Section 2-A(2) of the Industrial Disputes Act and the 1st respondent had entertained the said I.D. and issued notices to the petitioners. Challenging the action of respondent No.1 in entertaining I.D.No.42 of 2013 under Section 2-A(2) of the Industrial Disputes Act, the present writ petition is filed on the ground that respondent No.1 lacks territorial jurisdiction to entertain the I.D. preferred by the 2nd respondent under Section 2-A(2) of the Industrial Disputes Act.

4. The learned counsel appearing for petitioners has contended that a similar issue fell for consideration before this Court in **Siemens Ltd., Secunderabad v. Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad & another**¹, wherein, a learned Single Judge of this Court has held that the

¹ 2002 (6) ALD 492

Industrial Tribunal at Hyderabad has no jurisdiction to entertain an Industrial Dispute as the employee therein was seized to be an employee at Hyderabad office with effect from 03.10.1994 and was transferred to Manipal office, therefore, only the Tribunal at Karnataka State, within which Manipal is situated, was having jurisdiction, as none of the part of cause of action arose at Hyderabad.

5. The learned counsel for petitioners has also relied upon the judgment rendered by a Division Bench of this Court in **S.Padmanabham v. Industrial Tribunal-II, Hyderabad & others**², wherein, it was held that an employee who was discharging his duties at Sirpur Paper Mills, Sirpur Kagaznagar, Adilabad District, was dismissed from service on proven misconduct and the situs of employment of workman being criterion for raising industrial dispute, only the Industrial Tribunal/Labour Court at Godavari Khani was having jurisdiction to entertain the industrial dispute, but not the Courts at Hyderabad.

6. The learned counsel appearing for petitioners has further relied upon the judgment in **Workmen of Sri Ranga Vilas Motors (P) Ltd. v. Sri Rangavilas Motors (P) Ltd. & others**³. Paragraph 14 of the said judgment reads as under :

“14. 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

² 2009 (1) ALD 133 (DB)

³ AIR 1967 SC 1040

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. v. Workmen [(1962) 1 LLJ 409], 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 Ltd. v. Vin [(1956) 1 LLJ 557, 558]:

‘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 Section 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.”

Therefore, it is contended by the learned counsel for petitioners that the Industrial Tribunal at Hyderabad i.e. respondent No.1 has no jurisdiction to entertain the I.D. preferred by the 2nd respondent.

7. Learned counsel for petitioners has also relied on G.O.Ms.No.30, dated 27.01.1986, wherein, the jurisdiction of Industrial Tribunal at Hyderabad has been given. He contends that the Industrial Disputes pertaining to the areas falling under the jurisdiction of Industrial Tribunal at Hyderabad alone are to be entertained by the 1st respondent. But, in the instant case, the 2nd

respondent was terminated from service while he was discharging his duties at Aurangabad, therefore, the 1st respondent lacks territorial jurisdiction to entertain the I.D. filed by the 2nd respondent.

8. Learned counsel for 2nd respondent has contended that the 2nd respondent was terminated from service without affording any opportunity and without following the principles of natural justice. A perusal of the termination order also does not disclose that the 2nd respondent was terminated while working at Aurangabad. If really the 2nd respondent was terminated while working at Aurangabad, the same should have been disclosed in the termination order. Therefore, the 1st respondent has rightly entertained the I.D. preferred by the 2nd respondent, and that all the points which the petitioners are trying to raise in this writ petition with regard to territorial jurisdiction, can also be raised before the 1st respondent and the same can be adjudicated as a preliminary issue, but, the petitioners cannot stall the proceedings which are pending before the 1st respondent, by obtaining stay of all further proceedings vide orders dated 21.03.2014 and since more than Five years, there is stay of proceedings in the I.D. before the 1st respondent. The 2nd respondent is out of employment and is facing lot of difficulties as the proceedings in the I.D. pending before the 1st respondent are stalled.

9. This Court, having considered the rival submissions made by the parties, is of the considered view that the 1st respondent-Industrial Tribunal has got inherent jurisdiction to examine whether an

employee is rightly terminated or not, by entertaining the application under Section 2-A(2) of the Industrial Disputes Act. The point of territorial jurisdiction raised by the petitioners is a mixed question of fact and law and the same can also be raised before the 1st respondent by way of pleadings, so that the 1st respondent can decide the same as a preliminary issue, but they cannot stall the proceedings pending before the 1st respondent.

10. This Court has perused the termination order of 2nd respondent, which does not contain the place of issuance. Only the name of 2nd respondent is mentioned in the said order, without mentioning the place of work. As the termination order does not disclose that the 2nd respondent was terminated while working at Aurangabad, it is difficult for this Court to come to a conclusion that the termination orders were issued at Aurangabad. Therefore, this Court is not inclined to interfere in the matter.

11. Another interesting aspect in this case is that the petitioners have promoted the 2nd respondent vide proceedings dated 11.01.1999 as Supervisor. A perusal of the said promotion order discloses that the 2nd respondent was promoted while he was working at Bellary. The petitioners have issued another proceedings on 26.08.2003, wherein, the 2nd respondent was re-designated as Officer – Accounts while he was working at Bellary. Another letter was also issued to the 2nd respondent by the petitioners on 01.07.2006, which was addressed to the Kurnool Branch office. Apart from that, a series of letters were

addressed to the 2nd respondent on 01.07.2010 stationed at Aurangabad and a show cause notice was also issued to him by the petitioners at Aurangabad. Inspite of that, strangely, in the termination order dated 09.10.2013, no place is mentioned except mentioning the name of the 2nd respondent. Admittedly, the said termination order had emanated from the Secunderabad office, Andhra Pradesh. In the absence of mentioning the place at which the termination orders were served, the contention of the petitioners that the services of 2nd respondent were terminated while he was working at Aurangabad, cannot be accepted. Therefore, this Court is not inclined to interfere in the matter.

12. Accordingly, the writ petition is dismissed. However, the petitioners can raise the plea with regard to maintainability of I.D. before the Industrial Tribunal, Hyderabad i.e. 1st respondent, in which event, the 1st respondent shall consider the same and decide the issue regarding territorial jurisdiction as a preliminary issue, and only thereafter, proceed further in I.D.No.42 of 2013. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

12th June, 2019

ajr