

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10100 OF 2019

1. Chalet Hotels Ltd.
2. M/s.Lakeside Chalet .. Petitioners

Vs.

Shri Rajendra Prasad Singh .. Respondent

Mr.Ravindra V.Paranjape, for the Petitioners.
Mr.N.N. Gawankar i/b Mr.Manas N.Gawankar, for Respondent.

CORAM : M. S. KARNIK, J.

DATE : 05th MARCH, 2021

P.C. :

. The challenge in this Petition filed under Articles 226 & 227 of the Constitution of India is to an order dated 10/04/2019 passed by the Presiding Officer, Tenth Labour Court, Mumbai. Learned Counsel for the Petitioners challenging the order of the Labour Court submitted that the reference made before the Labour Court was not maintainable as second party was not a 'workman' and application therefore at Exhibit 'C-4' was filed for framing a preliminary issue before proceeding with the reference.

According to learned Counsel for the Petitioners, the issue whether the Respondent is a workman strikes at the very root of the maintainability of the reference and jurisdiction of the Labour Court to decide the reference and therefore the same should have been framed and decided as a preliminary issue before proceeding with the reference.

2. Learned Counsel submitted that the Hon'ble Supreme Court in **D.P. Maheshwari Vs. Delhi Administration and ors. (1983) 4 Supreme Court Cases 292** does not lay down a proposition that the preliminary issue cannot be framed and decided as such. In his submission, there were several documents relied upon to show that the Respondent was discharging managerial or supervisory duty. The salary of Rs.90,000/- payable to the Respondent clearly indicates that the Respondent is not a 'workman'. Learned Counsel submitted that the Labour Court committed an error in relying upon the decision in the case of **D.P. Maheshwari's case** (*supra*) to reject the application without considering the materials on record which justifies framing and a decision on the preliminary issue. He submitted that the Labour Court should have in the first instance decided whether in the facts and circumstances of the present case, the issue raised touching on the jurisdiction of the Labour

Court should be tried as a preliminary issue. According to him this exercise has not been done. Learned Counsel further submitted that at a later stage, if it is held that the Respondent is not a 'workman', then the entire exercise of leading evidence on all the issues together will be rendered futile. He submitted that in the facts of the present case, the issue raised by the Petitioners touching the jurisdiction of the Labour Court was required to be decided as a preliminary issue. Learned Counsel for the Petitioners relied upon the decision of the Karnataka High Court in the case of **Rangaswamy and Company Vs. D.V.Jagadish and anr. 1991 (62) F.L.R. 346.**

3. Learned Counsel for the Respondent relied upon the decision in the case of **D.P. Maheshwari** (*supra*) and submitted that the Labour Court in its order has given sufficient reasons for arriving at the conclusion that instead of deciding the issue as a preliminary issue, all the issues can be decided together.

4. Heard learned Counsel. Their Lordships in the case of **D.P. Maheshwari** (*supra*) have observed that the Tribunals and Courts who are requested to decide preliminary questions must ask themselves whether such threshold part-adjudication is

really necessary and whether it will not lead to other woeful consequences. It is further observed that the 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 and journeyings up and down. Their Lordships further held that it is also worth while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate. In the exercise of such jurisdiction, the High Court is not required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

5. In my opinion, whether the preliminary issue should be framed or not and so decided would depend on the facts and circumstances of each case. I find that the Labour Court has in paragraph 8 observed thus :

“8. The observations in **D.P. Maheshwari** (supra) are very clear and specific. It is provided by the Apex Court that; in labour litigations the matter should not be decided in piecemeal process. If such type of objections are allowed to be raised definitely it will protract the litigation. In **Hussan Mhaswadkar** (supra) though Hon’ble Apex Court observed about adjudicating of status of second party, but another question whether the first party therein was an ‘Industry’ or not has also been raised. To decide the status of second party

it would be appropriate that parties should be given sufficient opportunity to lead evidence being it as mixed question of facts and law. It is of no doubt that the issue regarding status of second party is necessary to be framed, but it can be decided along with other issues. Therefore, to avoid delay in progress of the reference it would be just and proper that issue about status of second party be framed and be decided with other issues. As such, the first parties is justifiable in raising the issue of workman regarding second party, but it is not necessary to decide the same is preliminary issue. Accordingly, I answer Point No. 1 'partly in affirmative' and in answer to Point No. 2 following order is passed;

O R D E R

(i) Application is partly allowed.

(ii) The issue to be framed as follows :

“Whether second party proves that he is a ‘workman’ u/s 2(s) of the I.D. Act ?

(iii) The abovementioned issue be decided with other issues.”

6. I find that the Labour Court was of the opinion that it is not necessary to decide the said issue as a preliminary issue. Further observation is made that to avoid delay in progress of the reference, it would be just and proper that issue about status of second party be framed and be decided with other issues. If in these circumstances, the Labour Court has formed an opinion that the issue regarding the status of the second party is necessary to be framed and it can be decided along with the

other issues instead of deciding the same as a preliminary issue, I see no error of jurisdiction committed by the Labour Court in adopting this course. The impugned order does not call for any interference. Petition is rejected.

(M.S.KARNIK, J.)

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