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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.27712 OF 2017

AND

WMP.NO.29663 OF 2017

The Management of
K-1815 Mathavarayapuram Primary Agricultural
Co-operative Credit Society
Rep. by its President
Mathavarayapuram Post,
Coimbatore.

...Petitioner

VS

1.The Presiding Officer,
Labour Court, Coimbatore.

2.S.Mohan

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent in I.A.No.1064 of 2016 in I.D.No.161 of 2009 and quash the order dated 25.05.2017.

For Petitioner : Mr.Haroon
For Mr.T.S.Gopalan & Co.

For Respondents : Mr.Abnaar and Abdullah (R2)

O R D E R

The Petitioner / Management has come forward with the present writ petition, challenging the order of the 1st Respondent dated 25.05.2017 made in I.A.No.1064 of 2016 in I.D.No.161 of 2009.



2. The case of the Management is that the Workman / 2nd Respondent herein raised an Industrial Dispute under Section 2(A)(2) of the Industrial Disputes Act, 1947 to set aside the dismissal order dated 10.04.2008 and to direct the Management to reinstate him with continuity of service and other attendant benefits. It is further case of the Management that during pendency of the dispute, the Management preferred an application to decide the status of the second respondent at first instance as preliminary issue before going for adjudication on merits, as, according to the Management, the 2nd Respondent was not a Workman and he was employed only in Supervisory and Managerial capacity and that he was terminated from service after due enquiry.

2.1. It is also the case of the Management that as the Management had raised the preliminary objection, the same was taken up by the Labour Court, by permitting the parties to let in evidence with regard to the status of the Workman / 2nd Respondent. Subsequently, the Labour Court, after hearing the parties, dismissed the Interlocutory Application filed by the Management, by observing that the preliminary issue raised in the Application would be decided along with other issues in the Industrial Dispute, so as to give an early disposal.

3. According to the Management, the preliminary issue to be decided is the root of the dispute raised by the Workman and therefore, the said issue should have been tried and decided by the Labour Court at the first instance. The Labour Court, instead of doing so, combined both the preliminary and main issues together for joint quietus, which is not acceptable. Learned counsel for the Management, in support of his submission, relied upon the judgment of the Apex Court rendered by two Judges in the case of Hussan Mithu Mhasvadkar vs. Bombay Iron & Steel Labour Board and another, reported in (2001) 7 SCC 394, wherein, it was held as follows:

"5. On a careful consideration of the respective submissions of the learned counsel on either side, we are of the view that in a case of the nature where the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section 2(s) of the I.D. Act, instead of embarking upon an adjudication in the first instance as to whether the respondent-Board



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is an Industry or not so as to attract the provisions of the Industrial Disputes Act, ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the Board, as an industry or not. The larger issue should have been entertained for consideration only in a case where it could have been disposed of otherwise without going into the nature and character of the Undertaking itself. For the said reason and also having regard to the submission made by the learned senior counsel for the respondents itself that the question as to whether the appellant falls within the definition of 'workman' may itself be considered on the supposition that the Board is an industry, we propose to deal with the status of the appellant as to whether he is a workman or not at the first instance and if necessitated on account of our decision on that issue, undertake the larger issue for our consideration and decision. The question as to what constitutes an industry for the purposes of the Industrial Disputes Act and what are those Undertakings or Establishments or activities, which answer the definition of 'industry' in Section 2(j), has been laid down authoritatively in several decisions of this Court, including the one in the Bangalore Water Supply and Sewerage Board case (supra) and what remains is to apply to individual cases, the principles laid down therein to adjudge the character or the activity or an undertaking or institution in a given case on the touchstone of the principles laid down therein. In view of this position in law, it becomes all the more necessary to first undertake an adjudication of the question as to status of the appellant."

4. In the aforesaid decision, the Apex Court has categorically held that when the status of the Workman has been questioned, naturally the Labour Court will have to answer that issue first and thereafter, proceed with the matter on merits. Therefore, in view of the aforesaid judgment, learned counsel appearing for the Management contended that the order of Labour



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exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art.136 are not meant to be used to break the resistance of workman in this fashion. Tribunals and Courts who are requested to decide preliminary question must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all 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."

8. In the other decision reported in 1983 II LLJ 429, the issue was whether the Development Officer of the Life Insurance Corporation is a Workman or not and the Supreme Court observed that mere designation is not suffice to hold that the person is not a Workman and held that the Development Officer is a Workman.

9. It is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion, as held by the Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."



10. The Apex Court in yet another case in Anand Bazar Patrika (P) Ltd. vs. The Workmen reported in (1970) 3 SCC 248 held that minor relegation of duties, which are Supervisory in nature, cannot convert the office work of a Senior Clerk in-charge into that of a Supervisor. It was further held that when a person executes the Supervisory work and incidentally, for a fraction of time, looks after the Clerical Work, then he can be called as a Supervisor and the similar is the situation for a Clerk doing Supervisory work temporarily for a specified period, which cannot at any stretch of imagination be said that he is not a Workman.

11. In the present case on hand, the parties have tendered evidence, which is not the subject matter in this Writ Petition and therefore, all the issues can be tried together in a composite manner. Merely because evidence had been taken, it does not mean that Labour Court needs to render decision on that issue. The Labour Court has got powers to try only two issues as preliminary one. Firstly, whether the Departmental Proceedings is fair or not; Secondly, whether the settlement Under Section 18 (1) of the Industrial Dispute Act 1947 entered is fair and acceptable and if so, whether an award could be passed in terms of the said settlement. In case, the domestic enquiry that has been conducted has been questioned by the Workman, the Management is entitled to get an opportunity to lead fresh evidence to establish the charges, as has been laid down by the Hon'ble Apex Court in the case of Workmen of M/s Firestone Tyre and Rubber Co. of India (P) Ltd., Vs. The Management reported in 1973 (1) LLJ 278 provided that they had taken a plea at the initial stage to that effect. In Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. and others, reported in (1979) 3 SCC 371, the Apex Court held that there is no need for the Labour Court or Tribunal to remind the Management as to what they should do and that there is no need to stall the proceedings on the preliminary issue.

12. With great respect to the decision of the Hon'ble Supreme Court cited by the learned counsel for the Management, reported in (2001) 7 SCC 394, I am unable to follow the same, in the light of the judgments of the Hon'ble Supreme Court in Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533 and D.P.Maheswari Versus Delhi Administration and Others reported in 1983 2 LLJ 425 and



S.K.Verma Vs. Mahesh Chandra and Another reported in 1983 2 LLJ 429 and more particularly in light of the decision of the Honourable Supreme Court in the case of The General Manager Telecom Vs. S.Srinivasa Rao and Others reported in 1997(8) (SCC) 767 that deals with the principle of precedent.

13. In the light of aforesaid facts and circumstances of the case, I find no perversity in the order passed by the Labour Court and no prejudice is going to be caused to the Management, if the entire issues are altogether tried by the Labour Court. This case is a classic example, as even after a lapse of 12 years, no final decision has been arrived at and as rightly observed by the Apex Court, there is a general tendency in existence where Managements adopt dilatory tactics for taking a decision.

14. In view of the afore-stated position, this Writ Petition is dismissed. The Labour Court is directed to take up the Industrial Dispute along with other issues, proceed with the same on merits without adjourning the matter beyond seven working days at any point of time in terms of Rule 34 (9) of Tamil Nadu Industrial Disputes Rules 1958, and pass an award on all issues on merits, if the matter is not settled between the parties by means of a settlement Under Section 18(1) of the Industrial Dispute Act, 1947. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To:

The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to M/s.T.S.Gopalan & Co., Advocate SR.No.28115

W.P.No.27712 of 2017

MG(CO)
RVM(08/11/2021)