

Diksha Rane

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

WRIT PETITION NO. 8938 OF 2022

MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD.

THR. CHIEF GENERAL MANAGER & ANR. ..PETITIONERS

VS.

SANDEEP SADANAND VANJARI

..RESPONDENT

Mr. P. P. Chavan a/w. Mr. Kiran Gandhi, Mr. Akash Kothari
i/b. Little & Co. for the petitioners.

Mr. Satyakumar Shettigar a/w. Mr. Ram Mohite for the
respondent.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 10, 2022.

ORAL JUDGMENT :

1. The challenge of the petitioner (hereafter 'employer' for short) in this writ petition filed under Articles 226 and 227 of the Constitution of India, is to the judgment and order dated November 13, 2021 passed by the Industrial Court, Thane. By this order, the revision application filed by the respondent (hereafter 'the employee' for short) was allowed. The Industrial Court thereby set aside the order passed by the Labour Court dated September 28, 2017 below Exhibit 'C-8' framing the preliminary issue "Does complainant prove his status as an employee under the provisions of the MRTU & PULP Act?" The Industrial Court

directed the Labour Court to frame all issues and directed the parties to lead evidence on those issues.

2. The brief facts which need to be stated are thus. The employee joined the services of the employer as a Junior Engineer on September 16, 1999. The employee was promoted as an Assistant Engineer on October 1, 2010. The employee applied for study leave in order to complete his Ph.D. course on March 24, 2011. The employer granted the study leave with effect from April 21, 2011 to April 20, 2013 without pay and allowance subject to terms and conditions enumerated in the Leave Sanction order dated May 16, 2011. The employer sent various reminders during the period 2013-2014 to the employee to report for work. The employee did not report for work despite receiving the communications.

3. The employer issued the administrative circular No. 490 dated July 1, 2014 whereby various posts were re-designated. The employee was then holding the post of Assistant Engineer which was re-designated as Deputy Executive Engineer. Between January to March 2015 various letters came to be addressed by the employer to the employee to report back for work. A show cause notice dated April 22, 2015 came to be issued calling upon the employee to submit an explanation as to why disciplinary action should not be initiated against him for continuous absence. The employee submitted his reply dated May 20, 2015 and requested his case be referred to the Civil

Surgeon for medical examination.

4. A chargesheet dated July 14, 2015 was issued against the employee for absenteeism. The employee filed his reply dated September 1, 2015 to the chargesheet. The charges were denied. The employer was not satisfied with the reply to the chargesheet and therefore, a departmental enquiry was initiated against the employee on September 29, 2015. The Enquiry Officer submitted his findings and report dated October 12, 2015, thereby holding that the employee guilty of the charges levelled against him. A final show cause notice dated October 15, 2015 came to be issued along with the report and the findings of the Enquiry Officer asking the employee to submit his explanation. The employee by his response dated October 26, 2015 replied to the show cause notice. The employee simultaneously filed Complaint (ULP) No. 121 of 2015 before the Labour Court, Thane, seeking to quash the chargesheet and the show cause notice.

5. The Labour Court passed an interim order on October 27, 2015 directing the parties to maintain status-quo. The employer filed reply-cum-written statement to the complaint on November 3, 2015 objecting to its maintainability. According to the employer, the post on which the employee was working was of managerial/administrative/supervisory in nature and therefore, the employee was not covered by the definition of "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereafter 'ID Act' for short),

consequently cannot be regarded as an “employee” within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereafter ‘the MRTU & PULP Act’ for short).

6. The employer filed an application Exhibit ‘C-8’ on March 7, 2017 praying that the preliminary issue be framed as to the status of the employee. By the order dated September 28, 2017, the Labour Court allowed the application filed below Exhibit ‘C-8’ thereby framing the preliminary issue as indicated hereinbefore.

7. Aggrieved by the order passed below Exhibit ‘C-8’, the employee approached the Industrial Court under Section 44 of the MRTU & PULP Act by way of a revision, challenging the Labour Court’s order. The Industrial Court passed the impugned order directing the Labour Court to frame all issues and decide them together instead of a decision on a preliminary issue.

8. Challenging the impugned order, Shri Chavan, learned counsel for the employer, submitted that the Industrial Court was not justified in interfering with the order of the Labour Court framing a preliminary issue. Shri Chavan submitted that in the facts of the case, the Labour Court was justified in framing a preliminary issue for deciding the employees status under the provisions of the MRTU & PULP Act in the first instance. Shri Chavan submitted that it is not in every case that the Labour Court must frame all issues and then decide the complaint. In his submission, the

Labour Court for cogent reasons had formed an opinion that it was necessary to frame the preliminary issue. Learned counsel urged that the Labour Court has properly taken into consideration the aspect that in the facts of the present case, the preliminary issue needed to be framed since the employee is protected by an ad-interim relief which continues to operate and hence there was no question of jeopardizing the industrial peace. Shri Chavan relied upon the following decisions in support of his submissions:

(a) D. P. Maheshwari vs. Delhi Administration & ors.¹;

(b) V. G. Jagdishan vs. Indofos Industries Limited²;

(c) Nashik Merchants' Co-op. Bank Ltd. & anr. vs. Madhukar Bhaurao Hingmare & anr.³;

(d) Bhagwan Jagannath Nitnaware vs. Union of India & anr.⁴.

9. On the other hand Shri S. M. Shettigar, learned counsel for the employee, submitted that the Industrial Court has not committed any error in interfering with the order passed by the Labour Court. In his submission, the law is well settled that in labour matters, it is necessary in the interest of justice, to hear all the issues together, instead of deciding some issue as a preliminary issue. Shri Shettigar invited my attention to the observations made by the Supreme Court in the landmark decision of the Supreme

¹ (1983) 4 SCC 293.

² (2022) 6 SCC 167.

³ 2011 (6) Mh.L.J. 567.

⁴ 2016 SCC Online Bom 16000.

Court in **D. P. Maheshwari** (supra). Shri Shettigar submitted that the very purpose of dissuading the Labour Courts from allowing the employers to raise the preliminary objections, is to discourage them from adopting devices to avoid decision of the complaint on merits. It is submitted that the Supreme Court has in no uncertain terms observed "the Tribunals are entrusted with the task of adjudicating Labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues". Shri Shettigar submitted that the jurisdiction of this Court cannot be allowed to be exploited by the present employer who can well afford to wait to the detriment of the employee who can ill afford to wait by dragging the matter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital. Shri Shettigar submitted that the attempt on the part of the employer is nothing but to break the resistance of the employee. In support of his submission that it is in the fitness of things that all the issues should be decided together, Shri Shettigar relied upon the following decisions:-

(a) D. P. Maheshwari vs. Delhi Administration (supra);

(b) National Council for Cement and Building Material vs. State of Haryana⁵;

(c) Bhagwan Jagannath Nitnaware vs. The Union of India and another⁶;

⁵ 1996 (3) SCC 296.

⁶ W.P.No. 1775/2016 Bom.HC decided on 18/8/2016.

(d) Rajiv Bhalchandra Gundewar vs. Crompton Greaves Limited⁷;

(e) Kashmira Leo Rebello vs. Himalaya Drug Co.⁸.

Shri Shettigar invited my attention to the findings of the Industrial Court. Learned counsel submitted that the view taken by the Industrial Court does not warrant any interference in the exercise of writ jurisdiction of this Court.

10. Heard learned counsel for the parties.

11. I have perused the memo of the writ petition, the exhibits and the impugned order. With the assistance of learned counsel I have gone through the order passed by the Labour Court as well as the Industrial Court.

12. The employer chargesheeted the employee for absenteeism. The Enquiry Officer held the misconduct as proved. The findings of the Enquiry Officer along with the enquiry report was served on the employee. He was called upon to submit his explanation. It is at this stage that the employee approached the Labour Court by filing the complaint of unfair labour practice under the MRTU & PULP Act. Satisfied that a *prima facie* case is made out, the Labour Court directed the parties to maintain status-quo.

13. It is the contention on behalf of the employer that after proceeding on study leave, the employee did not report back for work. According to learned counsel, the employee has not reported back for work since April 21,

⁷ 2000(1) CLR 818.

⁸ 2004(2) Bom. CR 513.

2013 till which date his study leave was sanctioned. It is the contention of learned counsel that despite sending written letters and requests made, the employee did not report back for work.

14. The Labour Court thought it fit to frame the preliminary issue. The Labour Court was impressed by the fact that the employee has been granted ad-interim relief and which continues. The question is whether the Industrial Court in revision should have interfered with the view taken by the Labour Court.

15. For answering this question, it would be necessary to firstly seek guidance from the decision of the Supreme Court in the celebrated case of **D.P. Maheshwari** (supra). Their Lordships bemoaned the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. Their Lordships noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. A reference to paragraph 1 of the decision in **D. P. Maheshwari** (supra) is necessary to appreciate why the Supreme Court was of the opinion that the Labour Court should decide all issues in dispute at the same time without trying some of them as preliminary issues. Paragraph 1 reads thus:-

"1. It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be 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. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions 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. It is also worth while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

16. It would also be pertinent to note the facts in **D. P. Maheshwari** (supra). The employee was terminated with effect from July 28, 1969. The industrial dispute was referred to the Labour Court on July 3, 1970. The reference was questioned by the employer by filing a writ petition in the Delhi High Court which was dismissed on May 22, 1972. Thereafter, the employer raised the preliminary contention before the Labour Court that the employee was not 'workman' under Section 2(s) of the ID Act and the reference was therefore incompetent. The Labour Court tried the question as a preliminary issue. Upon parties leading evidence, the Labour Court held the employee to be workman under Section 2(s) of the ID Act. The employer challenged the decision of the Labour Court on the preliminary issue before the Delhi High Court. Delhi High Court quashed the order of the Labour Court and the reference made by the Government. The Division Bench of

the High Court confirmed the decision of the Single Judge. Thereafter, the employee approached the Supreme Court. The Supreme Court observed that 13 years after the reference was made the matter is still at the stage of decision on a preliminary question. It is in these facts the decision of **D. P. Maheshwari** (supra) was rendered.

17. Let me next make a reference to the decision of the Supreme Court in the case of **National Council for Cement and Building Material** (supra) which considered several decisions including the one in **D. P. Maheshwari** (supra) on the subject. It would be relevant to refer to paragraphs 13 to 16 which reads thus: -

"13. This Court in **Cooper Engineering Ltd. v. P. P. Mundhe**⁹, in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in **S. K. Verma v. Mahesh Chandra, [(1983) Labour and Industrial Cases 1483 = 1983 (3) SCR 799]**, this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.

15. In **D.P. Maheshwari v. Delhi Administration, [1983 Labour and Industrial Cases 1629 1983 (3) SCR 949]**, this Court speaking through O.Chinnappa Reddy, J. observed that the policy to

⁹ 1975 (2) LLJ 379

decide the preliminary issue required a reversal in view of the "unhealthy and injudicious practices resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of Civil Courts". The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. To the same effect is the decision in **Workmen employed by Hindustan Lever Ltd. vs. Hindustan Lever Ltd. [(1984) Labour & Industrial Cases 1573 = 1985(1) SCR 641]**.

16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an 'Industry' within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage to the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs..

18. The Supreme Court in **Cooper Engineering** (supra), held that in order to obviate undue delay in the adjudication of the real dispute, the Industrial Tribunals should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court. The Supreme Court has strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.

19. In **V. G. Jagdishan** (supra), a decision of recent origin, the Supreme Court was considering the question, whether the issue of territorial jurisdiction which was raised could be decided as a preliminary issue. In paragraph 15, Their Lordships observed thus: -

“15. In D.P. Maheshwari (supra) which is pressed into service by learned Senior Advocate appearing on behalf of the appellant, in support of the submission that the Labour Court ought not to have given the decision only on preliminary issue and ought to have disposed of all the issues, whether preliminary or otherwise at the same time. On facts the said decision is not applicable to the facts of the case on hand. In the aforesaid decision no absolute proposition of law was laid down by this Court that even the issue touching the jurisdiction of the Court cannot be decided by the court as a preliminary issue and the court has to dispose of all the issues, whether

preliminary or otherwise, at the same time. When the issue touches the question of territorial jurisdiction, as far as possible the same shall have to be decided first as preliminary issue. Therefore, in the present case, the Labour Court did not commit any error in deciding the issue with respect to the territorial jurisdiction as a preliminary issue in the first instance.”

20. I find that in the context of the fact situation in **V. G. Jagdishan** (supra), Their Lordships held that the decision in **D. P. Maheshwari** (supra) is not applicable to the facts of the case on hand. Their Lordships observed that in **D. P. Maheshwari** (supra), no absolute proposition of law was laid down by the Supreme Court that even the issue touching the jurisdiction of the Court cannot be decided by the Court as a preliminary issue and the Court has to dispose of all the issues, whether preliminary or otherwise, at the same time. It was further observed that when the issue touches the question of territorial jurisdiction, as far as possible the same shall have to be decided first as a preliminary issue.

21. I am conscious that present is not a case where the issue touching the territorial jurisdiction is framed as a preliminary issue. In my humble opinion, the decision in **D. P. Maheshwari** (supra) was in the context of preventing certain employers from resorting to unhealthy dilatory tactics to the detriment of the employees. The Supreme Court bemoaned the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on

merits by resorting to raising various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court and then to the Supreme Court and delay a decision of the real dispute for years, sometimes for over a decade.

22. The principle expounded by the Supreme Court that all issues whether preliminary or otherwise should be decided together as to rule out the possibility of any litigation at the interlocutory stage, in its applicability to the complaint under the MRTU & PULP Act, will have to be considered in the light of the provisions of such Act.

23. Before proceeding further, considering the nature of the controversy, it would be useful to appreciate the scope of enforcement of a contract of personal service between an employer and employee. The Supreme Court in **Executive Committee of Vaish Degree College, Shamli & others vs. Lakshmi Narain & others**¹⁰ has observed in paragraph 18 that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions-

- (i) where a public servant is sought to be removed from service in contravention of the provisions of

¹⁰ (1976) 2 SCC 58.

Article 311 of the Constitution of India;

(ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and

(iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

24. In the present case, the employer is MSEDCL, a company in which the State Government holds major shares. Here is an employer who was dealing with the case of the employee, asked to report to work after the leave period was over. The employee did not report and therefore disciplinary action was initiated on account of continuous absence on his part. An enquiry was conducted. Before a final decision could be taken, the employee approached the Labour Court by filing a complaint of unfair labour practice. As an interim measure, the Labour Court directed the parties to maintain status-quo. The employee, thus continues in the employment of MSEDCL by virtue of the status-quo order, as a result, there is no finality as yet to the disciplinary proceedings initiated against the employee. The interim order of status-quo was passed by the Labour Court in exercise of the powers under Section 30(2) of the MRTU & PULP Act.

25. The question that arises for consideration in the present matter is, whether the Labour Court was justified in accepting the request of the employer for framing a preliminary issue as a part of threshold adjudication. To

answer this question, it would be material to refer to the relevant provisions of the MRTU & PULP Act. Clause (5) of Section 3 defines "employee". Clause (6) of Section 3 defines "employer". The procedure for complaint dealing with the unfair labour practices is provided for in Chapter VI of the MRTU & PULP Act. Chapter VII of the MRTU & PULP Act deals with the Powers of Industrial and Labour Courts. Sub-section (2) of Section 30 empowers the Court to pass interim orders. Section 30(2) reads thus: -

"30(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision;

Provided that, the Court may, on an application in that behalf, review any interim order passed by it."

26. As to the nature of orders that could be passed under Section 30(2) is dealt with by the Supreme Court in **Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others**¹¹. In paragraph 29 Their Lordships observed that "a conjoint reading of Section 28(1) and Section 30(1) clearly shows that complaint can be filed for the alleged unfair labour practice as contemplated in Item 1 of Schedule IV on any of the grounds mentioned therein, both at the stage where such final orders of discharge or dismissal are passed on the concerned alleged grounds and also at the stages

¹¹ (1995) 6 SCC 326.

prior to such final orders, once the employer is shown to have taken a firm step in that direction by initiating departmental enquiries with a view to ultimately discharge or dismiss the employee on any of the alleged grounds and such enquiries are presently in progress or are presently in offing. Then the employer can be said to be presently engaging in any such unfair labour practice. It becomes obvious that the twin phrases 'has engaged' and 'is engaging in' indicate not only the finished, complete or continuous action but also an incomplete continuous action". In paragraph 32, Their Lordships observed that "if an employer is alleged to be engaged in discharging any employee then even before the actual order of discharge is passed he can be said to be engaged in such discharge if it is shown that an attempt is made towards such a discharge with an intention to ultimately discharge the employee".

27. The Supreme Court then dealt with sub-section (2) of Section 30 of the MRTU & PULP Act in paragraph 35. Paragraph 35 reads thus: -

"35. Sub-section (2) of Section 30 of the Maharashtra Act lays down:-

"30.(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that

behalf, review any interim order passed by it."

The learned counsel for the appellant submitted that even if the final order of discharge or dismissal is passed by the employer by way of victimisation as alleged by the employee, the Labour Court in the complaint regarding such final order can pass interim orders of temporary relief or restraining order. Still it would not rule out the possibility on the part of the Labour Court of passing an interim order pending the domestic enquiry if any of the grounds mentioned in Item 1 of Schedule IV is effectively pressed in service by the employee against the employer. It is obvious that when the final order of discharge or dismissal is passed and if it is found to be a result of unfair labour practice as mentioned in clauses (a) to (g) of Item 1 of Schedule IV, it is to be quashed and reinstatement is to be ordered by way of mandatory relief. In such a case there would be no occasion of granting interim relief by way of prohibitory order or a restraining order, as contemplated by sub-section (2) of Section 30. Such a restraining order can be passed in a case where the complaint is filed at a stage where the final orders of discharge or dismissal are not passed on any of the grounds mentioned in Item 1 of Schedule IV. If such a complaint is ruled out the provisions of Section 30(2) would be rendered redundant and otios. When we keep in view the fact that as per Section 7 of the Maharashtra Act, all the complaints pertaining to Item 1 of Schedule IV can be filed only before the Labour Court and no other complaint regarding unfair labour practice can be filed before the Labour Court, and once the Labour Court is given the powers in appropriate cases of passing interim relief of restraining orders as per Section 30(2) it would clearly indicate the legislative intention that complaints regarding the proposed dismissal or discharge on any of the grounds mentioned in Item 1 of Schedule IV could be filed before the Labour Court. In such complaints the Labour Court in appropriate cases, in

exercise of its powers under Section 30(2) can issue interim orders with a view to preventing such alleged unfair practices from getting fructified. Thus Section 30(2) also highlights the legislative intent of providing an effective machinery to prevent the finalisation of the alleged unfair practices which are required to be nipped in the bud. If the orders of the Court whether final or interim are not complied with by the party against whom such orders are passed, it can be prosecuted under sub-section (1) of Section 48, which lays down as under :

"48.(1) Any person who fails to comply with any order or the Court under clause (b) of sub-section (1) or sub-section (2) of Section 30 of this Act shall on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees."

28. In paragraph 54 the Supreme Court has observed thus: -

"54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries

against the complainants concerned. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."

29. The principles laid down by the Supreme Court in the case of **Hindustan Lever Ltd.** (supra) demonstrates that a restraining order can be passed by the Courts under Section 30(2) of the MRTU & PULP Act. In appropriate cases, in exercise of its powers under Section 30(2) the Court can issue interim orders with a view to preventing such alleged unfair practices from getting fructified.

30. In my opinion, the question of trying some issues as preliminary issues in the backdrop of a complaint filed under the MRTU & PULP Act, particularly when during the pendency of the proceedings, restraint orders are passed by the Court as to dismissal or discharge in favour of the employee, need to be viewed differently. If an employee continues in employment by virtue of an interim order, the possibility of jeopardizing industrial peace is reduced to a large extent. In such an eventuality, as a result of interim order operating in favour of the employee, depending on the facts of each case, the Court may consider the request

made by the employer to decide the preliminary questions by asking themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. I may hasten to add that even in such cases the Court should be conscious that under the MRTU & PULP Act they 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 as observed by Their Lordships in **D. P. Maheshwari** (supra). Whether to frame and decide preliminary questions in a case where the employee is protected by an interim order would depend on the facts and circumstances of each case and upon the Court being satisfied that such a request is not an attempt on the part of the employer to delay or defeat the adjudication of the complaint on merits.

31. It is, however, clarified that even as the Courts under the MRTU & PULP Act are entrusted with the task of adjudicating the labour disputes, in cases where there is no interim protection in favour of the employee during the pendency of the proceedings, the question of framing a preliminary issue and a decision thereon would be governed by the law laid down in **D. P. Maheshwari** (supra).

32. In the present case, from the record it appears that, the employee even after he was called upon to report for work, failed to do so which lead to holding of the disciplinary enquiry against him. There is nothing on record

to indicate that the employee resorted to any proceeding for direction to the employer permitting him to resume duties. No doubt, the employee was proceeded against departmentally, the show cause notice of dismissal whereof is under challenge before the Labour Court. The employee is protected by an interim order. The employer in the present case is MSEDCL, a company in which the State Government holds major shares. It is a wholly owned corporate entity under the Maharashtra Government and is a public company in the category of "State Government Company" registered under the Companies Act, 1956. Learned counsel for the petitioner submitted 99.99% of shareholding of MSEDCL are held by MSEB Holding Company Limited (as nominee of Government of Maharashtra) and that balance 0.01% of shareholding of MSEDCL are held by the Chief Managing Director and other Directors of MSEDCL.

33. There is nothing on record to infer that MSEDCL has unnecessarily resorted to the old tactics of raising a preliminary dispute or that it has anything to gain by prolonging the adjudication of the complaint on merits. The submissions made by learned counsel for the employee do not persuade me to hold that MSEDCL has raised such a frivolous preliminary objection to delay and defeat the purpose of adjudication on merits. Conscious of the observations of the Supreme Court in **D. P. Maheshwari** (supra) and **Cooper Engineering** (supra) which crystalized the principles to be borne in mind why the Courts should

decide the preliminary issue as well as main issues together so that there may not be any further litigation at the interlocutory stage, in my humble opinion, in the present fact situation, the Labour Court was justified in framing a preliminary issue.

34. The Revisional Court while interfering with the order of the Labour Court was of the opinion that the matter before the Labour Court is five years old and on the basis of the ad-interim order, the employee is enjoying all the benefits. Nonetheless in later part of its order, the Revisional Court observed that the services of the employee are terminated, which observation appears to have been erroneously recorded. Factually, the ad-interim order passed by the Labour Court in favour of the employee subsists as of date.

35. For the reasons mentioned hereinbefore, the impugned order passed by the Revisional Court is quashed and set aside.

36. The writ petition is allowed. There shall be no order as to costs.

37. The Labour Court is requested to decide the preliminary issue as framed as expeditiously as possible and preferably within a period of four (4) months from November 14, 2022 on which date the parties are directed to appear before the Labour Court with the copy of this order.

38. At this stage, learned counsel for the employee requested for stay of this order. The request is rejected.

(M.S.KARNIK, J.)