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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 28576 of 2019

The Manager
Sungwoo Gestamp Hi Tech (Chennai) Ltd.
(Presently known as Sungwoo Hitech India Pvt. Ltd.)
Plot No. G-16-18, SIPCOT Industrial Park
Irungattukottai Post, Via Sriperumbudur
Kancheepuram District - 602 117. ... Petitioner

-vs-

1. S.Davan
2. Ethiraj
3. The Commissioner of Employees Compensation /
Joint Commissioner of Labour
Vellore.
4. The Regional Director
ESI Corporation
Sterling Road, Nungambakkam
Chennai - 600 034. ... Respondents
(R4 is Suo-motu impleaded vide
order dated 18.04.2022)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed in I.A. No. 62 of 2018 in W.C. No. 102 of 2017 dated 25.04.2019 pending on the file of the Third Respondent and quash the same.

For Petitioner : Mr. S.Anbazhagan

For Respondents: Mr. N.P.Jayakumar (for R1)
No appearance (for R2)
Mrs. C.Sangamithirai (for R3)
Special Government Pleader

Mr. S.P.Srinivasan (for R4)
Standing Counsel



O R D E R

Heard Mr. S.Anbazhagan, Learned Counsel for the Petitioner, Mr. N.P.Jayakumar, Learned Counsel for the First Respondent, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Third Respondent and Mr. S.P.Srinivasan, Learned Standing Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent had filed the Claim Petition in W.C. No. 107 of 2017 before the Third Respondent under the Employee's Compensation Act, 1923 (hereinafter referred to as 'the E.C. Act' for short) seeking compensation of Rs. 3,00,000/- from the Petitioner for the grievous injuries sustained by him amounting to permanent partial disability in his right hand in an accident that had taken place on 10.06.2010 in the course of his employment. The Petitioner filed an application in I.A. No. 62 of 2018 before the Third Respondent to reject W.C. No. 107 of 2017 as it had no liability to meet the claim made by the First Respondent. In support of the said contention, it was pleaded the First Respondent had resigned from the employment of the Petitioner on 04.06.2010 and could not claim to be its employee on 10.06.2010 when the accident is said to have taken place and that inasmuch as the establishment of the Petitioner is covered under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the E.S.I. Act' for short), by virtue of Section 53 of the E.S.I. Act, no claim for compensation under the E.C. Act could be made against the Petitioner. The Third Respondent declined to entertain the said application in I.A. No. 62 of 2018, which has been dismissed by order dated 25.04.2019 and is challenged in this Writ Petition.

3. Though it is true that there have been occasions where preliminary issues have been required to be decided before passing final orders in labour matters, it would be necessary at this juncture to quote from the ruling of the Hon'ble Supreme Court of India in D.P.Maheshwari -vs- Delhi Administration [(1983) 4 SCC 293], where it has been observed as follows:-

"1. It was just the other day (See S.K.Verma -vs- Mahesh Chandra [(1983) 4 SCC 214]) 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



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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 worthwhile 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."

In view of the said dictum which has been laid down in the interests of expediency, there does not appear to be any infirmity in the impugned order passed by the Third Respondent which is in consonance with it.

4. In order to conclusively ascertain as to whether the Petitioner would be exempted from liability under the provisions of the E.C. Act in this case on account of the coverage claimed by the Petitioner under the E.S.I. Act, the Regional Director, Employees' State Insurance Corporation, Sterling Road, Nungambakkam, Chennai-600034 is suo-motu impleaded as another Respondent in W.C. No. 107 of 2017 before the Third Respondent.

5. In such circumstances, while confirming the impugned order, the main case in W.C. No. 107 of 2017 matter shall be listed for hearing before the Third Respondent at 11.00 a.m. on 22.06.2022, when the Petitioner, First, Second and Fourth Respondents shall appear in person or through their authorized representatives as well as on the subsequent dates to which it is adjourned from time to time. The Petitioner and other contesting parties shall file their respective Counter Statements raising all their contentions and after hearing all parties including recording of evidence and examination of witnesses following the prescribed procedure, the Third Respondent shall pass reasoned orders in W.C. No. 107 of 2017 dealing with each of the contentions raised by the respective parties on merits in accordance with law, uninhibited and uninfluenced by the impugned order, and communicate the decision taken under written acknowledgment.

In fine, the Writ Petition is dismissed with the aforesaid observations. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Maya
To

1. The Commissioner of Employees Compensation /
Joint Commissioner of Labour
Vellore.



2. The Regional Director,
ESI Corporation,
Sterling Road, Nungambakkam,
Chennai - 600 034.

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Copy to

1. S.Davan,
S/o. Settu,
Kavarapalayam Village,
Arungundram Post,
Walajah Taluk,
Vellore District.
2. Ethiraj,
Captain, Electric Power Department,
EM XI Floor, Weld Shop,
Sungwoo Gestamp Hi Tech (Chennai) Ltd.
(Presently known as Sungwoo Hitech India Pvt. Ltd.)
Plot No. G-16-18, SIPCOT Industrial Park
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Irungattukottai Post, Via Sriperumbudur
Kancheepuram District - 602 117.

+1cc to M/s.S.P.Srinivasan, Advocate Sr.28118
+1cc to the Government Pleader Sr.28651
+1cc to M/s.N.P.Jayakumar, Advocate Sr.27925

W.P. No. 28576 of 2019

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