

23.12.2024.
Item No. 6.
Court No. 13
ap

F.M.A. No. 1838 of 2013

**M/s. Garden Reach Shipbuilders & Engineers Ltd.
Versus
Second Labour Court & Ors.**

Mr. Ranjay De, Id. Sr. Advocate,
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose.

...For the appellant.

Mr. Anant Kumar Shaw,
Mr. Ravi Kumar Dubey.

...For the respondents.

1. The short question that comes for consideration in the instant appeal is as to whether the reference proceedings taken up in the year 1999 by the Labour Court under the State against the appellant/employer, namely, Garden Reach Shipbuilders & Engineers Limited, by reason of the Notification dated 3rd July, 1998, would continue to survive after rescission thereof (supra) by the Central Government by Notification dated 5th May, 2008.

2. The relevant facts of the case are that prior to 5th May, 2008, the State Labour Authorities and Labour Courts, had jurisdiction to decide the matters in respect of the workmen of Central Government Public Undertakings, based on an earlier Notification dated 3rd July, 1998. The name of the appellant herein is specifically mentioned at No.35 in the Schedule to the said Notification.

3. The respondent workman was dismissed from service. He challenged the dismissal in terms of the

definition Section 2(A). In aid of his principal relief, challenging the order of dismissal, the petitioner filed for subsistence allowance under Section 15(2)B of the Act of 1947.

4. The said prayer under Section 15(2) of the Act of 1947 has been allowed and the petitioner has been paid all his dues until his superannuation during the reference.

5. The main reference is now pending adjudication where it is submitted that the evidence of OPW-1 has been completed and OPW-2 is due to be examined.

6. Mr. De, learned Senior Advocate appearing on behalf of the appellant placed reliance on a decision of the Hon'ble Supreme Court of India in respect of another case of the appellant being S.L.P. (C) No. 25556 of 2012 dated 8th December, 2017 has argued that the reference where it stands is required to be transferred to the Central Government Industrial Tribunal in view of the Notification of the Central Government dated 5th May, 2008.

7. Mr. De also relies upon another decision of the Division Bench of this Court in the case of ***M/s. Garden Reach Shipbuilders and Engineers Limited – Vs. – Assistant Labour Commissioner & Ors.*** reported in ***2016 SCC OnLine Cal 11952*** where a similar question as regards the jurisdiction of the State Labour Court and the Central Government Industrial Tribunal was left to be decided by the Tribunal. He

therefore submits that the Labour Court should be directed to decide upon its jurisdiction first.

8. This Court firstly notes that the decision of the Hon'ble Supreme Court of India dated 8th December, 2017 (supra), was based by consent of the parties and the issue of jurisdiction was left open to be decided in an appropriate case.

9. In so far as the decision of a Co-ordinate Bench of this Court reported in **2016 SCC OnLine Cal 11952** (supra), this Court is of the view that it would not be in the interest of the workman that he should be driven between the Court after Courts, on the basic point of jurisdiction.

10. The text of the Notification dated 5th May, 2008 is set out hereinbelow:

*“G.S.R. 336(E). – In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby rescinds the notification of the Government of India in the Ministry of Labour published in the Gazette of India, Extraordinary vide number S.O. 556 (E), dated 3rd July, 1998, **except as respects things done or omitted to be done before such rescission.**”*

11. It is clear and explicit from the above underlined portion of the notification that it will not apply to matters that are done or omitted to be done before the rescission. It therefore follows that, the instant reference made in the year 1999 and pending

adjudication way before the notification is not covered under the aforesaid Notification dated 5th July, 2008.

12. In that view of the matter, the issue as regards the Jurisdiction of the Labour Court under the State, in so far as the subject reference is concerned, is upheld in Reference Case No. 66 of 1999.

13. Let the above Reference Case be proceeded expeditiously and disposed of by the learned Second Labour Court at Kolkata, preferably within a period of three months from date and no unnecessary adjournments shall be granted to any of the parties.

14. It is expected that the Award is pronounced within a period of one month thereafter.

15. With the aforesaid directions, the instant intra court appeal shall stand disposed of.

16. There will be no order as to costs.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)