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W.A. Nos.109, 112, 127, 133, 134, 135, 139 and 140 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A.Nos.109,112,127,133,134,135,139 and 140 of 2024
and
connected C.M.Ps.

The Management of Rohini Mills Pvt. Ltd.
Indiampalayam
Arasur Post
Sathyamangalam Taluk
Erode District

Appellant in all writ appeals

v

1 The Presiding Officer
Labour Court
Salem

R1 in all writ appeals

2 N. Seenivasan

R2 in W.A. No.109 of 2024

2 P. Chidambaram

R2 in W.A. No.112 of 2024

2 S.P. Subramaniam

R2 in W.A. No.127 of 2024

2 M. Karthik

R2 in W.A. No.133 of 2024

2 A. Mubarak

R2 in W.A. No.134 of 2024

2 S.K. Subramanian

R2 in W.A. No.135 of 2024

2 M. Balasubramaniam

R2 in W.A. No.139 of 2024

2 S. Radhakrishnan

R2 in W.A. No.140 of 2024



W.A. Nos.109, 112, 127, 133, 134, 135, 139 and 140 of 2024

Writ Appeals filed under Clause 15 of the Letters Patent challenging the common order dated 19.09.2023 passed in W.P. Nos.3109, 3113, 3114, 3111, 3110, 3645, 3643 and 3639 of 2014, respectively.

For appellant in Mr. R. Sivakumar
all writ appeals for Mr. S. Manikandan

COMMON JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

For the sake of clarity, the appellant, the first respondent and the second respondent will be referred to as the Management, the Labour Court and the workman, respectively.

2 These writ appeals have been filed by the management impugning the common order dated 19.09.2023 passed by a Single Bench in W.P. Nos.3109, 3113, 3114, 3111, 3110, 3645, 3643 and 3639 of 2014, respectively, in and by which, the orders passed by the Labour Court in the interlocutory applications filed by the Management questioning the very maintainability of the industrial disputes, holding that the preliminary issue of maintainability of the industrial disputes can be decided along with other issues, have been confirmed.

3 The germane facts giving rise to the filing of these writ appeals are succinctly stated thus:

<https://www.mhc.tn.gov.in/judis>



3.1 After being dismissed by the Management, the workmen preferred a complaint under Section 33-A of the Industrial Disputes Act, on the ground that the Management, by not seeking approval, has violated Section 33(2)(b), *ibid.* After filing of failure report by the Conciliation Officer, the Government declined to refer the matter for adjudication on the ground that the Management has already filed an approval petition before the Special Industrial Tribunal, Chennai, where, an industrial dispute concerning all the workmen and the Management is pending and that the Management has complied with Section 33(2)(b), *ibid.*

3.2 However, the workmen raised industrial disputes under Section 2-A, *ibid.*, before the Labour Court, in which, the Management filed interlocutory applications praying to try the issue of non-maintainability of the industrial disputes as a preliminary issue, on the ground that the industrial disputes were not in accordance with Section 2-A or 2-A(2), *ibid.*, and dismiss the industrial disputes.

3.3 The Labour Court, on hearing either side, observing that only in respect of fairness of domestic enquiry, the question of trying the issue of maintainability of industrial dispute as a preliminary issue arises and that the issue of maintainability of the industrial dispute in the case on hand can be decided along with other issues, dismissed the interlocutory applications *vide* orders dated

29.10.2013.



3.4 Aggrieved, the Management preferred writ petitions, in which, the Single Bench, *vide* common order dated 19.09.2023, upheld the orders passed by the Labour Court in the interlocutory applications and directed the Labour Court to dispose of the industrial disputes within a period of six months.

3.5 Challenging the said common order passed by the Single Bench, the instant writ appeals have been filed.

4 According to Mr. Sivakumar, learned counsel representing Mr.S.Manikandan, learned counsel on record for the Management, there was an industrial dispute pending with regard to revision of wages and other issues, in the Special Industrial Tribunal constituted for the purpose of deciding the charter of demand pertaining to textile workers; when the matter was taken up, some of the workmen were proceeded with departmentally whose issue was not connected with the industrial dispute and the contention of the workmen that there is violation of Section 33 *ibid.*, was disputed; the authority before whom the complaint under Section 33-A, *ibid.*, was filed, after referring to the pleadings of the workmen and the Management, came to the conclusion that the Management has not violated Section 33(2)(b), *ibid.*, and that there cannot be any complaint under Section 33-A, *ibid.*; after the orders of the authority, the workmen filed claim petitions before the Labour Court under Section 2-A, *ibid.*, questioning their



dismissal; unless there is a conciliation proceeding as contemplated under Section 2-A, *ibid.*, more so, Section 2-A(2), *ibid.*, and there is failure of conciliation proceedings within 45 days, the question of filing claim petitions before the Labour Court before that, is impermissible; hence, the Labour Court should have rejected the plea of the workmen *in limini* without passing an interim order or holding that the employer is permitted to establish that the domestic enquiry has been conducted against the employees in a fair and proper manner.

5 In the course of his arguments, Mr. Sivakumar invited the attention of this Court to Sections 2-A(2), 33(2)(b) and 33-A, *ibid.* in support of his contention which are reproduced below for the sake of easy reference.

“2-A Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.”

33 Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings:

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman --



(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

33-A Special provision for adjudication as to whether conditions of service, etc. changed during pendency of proceedings.-- Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, --

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.”

6 Section 2-A, *ibid.*, was introduced in the year 1965 with effect from 01.12.1965. There were several amendments to Section 2-A, *ibid.*, and the last one was on 15.09.2010. The purpose of introduction of Section 2-A, *ibid.* and various amendments to the said provision, was to enable the employees to approach the Labour Court directly without the help of Trade Unions. Be it noted, conciliation proceedings are only to enable the parties to arrive at an amicable settlement. In the case on hand, various issues, including dismissal, was also conciliated by the Conciliation Officer in a complaint filed under Section 33-A, *ibid.*



7 A reading of Section 33-A, *ibid.*, would make it clear that any complaint made will have to be adjudicated as if it were an industrial dispute. After the introduction of 2-A(2), *ibid.*, reference from the Government under Section 10, *ibid.*, is not mandatory. The proceedings held by the Conciliation Officer/authority under Section 33-A, *ibid.*, can also be treated as part of conciliation proceeding and the employees are entitled to file petitions invoking the amendment provision to Section 2-A, *ibid.*, and there is no need for one more round of conciliation, as has been argued by Mr. Sivakumar. Further, though it may appear that this case is one of reference, after the introduction of Section 2-A, *ibid.*, in the year 1965, even without reference or the help of the union, an individual can raise a dispute and the principle that the conciliation should be in a particular manner cannot be accepted.

8 At this juncture, apropos it is to point out that a Coordinate Bench of this Court, in **Ramakrishna Mills (Coimbatore) Ltd. v Government of Tamil Nadu and others [(1984) II LLJ 259 Mad.]**, has rejected the issue at the threshold on the ground that conciliation is not mandatory, more so, in the light of the judgment of the Supreme Court in **D.P. Maheshwari v Delhi Administration and others [(1983) 4 SCC 293]**. The relevant passage from **Ramakrishna Mills, supra**, is extracted below:

<https://www.mhc.tn.gov.in/judis> “6. There cannot be a doubt that for the existence of an industrial dispute, there ought to be a demand by the workmen and a refusal to grant it by



the management. How that demand should be raised, should not and could not be a legal notion of fixity and rigidity. The grievance of the workmen and the demand for its redressal must be communicated to the management. The means and mechanism of communication adopted are not matters of much significance, so long as the demand is that of the workmen and it reaches the management. A written demand on the management is not in all cases a *sine qua non*, as pointed out by the Supreme Court in *Shambhu Nath Goyal v. Bank of Baroda*, [1978 — I L.L.N. 340] (vide supra). After all, there must arise a dispute or difference within the meaning of S. 2(k) or S. 2-A of the Act. In the instant case, the talks and the discussions held before the Assistant Commissioner of Labour, related only to the differences that had arisen between the workmen through their union, the seventh respondent and the petitioner over the orders of dismissal. It would be far fetched, and absolutely an untenable proposition to state that the grievance of the workmen over their non-employment and their agitation for reinstatement were not conveyed to the petitioner and there was no refusal of the same. That is not the actual position at all. It is not claimed before us that the talks and discussions before the Assistant Commissioner of Labour, related not to the orders of dismissal and the demand to set them at naught, and take back the workmen. The facts and circumstances, do establish beyond doubt that the workmen through their union had been demanding for reinstatement, which the petitioner had no inclination to accede to. The grounds conceived by it for doing so, are not germane to this question. Hence we have to repel the first ground of attack put forth on behalf of the petitioner.

7. The second ground urged by the learned counsel for the petitioner is that the Assistant Commissioner of Labour had not prosecuted conciliation proceedings as per S. 12 of the Act and the rules, and in the absence of prosecution of such statutory conciliation proceedings, preceding the order of reference by the first respondent, the said order is incompetent. This contention is fallacious. It has been observed in *C. Manuel v. Needle Industries (India), Ltd.*, [1981—II L.L.J. 102] (vide supra), after taking note of other judicial precedents, that:

“It may not be always necessary that conciliation should be resorted to under S. 12 of the Act and the report of the Conciliation Officer should be there for the appropriate Government to exercise the power of reference under S. 10 of the Act. Even without resort to conciliation proceedings, the reference of an industrial dispute existing or apprehended, under S. 10 of the Act is proper.

and

It is now well settled that the procedure indicated in S. 12 of the Act is not a condition precedent for the appropriate Government to exercise its power under S. 10(1) of the Act. Section 12(5) of the Act does not confer the power but it is only S. 10(1) of the Act that confers the power to make reference. The appropriate Government need not base its decision solely on the report of the Conciliation Officer, but is free to take into consideration all other relevant facts and circumstances. Section 10(1) of the Act is not controlled by S. 12(5) of the Act.”



There were talks and discussions before the Assistant Commissioner of Labour. May be, the Assistant Commissioner of Labour did not follow in terms the statutory provisions for prosecuting conciliation proceedings, and sending a report to the first respondent. But there is no indication in S. 10(1) that the Government should await the report of the Conciliation Officer under S. 12(4), before it exercises the power under S. 10(1). On the other hand, S. 20(2)(c) contemplates a reference by the Government even during the pendency of conciliation proceedings, on which reference, the conciliation proceedings shall be deemed to have concluded. Hence lack of adherence to the statutory provisions on the holding of a formal conciliation proceeding and sending a report thereafter will not affect the order of reference.”

9 However, Mr. Sivakumar, placing reliance on paragraph 6.5 of the judgment of the Supreme Court in **V.G. Jagdishan v Indofos Industries Ltd. (2022) 6 SCC 167**, which reads thus, contended that territorial jurisdiction can be decided:

“6.5 In the case of D.P. Maheshwari, supra, 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.”

But, be it noted, the said judgment is by a 2 Judge Bench of the Supreme Court, whereas, the judgment in **D.P. Maheshwari** is by a 3 Judge Bench, the relevant paragraph of which is extracted below for ease of reference:

“It was just the other day [See (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 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.”

10 While deciding the entire issue on hand, after evidence, the Labour Court is empowered to hold that in the light of territorial jurisdiction, the plea of the employees can be rejected.

11 It is to be pointed out further that only with regard to two aspects, viz., (i) whether the settlement arrived at between the Management and the workers is fair or not and (ii) whether the domestic enquiry conducted by the



Management is in accordance with the principles of natural justice or not, the Labour Court is empowered to decide the preliminary issue, as, only after deciding those two aspects, the Labour Court can proceed further and depending upon the plea taken by the employer, an opportunity has to be given to the employer to let in evidence to prove the charges. Except in those two circumstances, the preliminary issue of maintainability need not be tried as it will amount to protracting the proceedings, as has been held by the Supreme Court in **D.P. Maheshwari**, *supra*.

12 In the case on hand, the orders impugned in the writ petitions passed by the Labour Court in the interlocutory applications were passed way back on 29.10.2013 and a decade has gone by since then. As has been held by the Supreme Court in **D.P. Maheshwari** (*supra*), finality cannot be attained during the lifetime of the workmen if the preliminary issues are going to be tried. Except in the case of those two aspects stated *supra*, other issues, including the issue of territorial jurisdiction, have got to be tried along with the merits of the matter. If the contention of Mr. Sivakumar that the issue of maintainability of the industrial disputes ought to have been taken up by the Labour Court as the preliminary issue is to be accepted, the industrial disputes will not be concluded at least for two decades and there is no certainty that there will not be one more round of litigation on the issue of territorial jurisdiction.



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13 In view of the above discussion, we do not endorse the submission made by Mr. Sivakumar that the issue of territorial jurisdiction needs to be decided first by the Labour Court before proceeding further and accordingly, we uphold the impugned orders passed by the Single Bench.

14 It is made clear that this judgment will not preclude the Labour Court in trying to find out the feasibility for settlement between the parties. Further, since the matter has been pending for more than a decade, we direct the first respondent Labour Court to proceed with the industrial disputes on a day-to-day basis without adjourning the case beyond a period of seven working days in terms of Section 34(9) of the Tamil Nadu Industrial Disputes Rules, 1958, by deciding all the issues, except the two issues mentioned *supra*, in a composite manner.

15 It was submitted by Mr. Sivakumar that two of the appellants, *viz.*, M.Balasubramaniam (appellant in W.A. No.139 of 2024) and S. Radhakrishnan (appellant in W.A. No.140 of 2024), have entered into a settlement under Section 18(1), *ibid.*



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16 To be noted, the Industrial Disputes Act came into effect from 11.03.1947 and it is an Act to make provision for the investigation and settlement of industrial disputes and there is no bar for the employees settling the matter in terms of Section 18(1), *ibid.*, if they are desirous of getting rid of the dispute at the earliest point of time.

In the result, these writ appeals stand dismissed sans costs. Connected C.M.Ps. stand closed.

(S.V.N., J.) (K.R.S., J.)
11.01.2024

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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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To

The Presiding Officer
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Salem

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