

(1992) 08 AHC CK 0106

Allahabad High Court

Case No: Writ Petition No. 9676 of 1983

Swadeshi Polytex Ltd.

APPELLANT

Vs

Labour Court and
Others

RESPONDENT

Date of Decision: Aug. 9, 1992

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1), 2, 33

Citation: (1992) 2 UPLBEC 1521

Hon'ble Judges: Ravi S. Dbavan, J

Bench: Single Bench

Advocate: Sudhir Chandra and B. Sapru, for the Appellant; A.C. Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

Ravi S. Dhavan, J.

The subject matter of this writ petition is a preliminary issue before the Labour Court in an industrial adjudication. The Petitioner Messrs Swadeshi polytex Limited hiving its registered office at New Kavi Nagar, Ghaziabad, hereinafter referred to as the employer has filed the present writ petition against the proceedings of the Labour Court, Meerut in adjudication case no. 110 of 1978 in the matter relating to an industrial dispute between this employer and its workman Mr. L.S. Sharma. The State Government by an order dated June 10, 1978 referred the following matter for adjudication u/s 10(1)(c) of the Industrial Disputes Act, 1947 :-

kya Sewayojakon dwara apne shramik Sri L.C. Sharma putra Shri Har Prasad Sharma, stenographer ko dinank 13-2 -- 75 se sewaon samapt kiya jane uchit tatha/athawa vaidhanik hai ? Yadi nahi, to sambandhit shramik kiya labh/kshatipurit pane ka adhikari hai tatha anya kis vivaran sahit ?

This reference still remains under adjudication though fourteen years have passed since the reference was made.

2. The brief facts on which the employer and the Respondent workman concerned are not at issue are that it is not an issue that Mr. L.S. Sharma, the workman was employed at its Ghaziabad establishment. He was transferred to Ahmedabad by an order of the employer dated January 11, 1975. It appears that the workman concerned did not respond to the directions of the company on his transfer. Hereinafter the rift between the employer and (he workman begins.

3. It is on record that the workman filed a suit before the Munsif, Ghaziabad, Original Suit No. 80 of 1975 : Lajvant Saran Sharma v. Swadeshi Polytex Limited seeking an injunction transferring him from Ghaziabad to Ahmedabad. The workman had, as a Plaintiff, before the Munsif, Ghaziabad sought a declaration that the transfer order was illegal. The Munsif. Ghaziabad was of the view that the injunction sought cannot be granted as it was barred by the Specific Relief Act, 1963 and thus, the prayer for an ad interim relief was rejected by an order of February 1, 1975 The workman filed an appeal before the IInd Civil Judge, Meerut, being Miscellaneous Civil Appeal No. 80 of 1975. The learned Civil Judge declined to interfere with the order of the trial Court and dismissed the appeal by his order dated March 20, 1975. The workman continued to seek his remedy before the civil Court. He filed civil revision no. 86 of 1976 before the VIII Additional District Judge, Meerut. The learned Additional District Judge declined to interfere in it and the revision was dismissed by an order dated July 10, 1975. The net result of the proceedings before the civil Court, in so far as the workman was concerned is that he did not receive any injunction, ad interim or otherwise, stalling the order of transfer, with this chapter the civil proceedings closed. It appears that the workman raised an industrial dispute and this matter became the subject matter of a reference, referred to the Labour Court, Meerut.

4. Before the Labour Court the parties exchanged their written statements. The workman made a reference to these proceedings before the Labour Court in his written statement in paragraphs 9 and 10 The contention of the workman in his written statement was that during the course of the procerdings before the civil courts a termination order visited him. Thus; he contends that he sought conciliation which failed and consequently the matter was referred for adjudication as a reference, before the Labour Court, Meerut. The employer also filed his written statement, and explained in the written statement why the order of termination had to be passed. The case of the employer is that as the workman would not obey the transfer order, this amounted to misconduct and, thus, the workman"s services were liable to be terminated.

5. When the proceedings before the Labour Court began, the Petitioner company pressed for a trial on a preliminary issue. The Labour Court proceeded with the matter as if to take evidence as a whole. The Labour Court was of the view that all

the issues could and ought to be heard together. It passed an order to this effect on May 16, 1983, fixing the date for hearing of all the issues on August 11, 1983. The order passed on May, 16, 1983 is relevant and is reproduced below :

Sri R.P. Gautam from the employer files objection (42-D to 41-D). Application 41 -D rejected by order endorsed thereon. I find that all the issues can and in view of the age of the case, should be heard together. Therefore, I fix this case for final hearing on all issues on 11-8-1983.

Sd. P.O.

16-5-83

6. The date August 11, 1983 is relevant. On August, 8, 1983 the employer (Messrs Swadeshi Polytex Limited) filed the present writ petition and obtained an ad interim order by which further proceedings in the aforesaid adjudication case no. 100 of 1978 pending before the Labour Court, Meerut were restrained from proceeding. The last order passed by the Labour Court is dated May 16, 1983.

7. The record of the Labour Court standing thus, legal submissions have been made before this Court that once a preliminary issue had been pressed for, the Labour Court was obliged (a) to strike the preliminary issue and (b) render its decision on the preliminary issue. In so far as the first aspect is concerned, there is no issue framed. The controversy then narrows down on the only remaining aspect whether the preliminary issue should be separated from other issues and tried first and likewise a decision on it be rendered before the trial.

8. On the legal submissions parties have cited decisions. On behalf of the Petitioner reliance has been placed heavily on a decision of this Court in the matter of Star Paper Mills. 1987 LIC 1894. On behalf of the workman reliance has been placed on some of the cases noticed in the Star Paper Mills Case (supra). These are as reported in [Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another](#), .

9. In so far as the academic debate is concerned, it is not new. The only question is where lies the answer in between the decisions of the Supreme Court.

10. Taking the submissions made on behalf of the employer, placing reliance on the Star Paper Mills case (supra) the contention is to the effect, that when a preliminary issue has been asked for by a party, the Labour Court is obliged to frame a preliminary issue and consequently render its decision on the preliminary issue. This Court has carefully read the decisions in the Star Paper Mills case. This case, is on a proposition on what the obligations of a Labour Court are when a request is made for framing a preliminary issue and the stage of the proceedings, when such request is made. There is no quarrel on the argument that should a party seek a preliminary issue, relevant to the adjudication, the Labour Court cannot decline the request in striking a preliminary issue. Should a Labour Court not frame a preliminary issue relevant to a reference under adjudication, then it would be acting

arbitrarily. In the present case, upon a request made by the employer a preliminary issue has been framed. On the obligation of the Labour Court to render a decision on the preliminary issue, straight away, the matter needs to be examined on the decisions of the Supreme Court, in context, and further on the basis of the record as between the pleadings of the parties.

11. In so far as the decision of the Star Paper Mills is concerned, two aspects have not been noticed in this case. In paragraph 7, the judgment in this case refers to the case of Shankar Chakravorty and observes :

Before reading Shankar Chakravorti's let us consider some of the earlier decided cases against the backdrop that in the case in hand the employer had made a request for a decision on the first issue as a preliminary issue at the earliest opportunity. Therefore, we are not concerned with the controversy as to at what stage of the proceedings before the Labour Court should an employer seek an opportunity of adducing evidence aliunde.

In the facts and circumstances of that case both the issues engage the attention of the Court.

12. It appears that while intending to notice the decision of the Supreme Court in re: Shankar Chakravorty's case, this case in fact was not considered in the decision of the Star Paper Mill's case (supra). This Court is, thus, obliged to do so in this matter. Another case which was not brought to the notice of the Hon"ble Court considering the issues in the Star Paper Mills case, is the decision of the Supreme Court [S.K. Verma Vs. Mahesh Chandra and Another](#) , . On the legal submissions what remains are the three cases which have been referred to by learned Counsel for the workman.

13. Two passages from the decision in [Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another](#) , a decision not considered in the Star Paper Mills case are very relevant. These are :

The point worthy of note is that the contention of the Appellant that there is something like an obligatory duty of the Industrial Tribunal to call upon the employer to adduce additional evidence if it so chooses after recording a specific finding on the preliminary issue whether there was no enquiry or the one held was defective has been in terms and demonstrably negated. As a corollary a principle was enunciated that such an opportunity should be availed of by the employer by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been asked for by the management before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The ghost of any obligatory duty cast on a quasi-judicial authority, viz :

Labour Court or Industrial Tribunal to notify one of the parties to the proceedings before it what it should do or what are its rights and by what procedure, it should prove its case, even when the party is a well entrenched employer, ably assisted by the best available talent in the legal profession, was laid to rest. We would presently examine Cooper Engineering Limited case (1975 Lab. IC 1441) (SC) where the employer made some attempt to infuse life into that ghost that decision rests on the facts of the case. In this case the fact that before the final order was pronounced by the Tribunal a written request was made on behalf of the employer for adducing additional evidence to sustain the charge on which the Tribunal appears to have passed no order was held insufficient by this Court to entertain a contention that the employer was denied any such opportunity....

33. The employer terminated the service of a workman. That termination raises an industrial dispute either by way of an application u/s 33 of the Act by the employer or by way of a reference by the appropriate Government u/s 10. If an application is made by the employer as it is required to be made in the prescribed form all facts are required to be pleaded. If a relief is asked for in the alternative that has to be pleaded. In an application u/s 33 the employer has to plead that a domestic enquiry has been held and it is legal and valid. In the alternative it must plead that if the Labour Court or Industrial Tribunal comes to the conclusion that either there was no enquiry or the one held was defective, the employer would adduce evidence to substantiate the charge of misconduct alleged against the workman. Now if no such pleading is put forth either at the initial stage or during the pendency of the proceedings there arises no question of a sort of advisory role and the Labour Court or the Industrial Tribunal unintended by the Act to advise the employer, a party much better off than workman, to inform it about its rights, namely, the right to lead additional evidence and then given an opportunity which was never sought. This runs counter to the grain of industrial jurisprudence. Undoubtedly if such a pleading is raised an opportunity is sought, it is to be given but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings there is no duty cast by law or by the rules of justice, reason and fairplay that a quasi-judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights, namely, the right to adduce Additional evidence to substantiate the charges when it failed to make good the domestic enquiry and then to give an opportunity to it to adduce additional evidence. This, apart from being unfair to the workman is against the principles or rules governing the procedure to be adopted by quasi-judicial Tribunal, against the grain of adversary system and against the principles governing decision of a lis between the parties arrayed before a quasi-judicial Tribunal.

14. The other case not noticed in the re : Star Paper Mills (supra) is the case of [S.K. Verma Vs. Mahesh Chandra and Another](#), . The relevant portion, paragraph 2 of this case reads :

There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation, etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter other times of the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from Court to Court merely to vindicate, not justice but some rigid technical stand taken up by them. We hope that the public sector corporation will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures.

15. In the case of *Star P (sic) per Mills* in paragraph 90 the Court refers to the following observations :

....The echo of the aforequoted observations of the Supreme Court are to be found in the judgment delivered by that Court in *D.P. Maheshwari v. Delhi Administration* 1983 Lab IC 1629 : AIR 1984 SC 153. Keeping in view the anxiety of the Supreme Court that the employer should not be permitted to prolong the agony of the workmen by challenging in a different forum the propriety and legality of the decision given by the Labour Court or Tribunal on a preliminary issue delaying the ultimate decision and thereby abusing the discretion exercised in their favour by the forum concerned.....

16. It would be best to refer to the observations of the Supreme Court referred to in the *Star Paper Mills* case, in understanding the perspective of the decision of the Supreme Court in *D.P. Maheshwari v. Delhi Administration*'s case. The extract in reference to the context reads :

It was just the other day that we were bemoaning the unbecoming device 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 matters 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 that stage of decision on a preliminary objection. There was a time when it was thought prudent and wise

policy to decide preliminary issue 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 ill afford to wait by dragging the matter from Court to Court for adjudication 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 the 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 journeying 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.

2. Having sermonised this much, we may now proceed to state the facts which provoked the sermon. The Appellant D.P. Maheshwari was an employee of Toshniwal Brothers Private Limited when his services were terminated with effect from 28th July 1969. He raised an industrial dispute and on 3rd July 1979, the Lt. Governor of Delhi referred the dispute for adjudication to the Additional Labour Court, Delhi under Sections 10(1)(c) and 12(5) of the Industrial Disputes Act. The dispute referred for adjudication to the Labour Court was "whether the termination of Services of Shri D.P. Maheshwari is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in his respect ?" The management straightaway questioned the reference by filing writ petition no. 159 of 1972 in the Delhi High Court. The writ petition was dismissed on 22nd May 1972. Thereafter the management raised a preliminary contention before the Labour Court that D.P. Maheshwari was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act and the reference was therefore incompetent. The Labour Court tried the question whether D.P. Maheshwari was a workman as defined in Section 2(s) of the Industrial Dispute Act as a preliminary issue. Both parties adduced oral and documentary evidence. After referring to the evidence of the employee's witnesses the Labour Court said "Thus according to the evidence of

the employee's witnesses the claimant was employed mainly for clerical duties and; he did discharge the same. "The Labour Court then referred to the evidence of the witnesses examined by the management and said. "Thus the said evidence falls far short of proving that the claimant was in fact discharging mainly administrative or supervisory duties. The Labour Court then proceeded to refer to the documents produced by the management and observed. "Thus the documents filed by the Respondent do not go to show that the real nature of the duties discharged by the claimant was supervisory or administrative in nature." The Labour Court next referred to what it considered to be an admission on the part of the management who had classified all their employees into three separate classes, A, B and C. Class A described as "Managerial". Class B described as Supervisory and Class C described as "other" staff The name of D.P. Maheshwari was shown in Class C. After reviewing the entire evidence the Labour Court finally recorded the following finding.

17. In so far as the decision of the Supreme Court in Re: Cooper Engineering case is concerned it stands noticed in the case of Star Paper Mills. The effect of that decision was that industrial adjudication should not be stalled from final adjudication on issues adopted in the preliminary issues :

In this case, to give the amalgam which comes out for the purposes of conclusion is that in the matter of Star Paper Mills (supra) the decision is, to the effect, that should preliminary issues be sought at the proper stage a request to frame preliminary issue ought not to be declined.

18. The decisions of the Supreme Court are in clear terms that a preliminary issue is not to be stretched so as to prevent final adjudication of the case though while adjudicating a final decision, the preliminary issue itself may decide the case.

19. Now one aspect of the matter which is on record, no party has complained on it nor addressed arguments on it. It appears the Petitioner employer was conscious of the decisions of the Supreme Court when it took an objection in its written statement, dated March 14, 1978" It is appended as Annexure 7 to this writ petition. A particular pleading of the employer is relevant. The Court is referring to paragraph 13. It reads :

(13) That the employer however submits that if in any event this Hon"ble Court comes to the conclusion that it was the employer who terminated the services of the workman on account of misconduct and that his services could not be terminated without conducting a domestic enquiry into the matter, they may kindly be granted an opportunity to justify the allegations against the workman and prove bonafides of their action before deciding the entire issue on merits.

(Emphasis by Court)

20. This aspect has not been adverted to in the argument on behalf of the Petitioner company, the employer. learned Counsel for the workman Mr. K.P. Agarwal, Senior

Advocate, fairly submitted that this pleading of the employer in the written statement had escaped his notice. But it is difficult for the Court to ignore what the employer submitted before the Labour Court. It appears that the employer did not conduct the domestic enquiry and passed an order of termination. Being conscious of the legal proposition that if a domestic enquiry had not been called, he was confident of the fact that he could take the plea for justifying the alleged misconduct by the workman, and was prepared to participate in proving his bonafides on the merits of it by shifting the scene of the domestic enquiry before the Labour Court. The termination of the workman's employment was, after all, the reference itself.

21. Thus, the pleading of the employer is inconsistent with the academic arguments raised for a preliminary issue and a decision on it before anything else.

22. The pleading of the employer in his written statement before the Labour Court is compatible with the decisions of the Supreme Court that if he desires a preliminary issue to be framed a request must be made at the earliest stage. But the argument before the High Court that the preliminary issue must be decided before all other issues, is a plea barred by estoppel, when the written statement pleads, in effect, that the domestic enquiry which may not have been held the Labour Court may hold and the employer would prove the charges against the workman for misconduct.

23. What the Petitioner company has done is that having first acquiesced to the position to seek an opportunity that it would justify its action in proving that the workman had committed misconduct, it has put its exercise in abeyance by legal academics. This is precisely what the Supreme Court had apprehended in the case of *D.P. Maheshwari V. Delhi Administration* (supra).

24. Then, learned Counsel for workman rightly submits that the adjudication proceedings remain exactly where they were left in 1983, because the employer was evading the merits of the adjudication case on a preliminary issue, after submitting in the written statement that it would justify its action against the workman. The matter in the present case is yet to be adjudicated and in between fourteen years have passed and the Labour Court will only be taking up the issue from the stage where it was left, and now continue an exercise which is consistent with the law which has been determined by the Supreme Court.

25. Thus, this Court is of the view that there has been no error which has been committed by the Labour Court, manifest or otherwise, that this Court may utilise a writ of certiorari to quash the proceedings or use a writ of prohibition to direct the Labour Court not to hear the matter on merits but first try the preliminary issues. Consistent with the decisions of the Supreme Court and further consistent with the pleadings of the employer mentioned in paragraph 13 of his written statement, if he desires to justify the order of termination and wants to seize the opportunity that his action is bonafide, the employer may justify his action on issues consistent with the reference itself.

26. The petition has no merits and is dismissed with costs.