

Neutral Citation No. - 2024:AHC:84015-DB

AFR

RESERVED

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 358 of 2024

Appellant :- Jagran Prakashan Limited

Respondent :- Shri Krishna Mohan Trivedi And 3 Others

Counsel for Appellant :- Chandra Bhan Gupta

Counsel for Respondent :- C.S.C.,Man Mohan Singh

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

(Per: Arun Bhansali, CJ)

1. Heard Shri Sanjay Kaushal, learned Senior Counsel, assisted by Shri Chandra Bhan Gupta and Shri Manoj Kumar Dubey, learned counsel for the appellant, Shri Man Mohan Singh, learned counsel for respondent No. 1 and Shri Manish Goyal, learned Additional Advocate General, assisted by Shri Ankit Gaur, learned Standing Counsel for the State-respondents.
2. This special appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules (for short 'Rules'), is directed against order dated 11.12.2023, passed by learned Single Judge in Writ – C No. 39505 of 2023, whereby the said writ petition along with 60 other connected writ petitions, filed by the appellant/petitioner-Company, aggrieved of the reference made by the State Government to the Labour Court, Gautam Buddh Nagar, under Section 4-K of the Uttar Pradesh Industrial Disputes Act, 1947 (for short 'UPID Act'), has been dismissed.
3. The office has reported the appeal as barred by 98 days.
4. An application, supported by affidavit, seeking condonation of delay in filing the appeal has been filed.
5. Though the affidavit, giving out reasons for condonation of delay, is very cursory and only formality sake, as the application is not contested by

learned counsel for the respondents, the delay in filing the appeal is condoned.

6. The office has also raised objection that the appeal appears to be not maintainable, in view of the Chapter VIII Rule 5 of the Rules. Learned counsel for the respondents has also raised objection to the maintainability of the appeal and placed reliance on **M/s Vajara Yojana Seed Farm, Kalyanpur and others Vs. Presiding Officer, Labour Court II, U.P., Kanpur and another : (2003) 1 UPLBEC 496.**

7. Learned counsel for the appellant submits that the issue raised about the maintainability has no substance as the present case does not fall in any of the categories, wherein the special appeal has been held to be not maintainable. Reliance is placed on **Sheet Gupta Vs. State of U.P. and Others : AIR 2010 ALL 46 (FB)** and **Central Mine Planning and Design Institute Limited Vs. Union of India and Anothers : (2001) 2 SCC 588.**

8. We have considered the submissions made by learned counsel for the parties on the aspect of maintainability of the special appeal. The provisions of Chapter VIII Rule 5 of the Rules, *inter alia*, read as under:

“5. Special Appeal: - An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award – (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.”

9. A Full Bench of this Court, in the case of **Sheet Gupta (supra)**, wherein on account of conflict in two Division Bench Judgement of this Court including in **Vajara Yojana Seed Farm (supra)**, relied on by learned counsel for the respondent, came to the following conclusion:

“18. Having given our anxious consideration to the various plea raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court. However, such special appeal will not lie in the following circumstances:

1. The judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;

2. The order made by one Judge in the exercise of revisional jurisdiction;

3. The order made by one Judge in the exercise of the power of Superintendence of the High Court;

4. The order made by one Judge in the exercise of criminal jurisdiction;

5. The order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(i) the Tribunal,

(ii) Court or

(iii) Statutory Arbitrator

made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

6. The order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

(i) the Government, or

(ii) any Officer or

(iii) Authority

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e., under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India.”

10. A perusal of the above would reveal that the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India, in respect of any judgement, order or award by (i) the Tribunal, (ii) Courts or (iii) Statutory Arbitrator, made or purported to be

made in exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India and the order made by one Judge in the exercise of jurisdiction by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award of (i) the Government or (ii) any Officer or (iii) Authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e., under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India, the appeal would not be maintainable.

11. In the present case, the order impugned has been passed by the State Government exercising powers under the UPID Act and against the said order, the judgment impugned has been passed by learned Single Judge. The said impugned order would fall neither in the category of judgment, order or award passed by the Tribunal, Court or Statutory Arbitrator nor an order passed in exercise of appellate or revisional jurisdiction by the Government or Officer or Authority and therefore, it cannot be said that the present appeal, against the order passed by learned Single Judge, would not be maintainable. The judgment in the case of **Vajara Yojana Seed Farm (supra)**, would have no application to the present case, wherein the Division Bench was dealing with appeals arising out of writ petitions in which the award of Labour Court was challenged, which is not the case in the present appeal.

12. Having cleared the decks about the maintainability of the appeal, the appeal is being considered on merit.

13. The respondent-workman approached the Deputy Labour Commissioner, Department of Labour, Uttar Pradesh, Gautam Buddh Nagar (NOIDA), raising demand regarding illegal and unjustified termination of his service vide order dated 05.03.2016. In the application, made by the workman/claimant, reference was made to Section 16-A of the Working

Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short 'WJ Act') and Section 2-A of Industrial Disputes Act, 1947 (for short 'Central ID Act'). The appellant-Management, filed its written statement before the Authority and the Authority, by its order dated 01.08.2019, referred the dispute to the Labour Court, Gautam Buddh Nagar under Section 4-K of the UPID Act. The respondent-workman filed his statement of claim before the Labour Court, Gautam Buddh Nagar and the same was contested by the appellant. A rejoinder was filed, list of documents were submitted and preliminary issue as to whether the domestic enquiry was held against the principles of natural justice was framed on 20.09.2021, whereafter it appears that the matter is stuck at the said stage, wherein the same is fixed for cross-examination of the workman by the appellant-employer.

14. During the pendency of the proceedings before the Labour Court, which was already pending for over four years, present writ petition came to be filed on 11.12.2023 questioning the very reference before the Labour Court under provisions of Section 4-K of the UPID Act.

15. Learned Single Judge, with reference to judgment in **Jagaran Prakashan Limited Vs. Presiding Officer, Labour Court : 2020 (167) FLR 412 and Bureau Chief Rastriya Sahara and another Vs. Labour Commissioner, U.P. and others: Writ – C No. 23241 of 2016** and other connected matters decided on 03.04.2023, wherein the petitioner -Jagaran Prakashan was also a petitioner in Writ – C No. 22872 of 2016, came to the conclusion that the Court has already taken a view that reference can be made by the State Government and the said orders having not been assailed by the appellant, came to the conclusion that no case for interference was made out and consequently, dismissed the writ petitions.

16. Learned counsel for the appellant made vehement submissions that the two judgments, relied on by the learned Single Judge, only deal with the issue of the State Government being the appropriate Government, which was not the issue raised in the present writ petition. The core issue was as to whether the reference could be made under the UPID Act or the same was

required to be made under the Central ID Act by the State Government and that too to the Industrial Tribunal and not the Labour Court. Further submissions have been made that the workman, in his demand before he Deputy Labour Commissioner, made specific reference to provisions of Section 16-A of the WJ Act and Section 2A of the Central ID Act and that as the plea, in the demand notice, before the Deputy Labour Commissioner and the claim, before the Labour Court, are based on the provisions of WJ Act in relation to the wages, the said subject matter would fall within the Third Schedule of the Central ID Act and in terms of Section 10(1)(d) of the Central ID Act, the dispute could only be referred to the Industrial Tribunal and as, admittedly, the Labour Court at NOIDA is not an Industrial Tribunal, the matter could not have been referred to the Labour Court. Submissions have also been made that the proviso to Section 10(1)(d) of the Central ID Act would not be attracted in the present case as according to the respondent's own assertion, 150 workmen are affected by the demand of wages raised, which resulted in his termination and therefore, the judgment impugned passed by learned Single Judge as well as the reference made by the State Government deserves to be set aside. Reliance has been placed on **Hind Filters Limited and Another Vs. Hind Filters Employees' Union and Another : 2023 INSC 799.**

17. Learned counsel for the respondent-workman contested the submissions made. It was reiterated that the issue raised is squarely covered by orders passed in appellant's own challenge laid earlier to the jurisdiction of the State Government and referring the dispute to the Labour Court and as such, the learned Single Judge was justified in dismissing the writ petitions. It is emphasized that irrespective of making reference to the provisions of WJ Act and Central ID Act, the crux of the matter is that the respondent-workman had questioned the validity of his dismissal by the appellant-employer, which dispute squarely falls within the Second Schedule of Central ID Act and First Schedule of UPID Act and has rightly been referred to the Labour Court by the State Government under provisions of Section 4-K of the UPID Act, which is, in substance, *pari materia* with provisions of

Section 10 of the Central ID Act and therefore, the appeal deserves dismissal.

18. We have considered the submissions made by learned counsel for the parties and perused the material available on record.

19. It is surprising, as to how, after four years of the reference made by the State Government on 01.08.2019, in the year 2023, after contesting the matter before the Labour Court, the issue of reference being without jurisdiction has dawned on the petitioner-appellant.

20. Be that as it may, the plea, raised is that the present dispute, could not have been referred to the Labour Court though the Deputy Labour Commissioner, Gautam Buddh Nagar had the jurisdiction to refer the matter, which could only be referred to an Industrial Tribunal. The foundation of the said arguments, as noticed hereinbefore, lies in the fact that the demand raised, before the Deputy Labour Commissioner, by the workman made reference to provisions of Section 16-A of the WJ Act and Section 2A of the Central ID Act. The said aspect was reiterated in the claim, filed before the Labour Court, pursuant to the reference made by the State Government.

21. A perusal of the demand raised before the Deputy Labour Commissioner as well as the claim filed before the Labour Court would reveal that though the same in the title/subject matter makes reference to the said two statutes, in the demand raised and claim filed, reference to the provisions of WJ Act has been made only as a pre-cursor, which led to the dispute and ultimate dismissal of the workman.

22. The prayer made before the Deputy Labour Commissioner, *inter alia*, reads as under:

“PRAYER

In view of the submissions made hereinabove and also in view of the facts and circumstances of the case, the Claimant/workman prays for intervention as per law for facilitating justice to the Claimant/workman in getting back his employment with the management/opposite party who deprived him from that. The management be made to see reason and recall the impugned order alleged to have been issued on 05.03.2016 along with the report of the sham enquiry conducted by it and advised to reinstate the

Claimant/workman in service with full back wages and consequential benefits of service. The Claimant/workman also prays for any other order or orders as the Esteemed Authority may deem fit and proper in the facts and circumstances of the case.

The Claimant/workman prays accordingly.”

23. Similarly, in the claim filed before the Labour Court, the following prayer was made:

“PRAYER

In view of the submissions made hereinabove by the Workman/Applicant, it is most respectfully prayed that this Hon’ble Court may be pleased to direct the Management to:

i) Reinstate the Workman in service by quashing and setting aside alleged order dated 05.03.2016 passed on the basis of the findings of defective enquiry conducted by a biased and prejudiced Enquiry Officer and by quashing and setting aside the illegal suspension/termination of the workman by allowing him to resume his duties with back wages and continuity of service and with all other consequential reliefs applicable to his service with the Management as if his services were never terminated;

ii) Make payment of Pay and Allowances for the period of illegal suspension/termination with admissible interest;

iii) Pay costs of this litigation; and

iv) Pass any other order/orders as may be deemed fit and proper in the facts and circumstances of the case.”

24. A bare perusal of the above would reveal that the workman has sought setting aside of the order of termination, agitating the enquiry as defective and has claimed back wages and continuity in service with other consequential reliefs along with pay and allowances for the period of suspension/termination with admissible interest. No relief worth the name in relation to the wages in terms of the provisions of the WJ Act and the implementation of the recommendation of the Wage Board and payment of the revised wages has been sought/made.

25. The order of reference made by the Deputy Labour Commissioner dated 01.08.2019, *inter alia*, reads as under:

“औद्योगिक विवाद का विवरण

क्या सेवायोजक द्वारा अपने कर्मचारी कृष्ण मोहन त्रिवेदी, पुत्र श्री अनिल कुमार तिवारी, पद इलेक्ट्रिशियन की सेवाएं दिनांक 05-03-2016 को समाप्त किया जाना उचित

अथवा वैधानिक है? यदि नहीं, तो संबंधित कर्मचारी अपने सेवायोजक से किस हित लाभ/ आनुतोष (रिलिफ) पाने का अधिकारी है एवं अन्य किस? विवरण सहित।

(पी०के०सिंह)

उप श्रमायुक्त, उ०प्र०
नोएडा, गौतमबुद्ध नगर
दिनांक 1.8.19''

26. A perusal of the above would also reveal that the reference made is in relation to the validity of the order of termination dated 05.03.2016 and no reference whatsoever has been made to the element of wages. Admittedly, the Second Schedule of the Central ID Act, which enumerates matters within the jurisdiction of the Labour Court provides 'discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed' and similar is the position in the UPID Act, wherein in the First Schedule, identical entry has been indicated.

27. It is well settled that the title of an application/claim and reference made therein does not determine the jurisdiction of a forum. The same only depends on the substance of the application/claim/demand. As such the reliance placed solely on the reference made to provisions of WJ Act and Central ID Act by the appellant, cannot be accepted.

28. Provisions of Section 4-K of the UPID Act, *inter alia*, reads as under:

"4-K. Reference of disputes to Labour Court or Tribunal – Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication.

Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court."

29. A perusal of the above provisions reveal that industrial dispute, contained in the First Schedule, is required to be referred to a Labour Court. The plea, sought to be raised by the appellant-petitioner only on account of the fact that reference was made to provisions of Section 16-A of the WJ Act and 2A of the Central ID Act in the demand, before the Deputy Labour

Commissioner and in the claim before the Labour Court, enumerating the events, which led to the dismissal of the workman, wherein reference has been made to the dispute pertaining to the recommendations and implementation of the Wage Board, by itself, cannot bring the subject matter of dispute as that of wages, i.e., instead of the same being in relation to the dismissal, the same would be that of wages. The very fact that the Labour Court has framed preliminary issue about validity of the domestic enquiry also substantiates the said aspect.

30. Insofar as, reliance placed on the judgment in the case of **Hind Filters Limited (supra)** is concerned, the subject matter of the dispute referred by the Labour Commissioner as noticed in para 10 of the judgment, pertains to wages only, which is not the case in the reference made in the present case, as such, the said judgment has no application to the present case.

31. In view of the above facts situation, the plea, raised by the appellant, wherein there is an admission pertaining to the appropriate Government being the State Government in light of the decided cases of the appellant-organization as laid down by learned Single Judge, the fresh plea raised, based only on the indications made in the demand and the claim, has no substance.

32. Consequently, no case is made out for interference in the judgment impugned passed by the learned Single Judge though on different grounds. The appeal is, therefore, dismissed.

33. As the dispute is pending before the Labour Court for over four years and it has not yet proceeded even to the stage of cross-examination on the aspect of fairness of the enquiry, the Labour Court is directed to proceed with the matter with utmost expedition as the termination pertains to the year 2016.

Order Date :- 09.05.2024
Mukesh Pal

(Vikas Budhwar, J) (Arun Bhansali, CJ)