

FD no. 2167-2021

3rd May, 2023

Present: Shri Vedant Singh, Ld.A/R with the claimants
Shri Sh. K.K. Pandey and Sh. Akhil Anand, Ld.A/Rs for the management.

This order deals with the application filed by the mgt on 17.04.2023 praying therein to decide issue no. 1 and 2 as preliminary issues. A detail reply to the application has been filed by the complainants. The Ld. A/R for the mgt submitted that this Tribunal by order dated 16.12.2021 has framed 4 issues. Issue no. 1 is with regard to the maintainability and issue no. 2 is with regard to the valid espousal of the cause by the union representing the workmen. On behalf of the mgt arguments were advanced that these issues have been framed in view of the objection taken by the mgt in the written statement. These issues are based upon questions of law and go to the root of the matter. The maintainability of the application filed u/s 33A of the Id. Act has also been challenged on the ground that ID. No. 5/2018 not being an Industrial Dispute, the present proceeding u/s 33 A is not maintainable. Hence, Mr. Bhatt submitted that to avoid conflict of decision it is essential in the interest of justice to decide issue no. 1 and 2 as a preliminary issue. To support his contention he relied upon the Judgment of the Hon'ble Supreme Court in the case of **V.G Jagdishan Vs. Indofos Industries Limited (2022) 6 Supreme Court Cases 167** wherein the Hon'ble Supreme Court have held that when the issue touches the question of territorial jurisdiction, as far as possible the same has to be decided first as a preliminary issue. Thus, the Ld. A/R for the management submitted that the issue relating to maintainability, on account of the nature of the dispute, be decided as a preliminary issue.

On behalf of the claimants objection was raised on the ground that the application was designed to delay the proceeding which is seriously prejudicial to the claimants. He pointed out that the mgt had approached the Hon'ble High Court in w.p.c no. 3962 of 2022 and the same was dismissed

by the Hon'ble High Court . Hence, the Hon'ble high Court have formed the opinion that two specific issues should not be taken up as preliminary issue. Citing the judgment of the Hon'ble Supreme Court in the case of **D.P Maheshwari Vs. Delhi Administration** he submitted that the apex court have expressed the view that the Labour Court should not give decision only on preliminary issue but dispose of all the issues at the same time.

In reply the Ld. A/R for the mgt submitted that in the case of **V.G Jagdishan**, referred supra, the Hon'ble Supreme Court have clearly distinguish the case of **D.P Maheshwari** and observed that no absolute proposition of law was laid down by the Hon'ble Supreme Court that 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 at a time .

In this case as seen from the pleadings ID. No. 5/2018 relating to the general demand of the cabin crew members is pending since the year 2018. The complainant of this proceeding are the members of the association pursuing the said demand and during the pendency of the said proceeding, as alleged by them their service were terminated. Prima facie it appears that the proceeding is maintainable. Moreover, examination of the claimant witness has been completed and examination of the mgt witness is in progress. The matter has suffered adjournments as a proposal was raised for negotiation and settlement of dispute. Before commencement of hearing and recording of evidence the mgt had never made a prayer for deciding issue no. 1 and 2 as preliminary issue which has been done at this belated stage of the proceeding.

The judgment relied upon by the Ld.A/R for the mgt in the case of **V.G Jagdishan** referred supra is distinguishable on facts from the case in hand. In that case the Territorial jurisdiction of the tribunal was the issue and thus the Hon'ble Supreme court held that the said issue is to be decided at the 1st instance. But in this case issue no. 1 and 2 which are with regard to the maintainability of the proceeding for want of

espousal, is not a pure question of law but a mixed question of fact and law which can be decided looking into the totality of the evidence adduced by the parties.

Hence, it is held that the application filed by the mgt at this belated stage, when the evidence has been recorded in part, cannot be considered to decide issue no. 1 and 2 as preliminary issue. The petition filed on 11.04.2023 is accordingly rejected.

Call the matter on 8/5/2023 for tendering and cross-examination of mgt witness. Mgt is directed to serve advance copy of the affidavit on the applicants at least one day before the date fixed to facilitate the recording of the cross examination. It is made clear that no further opportunity shall be granted to the mgt beyond the date fixed.

Presiding Officer