

Id. No. 5/2018

10th April, 2023

Present:

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

The matter stands posted today for objection and hearing of the petition filed by the management on 28.03.2023 praying that the Hon'ble High Court in w.p.c no. 3692 of 2023 have given liberty to the management respondent to move an application before this Tribunal for hearing of the issues relating to maintainability as a preliminary issue and till then the hearing of Id. No. 21/2021 be stayed.

Today, the claimants filed reply to the said petition as directed. Before commencement of the hearing the Ld. A/R for the management moved another application alongwith some citations praying to deal and dispose off issue no. 1 and 3 as preliminary issues. The Ld. A/R for the claimants received the copy of the application and agreed to advance argument today on both the applications. Heard.

The Ld. A/R for the respondent submitted that the Tribunal has framed all together 5 issues by order dated 24.1.2019. Issue no. 1 is with regard to the maintainability of the proceeding and issue no. 3 is with regard to the valid espousal of the cause by the union representing the workmen. He further submitted that these issues were framed in view of the objection taken by the mgt in the written statement. The mgt has specifically challenged the maintainability of the dispute for want espousal stating that the dispute is not an industrial dispute but an individual dispute. This proceeding has a bearing on Id. No. 21/2021 which has been filed as a complaint u/s 33 of the Id. Act by the complainants who are the parties of this proceeding. He further pointed out that the evidence of the claimants have been concluded and the evidence of the mgt has been recorded in part. Whatever evidence is to be adduced has already been adduced by the claimant. Hence, to obviate

conflict of the decision and in the interest of justice issue no. 1 and 3 be decided as a preliminary issue and till that decision the further proceeding of Id. No. 21.2021 be stayed. To support his contention he relied upon the judgment of the Hon'ble Supreme Court in the case of V.G. Jagdishan Versus 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.

The Ld. A/R for the claimants while taking serious objection to the application moved by the management, submitted that the application is designed with the sole intention of delaying the proceeding which is seriously prejudicial to the claimants. He also argued that the similar prayer was made by the management before the Hon'ble High Court in w.p.c no. 3962 of 2022. The w.p.c having been dismissed, the tribunal has to take note of the fact that the Hon'ble High Court didnot accept the contention of the respondent for hearing the two specific issues as preliminary issue. He further argued that Hon'ble Supreme Court in the case of D.P Maheshwari Versus Delhi Administration have clearly held that the labour court ought not give the decision only on preliminary issue but dispose off all the issues at the same time. He also pointed out that the respondent, intentionally had not prayed, for disposal of the two issues as preliminary issue at the earliest opportunity and the present application filed, if at this stage allowed, would cause prejudice to the claimants.

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 off all the issues at a time .

In this case, the issues were framed on 24.01.2019. At that point of time, the mgt never made a prayer for deciding issue no. 1 and 3 as preliminary issue. The claimant proceeded with the evidence and closed the same. The mgt examined one witness and the matter is pending for further evidence by the management. At this juncture, the mgt has prayed that the evidence adduced by the parties is sufficient to decide issue no. 1 and 3 as the claimants have not adduced any evidence at all with regard to the espousal making the dispute an industrial dispute. Once the Tribunal will come to hold that this is not an examination of the witness examined by the claimants who has admitted that no evidence relating to espousal has been placed on record. But it is a matter to be observed that, had this prayer for decision of two issues as preliminary issue been made at the earliest opportunity, the claimants could have been in a position to address the same by adducing evidence. Moreover, if after recording of the evidence of some witnesses, if a prayer will be made for decision of one issue keeping the others pending and the same if allowed, the same will certainly impact the merit of the matter and the totality of the decision to be taken by the Tribunal.

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 3 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

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part, cannot be considered to decide issue no. 1 and 3 as preliminary issue. The petition filed on 28.03.2023 and 10.04.2023 are accordingly rejected. Call the matter on 17.04.2023 for evidence to be adduced by the management as a last chance.

Presiding Officer
10th April 2023