

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-2, MUMBAI**

**REFERENCE NO.CGIT-2/34 of 2016**

HSBC

(Hongkong And Shanghai Banking Corp. Ltd.)

-First Party

V/s

Shri Sachin N. Moghe.

-Second Party

**ORDER BELOW EX- 27 & 28**

(Delivered on 30-08-2024)

Read applications filed by the Second Party (in person).  
Perused the exhaustive say Ex-29 and additional written submission  
Ex-30 given on behalf of the First Party (Management).

Heard both the sides.

It appears that, by this applications the Second Party prays  
for framing fresh issues and he was not agreeable to decide the issue  
of workman as preliminary issue. These applications have been  
strongly opposed by the First Party management by saying that, the  
proceeding ought to be conducted on the issues framed by the  
Tribunal as the same is an order passed in the proceedings and the  
statement given by the Second Party was voluntary hence cannot  
withdraw the same and ultimately prayed for rejection of the  
applications.



It is worthwhile to mention here that, my predecessor has framed the issues at Ex-26. True it is that, in the statement made by before my Learned predecessor, the Second Party agreed that, issue no. 1 can be heard as preliminary issue however my learned predecessor nowhere mentioned about the preliminary issue in the issues framed at Ex-26. Not only this but, framing of issue is not an order of the Court or Tribunal and merely because the Second Party agreed that, any particular issue be decided as preliminary issue, it will not be just to consider that issue as preliminary issue.

In the instant case, in the order of Reference dated 22.12.2016, it has been specifically mentioned in the Schedule that whether the Second Party is a 'workman' within the meaning of Sec. 2-S of the ID Act and the First Party also objected the status of the Second Party as workman in the reply and requested to frame the preliminary issue as it touched to the Jurisdiction of this Tribunal however in my opinion the objection regarding the status of employee is based on mixed question of facts and Law therefore it will be just to decide the issue regarding the status of the Second Party as 'workman' alongwith other issues therefore it seems that my Learned predecessor rightly not mentioned in the issues framed as preliminary issue.

In **Rajiv Gundewar v/s. Crompton Greaves 2000 (85) FLR 602 Bombay High Court** it has been appreciated that, piecemeal decision on the issue always results in protracting the litigation and to avoid that, it is also advantageous that all issues be decided together. It is true that, the question whether the complainant is a workman or not is a vital issue but at the same time the other issues regarding

SKW

legality of correctness of the termination of the complainant needs to be gone into by the Labour Court also because even if it is held by the Labour Court that, the complainant is not a workman, the other issue raised in the complaint are required to be decided because in case the said finding is not held, ultimately by superior Court the matter may not be required to be remanded for the decision on the other issues. If the other issues are decided by Labour Court, the decision of all issues simultaneously shall definitely curtail unnecessary delay in final disposal of the matter.

In **M/s. Cipla Ltd. & Ors. v/s. Ripudaman 1999 1LLJ 900 Supreme Court** it has been appreciated that, the Labour Court should decide all the issues together and shall not compartmentalize or split the issue into pre-issues or non-pre issues as such procedure if adopted may result in delay.

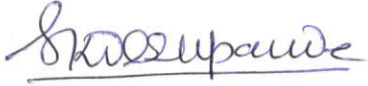
The counsel for the First Party relied the decision of High Court (M.P.) Between **BIRLA Corporation v/s. Dy. Labour Commissioner 2016 (151) FLR 353** in that decision it has been observed about framing of preliminary issue.

However, in the light of the above referred decisions of our Bombay High Court & Supreme Court, there is no necessity to frame the preliminary issue regarding the status of the Second Party whether he is a workman or not, therefore it will be just to decide all the issues together without considering the issue regarding the workman as preliminary issue.

SKW

In the result, there is no necessity of framing another issues and all issues will be decided simultaneously.

Date: 30-08-2024

  
(Shrikant K. Deshpande)  
Presiding Officer  
CGIT -2, Mumbai