Karnataka High Court Management Of Rangaswamy & Co. vs D.V. Jagadish on 20 March, 1990 Equivalent citations: 1991 (62) FLR 346, ILR 1990 KAR 1387, 1990 (2) KarLJ 307 Author: K Swami Bench: D V Rao, K Swami JUDGMENT K.A. Swami, J. 1. Though this Writ Appeal is posted for orders, by consent of both sides, it is heard for final disposal. 2. This writ appeal is preferred against the order dated January 12, 1990 passed in W.P. No. 22172/1989. The appellant in this appeal was the petitioner in the writ petition. Respondents 1 and 2 herein were also the respondents 1 and 2 the writ petition. Therefore, in this Judgment the parties, will be referred to as appellant and respondents. 3. The appellants has sought for quashing the orders dated June 24, 1989 and November 3, 1989 passed in Reference No. 79/88 passed by the 2nd respondent and produced as Annexures C and F respectively. 4. Under Annexure-C, the second respondent directed the II party to pay interim relief of Rs. 1,200/- per month to the 1st Party (the 1st respondent here in) from the date of I.A. No. I. i.e., July 7, 1988 till the date of disposal of the main petition. Annexure-F is another order by which the second respondent has refused to set aside the order dated June 24, 1989 - Annexure-C. 5. The dispute has been raised by the first respondent under Section 10(4-A) of the Industrial disputes Act (here after referred to as the Act). It is relevant to notice at this stage that sub-section (4-A) of section 10 of the Act came to be inserted by the State Amendment under Karnataka Act No. 5 of 1988 with effect form April 7, 1988. In the dispute, the first respondent has sought for a declaration that the order removing him from services is null and void and to reinstate him. The party No II in the dispute consists of three entities. The first entity i.e. the II party No. I is the appellant in this appeal. The other two are (i) The Management of M/s. S. V. Rangaswamy & Co., Pvt. Ltd. by its Managing Director Sri S. V. Rangaswamy and (ii) Smt., S. R. Nandini, former Managing Partner of Rangaswamy & Co. The II Party No. 1 is described by the Labour Court as party No. II (A) and the other two are described as party No. II(B) and II(c) Party Nos. II(B) and II(C) are not parties to the writ petition and also to the writ appeal. However it is stated that they have separately challenged the orders in question. 6. The point for consideration in this appeal is, whether the Labour Court has acted within its jurisdiction in awarding the interim relief to the first respondent ? 7. The learned single Judge has dismissed the writ petition holding that whether the first respondent is a workman or not has to be decided after enquiry and it need not be decided at the stage of granting interim relief. 8. It is contended by Sri G. S. Visweswara learned Counsel for the appellant that when the appellant, that when the appellant has dispute that the first respondent is a workman of the appellant, it becomes a jurisdictional issue, therefore, the Labour Court without deciding the same could not have granted the interim relief. 9. The case of the appellant is that the first respondent is not a workman because his employment falls within the fourth category mentioned in the definition of workman. It is not necessary for us to go into the question whether the first respondent is a workman. 10. On the contrary, it is contended by Sri Krishnaiah, learned Counsel for the first respondent, that as long as it is not disputed by the appellant that the first respondent was its employee and he has

been removed from service without holding an enquiry, there is a prima facie case for granting the interim relief because unless the appellant proves during the course of the trial of the dispute that the removal or dismissal is justified by adducing appropriate evidence, till then the first respondent is entitled to have the interim relief as otherwise, it would not be possible for him to survive and prosecute the dispute, that the contention that the first respondent is not a workman of the appellant need not be decided at the interlocutory stage and such an issue need not also be tried as a preliminary issue. In support of his contention, the learned Counsel has placed reliance on a decision of the Supreme Court in D. P. Maheshwari v. Delhi Administration & others (1983-I-LLJ-425) whereas Sri G. S. Visweswara, learned Counsel for the appellant, has place reliance on the decision in Management of Express Newspapers (Pvt.) Ltd. Madras v. The workers & other (1962-II-LLJ). 11. It is necessary to point out that in a case where reference is made by the State Government under Section 10(1) of the Industrial Disputes Act, the reference itself is sufficient to confer jurisdiction upon the Labour Court or the Industrial Tribunal to decide the matter referred to it and also other matters incidental there to. However, even in such cases, also, it is open to challenge that the dispute referred to the Industrial Tribunal or Labour Court is not an industrial dispute. Similarly in the case of a dispute raised under sub-section (4-A) of section 10 of Act, it is open to challenge that the dispute raised is not an industrial dispute and the person raising it is not a 'Workman'. These question touch the very jurisdiction of a Labour Court or Industrial Tribunal, as the case may be, to try and decide the dispute. 12. Whenever a question affecting the jurisdiction of an Industrial Tribunal or a Labour Court is raised, it is necessary for the Tribunal or the Labour Court to decide the same. A similar question arose in the case of Management of Express Newspapers (Pvt. ) Ltd. Madras v. The Workers & Others (supra). The Supreme Court held thus (pp. 231-232) : "If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ. It is also true that even if the dispute is tried by the Industrial Tribunal at the very commencement the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not and the decision on this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the employer is a closure or lock-out. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not." 13. Similarly, in the instant case, the jurisdiction of the Labour Court to decide the dispute, depends upon the decision on the question whether the 1st respondent is a 'workman'. Therefore, the Labour Court ought to have decided the issue as a preliminary issue if it was required to consider the interim relief sought for by the 1st respondent. Therefore, in a case where no interim relief is sought for or is required to be granted the issue affecting the jurisdiction can also be tried along with the other issues. However, we would like to make it clear that it all depends upon the facts and circumstances of each case as to whether

an issue touching the jurisdiction of the Labour Court or Industrial Tribunal should be tried as a preliminary issue or not. Even in D. P. Maheshwari v. Administration and others (supra) the Supreme court has not held that an issue touching jurisdiction should not be tried as a preliminary issue. No doubt, the Supreme Court has expressed that the recording of findings on preliminary issues and challenging the same in the High Court and at the Supreme Court would consume lot of time and in the meanwhile, it would have a very deleterious effect on the workman. Therefore, it is further observed by the Supreme Court that in such cases, normally the jurisdiction under Articles 226 and 227 should not be exercised and the matter should be allowed to be decided on merits. Regarding an issue touching the jurisdiction should be tried as a preliminary issue, it is observed thus (p. 427) : "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." Therefore, we have already pointed out that it would depend upon the facts and circumstances of each case, and the Tribunal or the Court seized of the matter has to decide whether in a given case, the issue raised touching the jurisdiction should be tried as a preliminary issue. In view of this, it is not possible to hold that the Supreme Court in D. P. Maheshwari's case (supra) has laid down that an issue touching the jurisdiction of an Industrial Tribunal or a Labour Court should not or need not be tried as a preliminary issue. The decision in Management of Express Newspapers (Pvt.) Ltd. v. The Workers and Others (supra) has not been referred to in D. P. Maheshwari's case. Therefore, the proposition laid down in Express Newspaper's case read with the decision in Maheshwari's case, it emerges that it is open to the Industrial Tribunal or the Labour Court in a given case to try the issue touching the jurisdiction as a preliminary issue; but it has to consider whether in the facts and circumstances of the case, it is necessary to decide the issue touching the jurisdiction as a preliminary issue or decide the same along with other issues. 14. In the instant case, the Labour Court is required to decide the question as to whether the 1st respondent was a 'workman' whereas the Labour court has held that it is not necessary to decide the same for the purpose of granting interim relief and the same can be decided at a later stage. At the later state, if it is held that the 1st respondent is not a 'workman', he would not be entitled to any relief whatever in the dispute raised by him including the interim relief claimed by him. In that, event, the interim relief ordered by the Labour Court would be without jurisdiction. Therefore, in the facts and circumstances of the case, the issue raised by the appellant touching the jurisdiction of the Labour Court was required to be decided as a preliminary issue. This is sufficient to dispose of the writ appeal. 15. However, it is submitted by Sri Krishnaiah, learned Counsel for respondent No. 1, that assuming that without deciding the issue touching the jurisdiction, the Labour Court could not have passed an order granting interim relief, but no such limitation operates on the jurisdiction of this Court. Therefore, it is further submitted that as the appellant has admitted that the 1st respondent was its employee and as the 1st respondent has nothing to survive, atleast in the exercise of the jurisdiction under Article 226 of the Constitution,

the appellant may be directed to pay a reasonable amount as an interim relief to enable the 1st respondent to maintain himself and to prosecute the dispute. 16. It is true that the appellant has not disputed that the 1st respondent was its employee. It is also the case of the appellant that it has, in the exercise of its power as contained in the terms of employment of the 1st respondent, terminated the service of the 1st respondent. Whether the appellant is justified in terminating the services or not is a matter on which we need not express any opinion as it is a matter for the Labour court to consider. But one thing that is clear is that if the 1st respondent has nothing to maintain himself it is necessary that he should be provided an interim relief so that he can prosecute the dispute and the relief sought for by him can be adjucated. Therefore, we are of the view that in exercise of our jurisdiction under Articles 226 and 227 of the Constitution, the appellant can be directed to pay certain sum to the 1st respondent during the pendency of the dispute. 17. As far as the quantum of the interim relief is concerned, it is not in dispute that on the date the 1st respondent was removed from employment, he was drawing the wages of Rs. 1,680/- p.m. 50% of the amounts would come to Rs. 840/-. Therefore, we are of the view that a sum of Rs. 900/- p.m. would be reasonable. According, this writ appeal is allowed in the allowing terms : i) The order passed by the learned single Judge in W.P. No. 22172/1989 on January 12, 1990 is set aside; (ii) The impugned orders dated June 24, 1989 and November 3, 1989 passed on I.A. No. I and I.A. Nos. II to IV respectively in Ref. No. 79/1988 by the 2nd respondent and produced as Annexure-Cand Fare quashed. (iii) The Labour Court is directed to decide the issue as to whether the 1st respondent is a 'workman' as a preliminary issue. (iv) The appellant is directed to pay by way of an interim relief a sum of Rs. 990/- p.m. from the date of presentation of the writ petition to this Court until the preliminary issue is directed. (v) After the preliminary issue is decided and in case it is held in favour of the 1st respondent, it is open to him to make an application for interim relief. In that event, the Labour court can consider the same on merits without reference to this judgment. (vi) The arrears due upto the end of March 1990 be paid on or before April 18, 1990. (vii) The interim relief from April 1990 onwards shall be paid on or before the 10th of the succeeding month. (iii) The interim relief ordered will abide by the ultimate result in the proceeding.