Hind Filters Ltd. vs Hind Filters Employees Union on 17 August, 2023

Author: Rajesh Bindal

Bench: Rajesh Bindal, Hima Kohli

2023INSC799

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8801 OF 2012

HIND FILTERS LTD. & ANR. …

VERSUS

HIND FILTER EMPLOYEES' UNION & ANR. …R

JUDGMENT

Rajesh Bindal, J.

1. Aggrieved against the order1 passed by the High Court2 in the Writ Petition3 filed under Article 227 of the Constitution of India, the Management is before this Court in appeal. Vide the aforesaid order1, three orders4, passed by the Labour Court5, were set aside with a direction to the Labour Court to allow the appellants-Management to exercise liberty only in relation to correction of factual errors in the order. 17:59:38 IST Reason: High Court of Madhya Pradesh at Indore.

WP (C) No. 824 of 2011.

Dated 30.06.2010, 12.08.2010 and 06.10.2010 passed by the Labour Court. Labour Court, Dewas, Madhya Pradesh.

FACTS

2. The facts of the case, as evident from the record, are that the appellants-Management moved an application under Section 25-N of the ID Act6 seeking permission to retrench 45 workmen w.e.f. 01.12.2000. However, vide order dated 16.10.2000, the permission was declined by the Labour Commissioner and the application filed by the appellants- Management was rejected. Thereafter, the workmen raised certain demands on 09.10.2001, seeking increase of wages and other facilities. The Labour Commissioner referred the dispute to the Labour Court vide order dated 07.08.2002. Statement of claim was filed by the respondents- workmen before the Labour Court to which reply

was filed by the appellant-Management. Finally, the matter was adjudicated. The claim made by the respondents-workmen was accepted by the Labour Court vide Award dated 10.02.2006.

2.1 Challenging the aforesaid Award, the appellants- Management filed a Writ Petition7 before the High Court2. As an interim measure, the High Court, while issuing notice, stayed the operation of the The Industrial Disputes Act, 1947 ('ID Act') W.P. No.2375 (S) of 2006 before the High Court of Madhya Pradesh at Indore. Impugned Award dated 10.02.2006 of the Labour Court. Plea raised by the appellants-Management before the High Court was that there being more than 100 workmen in the factory of the appellants, reference under Section 10 of the ID Act6 should have been made by the Labour Commissioner only to the Industrial Tribunal. Vide order dated 06.01.2010, the High Court accepted the Writ Petition filed by the appellants-Management. The prayer made was that there being a jurisdictional error with reference to the court to which the reference could be made, as the appellants-Management had more than 100 workmen, liberty be granted to the appellants to approach the Labour Court by filing an appropriate application for correction of the factual error. Respondent No.1 being aggrieved by the order passed by the High Court filed a Review Petition8 before the High Court. However, the same was dismissed by the High Court vide order dated 12.03.2010. 2.2 The appellants-Management filed an application before the Labour Court for correction of the factual error annexing documents, showing that even in the returns filed with the Employees State Insurance Corporation and Life Insurance Corporation etc., more than 100 workmen Review Petition No.46 of 2010.

were shown to be employed with the appellants-Management. Reply was filed by the respondents-workmen to the application, objecting to the documents placed on record by the appellants-Management along with the application for correction of the error. The Labour Court vide order dated 30.06.2010 dealing with the objections raised by the respondents- workmen, issued notice in the application and allowed the appellants- Management to file the documents in support of its claim. 2.3 Again, objection was raised by the respondents-workmen regarding maintainability of the application before the Labour Court. However, the same was also rejected vide order dated 12.08.2010. Subsequently, an application was filed by the appellants-Management for summoning of official records and the witnesses. The same was allowed by the Labour Court vide order dated 06.10.2010. At that stage, the objection, raised by the respondents-workmen for summoning of witnesses, was rejected as they would have a clear opportunity of cross- examining them.

2.4 Being aggrieved, the respondents-workmen challenged the aforesaid three orders of the Labour Court before the High Court by filing a Writ Petition under Article 227 of the Constitution of India. The order passed therein by the High Court has been challenged in the present appeal.

ARGUMENTS

3. Learned counsel for the appellants-Management submitted that a preliminary objection was raised by the appellants before the Labour Court regarding maintainability of the reference since the appellants-Management all along had employed more than 100 workmen. In view of Section 10 of the ID Act, in cases where claim is made regarding wages and allowances as provided in the Third

Schedule of the ID Act with reference to an establishment where there are more than 100 workmen employed, the reference of dispute has to be made to the Industrial Tribunal. In the case in hand, ignoring this fact, the Labour Commissioner made the reference of dispute to the Labour Court. The Labour Court while adjudicating the claims ignored the admission on the part of the representative of the respondents-workmen that there were more than 100 workmen employed with the appellants-Management. The appellants-Management had placed before the High Court clinching material to establish that there were more than 100 workmen in the establishment, which was in the form of certificates from the Employees State Insurance Corporation and Life Insurance Corporation from whom the appellants-Management had taken a group gratuity policy for its workmen. Though there was some lapse in leading evidence before the Labour Court, the same was on account of the fact that in his cross- examination, the representative of the respondents-workmen had admitted that there were more than 100 workmen employed in the establishment.

3.1 He further submitted that as it was an issue of jurisdiction of the Labour Court to adjudicate the matter, the High Court had given liberty to the appellants-Management to approach the Labour Court for correction of the error. The Review Petition8 filed by the respondents- workmen was dismissed by the High Court. Even the objections raised by the respondents-workmen before the Labour Court were rejected, while noticing that the workmen would have full opportunity to cross-examine the witnesses, being summoned by the appellants-Management to establish that there were more than 100 workmen employed in the establishment. The evidence was clinching as it had to come from Employees State Insurance Corporation and Life Insurance Corporation. However, when the respondents-workmen challenged the aforesaid orders before the High Court, the plea of the respondents was accepted. It was observed that the appellants-Management shall not be entitled to lead evidence to disturb the finding recorded by the Labour Court as liberty was granted to the appellants-Management only for correction of the factual error and the same shall be limited in terms of Rule 28 of the Rules9 or at the most, Section 152 of the Code10. The argument was that order as such was not assailed on merits.

3.2 Submission is that the documents sought to be produced by the appellants-Management go to the root of the case on the question of jurisdiction of the Labour Court to adjudicate the matter. When the same were placed before the High Court by the appellants-Management while challenging the Award of the Labour Court dated 10.02.2006 being prima facie satisfied with the argument, liberty was granted to move an application before the Labour Court for correction of the factual error. In case, correction of factual error needs some evidence, that would be permitted.

3.3. In support of the arguments that the court can remand the matter to the Labour Court, reliance was placed on the judgments of this The Industrial Dispute (Central) Rules, 1957 Civil Procedure Code, 1908 Court in Santhosh Bansi Mahajan v. State Industrial Court, Madhya Pradesh and others, (1984) Supp. SCC 193 and Bundi Zila Petrol Pump Dealers Association, Bundi v. Sanyojak Bundi Zila Petrol Mazdoor Sangh (BMS), (2019) 5 SCC 337.

4. On the other hand, learned counsel for the respondents submitted that it is too late to reopen the entire issue, nearly, after two decades. The reference was made to the Labour Court on 07.08.2002.

Many of the workmen have already retired and some have even expired. Whatever evidence was led by the appellants-Management, on the basis thereof, finding was recorded that the appellants-Management had not employed more than 100 workmen and the Labour Court had jurisdiction to deal with the questions referred. Mere admission by one of the representatives of the respondents-workmen, who appeared before the Labour Court, would not discharge the onus cast on the appellants- Management to prove that it had employed more than 100 workmen. The evidence sought to be produced now is in the form of returns filed, after the reference was made. The prayer is for dismissal of the appeal.

5. We have heard learned counsel for the parties and perused the relevant record.

DISCUSSION

6. Before we deal with the merit of the controversy in issue, we deem it appropriate to discuss the jurisdiction of the Labour Court and the Industrial Tribunal for reference of a dispute. It is for the reason that the claim of the appellants-Management is that it employed more than 100 workmen.

7. Section 10(1) of the ID Act inter alia provides that where appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, by an order in writing, refer the dispute to the 'Labour Court' if it relates to the issues specified in the Second Schedule. Where the matter relates to the issues specified in the Third Schedule, the dispute is to be referred to a Labour Court, if the dispute is not likely to affect more than 100 workmen. Otherwise, Section 10(1)(d) of the ID Act provides that the disputes as enumerated in the Third Schedule are to be referred to a Tribunal. The aforesaid two terms have been defined in Section 2(kkb) and 2(r) of the ID Act, respectively. Relevant provisions of Section 10(1) of the ID Act are extracted below:

> "10. Reference of disputes to Boards, Courts or Tribunals:-
>
> (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-
>
> (a) refer the dispute to a Board for promoting a settlement thereof; or
>
> (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
>
> (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
>
> (d) refer the dispute or any matter appearing to connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

> Provided that where the dispute relates to any matter specified in the Third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)"

8. The Second and the Third Schedules attached to the ID Act required for proper appreciation of the arguments, are extracted below:

> "THE SECOND SCHEDULE MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS
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> 1. The propriety or legality of an order passed by an employer under the standing orders;
>
> 2. The application and interpretation of standing orders;
>
> 3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
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> 4. Withdrawal of any customary concession of privilege;
>
> 5. Illegality or otherwise of a strike or lock-out; and
>
> 6. All matters other than those specified in the Third Schedule.

THE THIRD SCHEDULE MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

1. Wages, including the period and mode of payment;

2. Compensatory and other allowances;

3. Hours of work and rest intervals;

4. Leave with wages and holidays;

5. Bonus, profit sharing, provident fund and gratuity;

6. Shift working otherwise than in accordance with standing orders;

7. Classification by grades;

8. Rules of discipline;

9. Rationalisation;

10. Retrenchment of workmen and closure of establishment; and Any other matter that may be prescribed."

9. A perusal of the aforesaid Schedules shows that the matters, enumerated in the Second Schedule, are falling in the jurisdiction of the Labour Court. Whereas the matters, as mentioned in the Third Schedule, are within the jurisdiction of the Industrial Tribunal with the only exception that for dispute provided in the Third Schedule; if not more than 100 workmen are affected, reference is to be made to the Labour Court.

10. In the case in hand, reference of the following disputes was made by the Labour Commissioner, Indore to the Labour Court, Dewas vide order dated 07.08.2002:

> "1. Whether it is justified to grant wage increase to the workmen working in the Company? If so, what should be the plan for the same?
>
> 2. Whether according to the ability, seniority and experience, grading has to be made and whether it would be justified to decide a policy for wage fixation according to these grades? If so, what should be the structure of such policy?
>
> 3. Whether it is justified to give Dearness Allowance to the workmen? If so, what should be the quantum of the same?
>
> 4. Whether it is justified to increase the House Rent Allowance, Conveyance Allowance and Washing Allowance of the workmen of the Company? If so, what should be the plan for the same?
>
> 5. Whether it is justified to department-wise classify the number of permanent workmen? If so, what should be the plan for the same?
>
> 6. Whether it is justified to provide Education Allowance, Canteen Allowance, and Night Allowance?

If so, what should be the plan for the same?

7. Whether it is justified to restart Attendance Allowance to the workmen of the Company as was given to them earlier, to increase rate of the same and to compensate them for the discontinued period? If so, what should be the plan for the same?

8. As provided earlier, whether it is justified to allow earned leaves to a workman even if he has worked for less than 240 days in a year?

9. Whether in past, the weekly off was not adjusted in allowing the earned leaves? What should be the justification of restarting the same arrangement?

10. Whether the other benefits as provided by ISO certified Companies are justified to be provided to the workmen of this Company?"

11. A perusal of the aforesaid issues which were referred by the Labour Commissioner to the Labour Court shows that these pertain primarily to the wages and allowances which exclusively fall within the jurisdiction of the Industrial Tribunal, in case more than 100 workmen are to be affected.

12. In this light, the stand taken by the appellants-Management is that in the establishment of the appellants-Management, there were more than 100 workmen, hence, reference of the dispute to the Labour Court was without jurisdiction and consequently, any award passed by the Labour Court is not sustainable. When the matter was being adjudicated by the Labour Court, the appellants-Management raised a preliminary objection regarding its jurisdiction, for which an additional issue was also framed, which reads as under:

> "1. Whether this court has not got jurisdiction to hear and adjudicate this matter since there being employed more than 100 workmen in the factory of Party on Second Part?"

13. Some evidence was led by the appellants-Management in terms of which from the year 2001 to 2005, there were 92 workmen employed in the establishment. However, there was categoric admission made in the cross-examination of Kishori Lal Sharma, who appeared as a witness on behalf of the workmen, stating that there are more than 100 workmen in the factory but in their Union only 85 of them are members. The Labour Court found that there being less than 100 workmen, the dispute was rightly referred to the Labour Court. Final Award was passed on 10.02.2006. The same was challenged by the appellants-Management before the High Court by filing the writ petition7. The argument raised before the High Court was that there was a jurisdictional error in the order passed by the Labour Court as the Management had a strength of more than 100 workmen. It was prayed that the writ petition may be disposed of with liberty to the Management to approach the Labour Court for correction of factual error. The writ petition was disposed of vide order dated 06.01.2010 with liberty as prayed for. Review Petition8 was filed by the respondents-workmen against the aforesaid order. However, the same was dismissed on 12.03.2010. Thereafter, the matter was taken up before the Labour Court.

14. The appellants-Management filed an application before the Labour Court bearing I.A. No.1/2010 submitting various documents showing that the Management had employed more than 100 workmen from 1999-2000 till 2009-2010. These were in the form of the documents from Employees State Insurance Corporation, Life Insurance Corporation, Employees Provident Fund Organisation etc. After hearing counsel for both the parties, the Labour Court vide order 30.06.2010, admitted the application and permission was granted for annexing the documents. It was noticed in the order that in case the appellants-Management employed more than 100 workmen, the Labour Court had no jurisdiction to adjudicate on the issue. As the High Court had granted liberty for correction of factual error to substantiate that there were more than 100 workmen, the appellant could place on record the documents. The objections, raised by the respondents-workmen, were dismissed by a separate order dated 12.08.2010. Thereafter, vide order

dated 06.10.2010, the application (I.A. No.2/2010) filed by the appellants- Management seeking permission to summon the official witnesses to prove the documents placed on record was allowed with the observation that no prejudice as such would be caused to the respondents-workmen, as they will have the opportunity to cross-examine the witnesses.

15. A Writ Petition was filed by the respondents-workmen, to challenge the aforesaid orders, which was allowed by the High Court while setting aside the orders dated 30.06.2010, 12.08.2010 and 06.10.2010 passed by the Labour Court.

16. As the number of workmen employed in the establishment has a direct relation with the jurisdiction of the Labour Court or the Industrial Tribunal to deal with the matter, we deem it appropriate to refer to the material which was placed on record by the appellants-Management before the Labour Court, after the earlier Writ Petition filed by the appellants-Management was disposed of with liberty to the Management to move for correction of factual error. The documents are as under:

> (i) A certificate dated 26.05.2010 issued by the Employees State Insurance Corporation giving details of the number of employees shown in the returns filed by the Management with the Corporation from the year 1999-

2000 to 2009-2010.

(ii) A certificate dated 07.06.2010 issued by the Life Insurance Corporation giving details of the number of workmen for which contribution was being made on yearly basis for the workmen under the Group Gratuity Policy. The details pertain to the years 2000 to 2009.

(iii) A certificate dated 07.06.2010 of the Management showing the number of workmen for which returns were being filed with the Employees Provident Fund Organisation, for their contribution towards provident fund and family pension fund. The details pertain to the years 1999-2000 to 2009-2010.

(iv) A certificate dated 07.06.2010 issued by the Life Insurance Corporation showing contribution on yearly basis for the workmen employed with the Management under Employee's Deposit Linked Insurance. The details pertain to the years 2000 to 2009.

(v) A certificate dated 07.06.2010 by the Management giving detail of the number of workmen who were paid bonus under the Payment of Bonus Act each year. The details pertain to the years 1999-2000 to 2008- 2009.

17. A perusal of the aforesaid documents prima facie shows that more than 100 workmen were employed by the appellants-Management from 1999-2000 to 2009-2010.

18. The reference in the case was made by the Labour Commissioner to the Labour Court vide order dated 07.8.2002.

19. Another important fact to be noticed here is that, when an application was filed by the appellants-Management on 18.08.2000 under Section 25-N of the ID Act seeking permission to retrench 45 workmen w.e.f. 01.12.2000, the same was rejected by the Labour Commissioner, Indore vide order dated 16.10.2000. In the aforesaid order, a statement of yearwise production and sales, and average workmen employed on a daily basis has been extracted. It is from the year 1990-1991 till 1999- 2000 for completed years and for the months of April to August 2000. In all these years, the average daily workmen employed were more than 100 except in the year 1999-2000, when these were shown to be 99.

20. An application was filed by the respondents-workmen on 09.10.2001 with the appellants-Management raising certain demands. It was on the basis thereof that, reference was made to the Labour Court by the Labour Commissioner vide order dated 07.08.2002. Meaning thereby, that the record showing that the appellants-Management was employing more than 100 workmen, was available and was a part of the earlier proceedings before the Labour Commissioner.

21. On the issue as to whether a matter can be remitted back to the Labour Court for a decision afresh, guidance is available from judgment of this Court in Santhosh Bansi Mahajan's case (supra). It was a case where a document on which reliance was placed by the workmen was not placed before the Labour Court when the matter was considered. It was placed on record for the first time before this Court. Liberty was given by this Court to file the said document before the Labour Court and the matter was remitted back to the Labour Court to be decided afresh. Similar issue had come up for decision before this Court in Bundi Zila Petrol Pump Dealers Association's case (supra) wherein an ex-parte Award was passed against the Management. This Court, finding that there were sufficient reasons for the absence of the Management before the Tribunal, set aside the Award and the matter was remanded to the Industrial Tribunal giving liberty to the appellant before this Court to file the written statement and lead evidence.

22. In the case in hand as well on the facts, as noticed above, we find that the matter needs to be re-examined by the Labour Court, as the material permitted to be placed on record will go to the root of the case in determining the jurisdiction of the Labour Court to adjudicate the matter. The material sought to be relied upon by the appellants- Management to substantiate its plea has been briefly referred to in paras 16 and 19 of this order.

23. For the reasons, mentioned above, we find merit in the present appeal. The same is accordingly allowed. The impugned order passed by the High Court dated 11.05.2011 as well as the orders of the Labour Court dated 30.06.2010, 12.08.2010 and 06.10.2010, are set aside. The matter is remitted back to the Labour Court, Dewas for adjudication afresh, after permitting the appellants-Management to lead evidence to substantiate the plea that they were employing more than 100 workmen during the relevant period. Needless to add, that the respondents- workmen will also have an opportunity to cross-examine the witnesses produced by the appellants-Management, and also lead their own evidence, in case need so arises. Since the matter is quite old, we direct the Labour Court, Dewas to dispose of the same within a period of six months from the date of receipt of a copy of the order.

24. The appellants-Management shall deposit costs quantified at 1,00,000/- (Rupees One Lakh) with the Labour Commissioner, Indore within a period of six weeks, which shall be disbursed to the workmen working with the appellants-Management, equally by directly transferring the proportionate amounts in their bank accounts. Needful shall be done within four weeks of deposit. Needless to add that the appellants/Management shall cooperate in the process.

25. We may clarify that while passing the above order, we have not expressed any opinion on merits of the controversy.

.....J. [HIMA KOHLI] .....J. [RAJESH BINDAL] New Delhi August 17, 2023.