

M/S MITRA S.P. (P) LTD. & ANR.

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v.

DHIREN KUMAR

(Civil Appeal Nos. 4863-4866 of 2022)

AUGUST 04, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Labour Laws – Industrial Disputes Act, 1947 – s.33(C)(2) – Single Judge of High Court passed common judgment - dismissing the writ petition preferred by the Management in which the Management challenged the original judgment and award passed by the Labour Court and allowing the writ petition preferred by the workman against the order of Labour Court rejecting his s.33(C)(2) application – Held: So far as challenge to the award passed by the Labour Court by the Management is concerned, there was only one submission with respect to territorial jurisdiction and the Single Judge negatived the same – The same does not warrant any interference – However, at the same time, while allowing the writ petition preferred by the workman, there was no discussion at all by the Single Judge on the order passed by the Labour Court rejecting the s.33(C)(2) application – The Single Judge ought to have given some findings on the order passed by the Labour Court rejecting the s.33(C)(2) application – Under the circumstances, matter remitted back to Single Judge of High Court to decide writ petition preferred by the workman afresh, on merits.

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4863-4866 of 2022.

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From the Judgment and Order dated 22.03.2022 of the High Court of Andhra Pradesh at Amravati in Writ Appeal Nos.615 and 617 of 2021 and Order dated 28.12.2018 in Writ Petition Nos.2955 of 2001 and 5271 of 2009.

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Siddhartha Dave, Sr. Adv., Dhananjaya Mishra, Ratinesh Rai, Navneet Dogra, Ramendra Mohan Patnaik, Advs. for the Appellants.

K. Parameshwar, Pai Amit, Abhiyudaya Vats, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

M. R. SHAH, J.

B 1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court in Writ Appeal Nos. 615/2021 and 617/2017 in respective Writ Petition Nos. 2955/2021 and 5271/2009, the Management has preferred the present appeals.

C 2. The respondent – workman was appointed as a Junior Supervisor with the company’s branch at Visakhapatnam. While he was working at Visakhapatnam, he was transferred to Jharsuguda in State of Orissa vide order dated 20.07.1997. The workman instead of joining at the place of transfer submitted a representation to the Director requesting for transfer to Mangalore in Karnataka State. The same was not acceded to. Challenging the said order of transfer, the workman filed O.S. No. 1602/1997. The Civil Court did not grant any relief as prayed by the workman. Thereafter, the workman was relieved by the branch office at Visakhapatnam on 14.08.1997. Though the said relieving order was received by the workman, he neither handed over the charge at Visakhapatnam nor did he report for duty at Jharsuguda office. Therefore, the management treated him as deemed to have been relieved w.e.f. 14.08.1997 from Visakhapatnam office. Thereafter, the management issued a show cause notice dated 24.10.1997 to comply with the directions of transfer or else disciplinary action would be initiated against the workman. Thereafter, the workman was placed under suspension. Domestic enquiry was ordered. The enquiry proceeded ex-parte. Subsequently, the management dismissed the workman from service w.e.f. 15.09.1998. Aggrieved by the dismissal order, the workman filed I.D. No. 219/1998 before the Labour Court. The Labour Court vide judgment and award dated 23.10.2000 modified the order of dismissal with stoppage of one increment with cumulative effect and ordered for reinstatement of the workman into service, with a direction to the workman to join at the place of his transfer i.e., at Jharsuguda within a period of one month from the date of receipt of the order, failing which, he shall not be entitled to the reinstatement. The Labour Court also further directed that the management shall consider the request of the workman for retransfer to Visakhapatnam or Mangalore after the workman joins at his new station and that if the workman fails to report for duty at Jharsuguda within one month he shall not be entitled to back wages or continuity of service. The management filed W.P. No. 2955/

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2001 before the learned Single Judge of the High Court. On 22.02.2001 while admitting the writ petition, the learned Single Judge granted interim suspension of the order of the Labour Court. Subsequently, learned Single Judge modified the said interim order granting interim stay subject to the condition of the management complying with Section 17-B of the Industrial Disputes Act.

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2.1 It is the case on behalf of the workman that thereafter he reported at Jharsuguda but he was not permitted to join on the ground that no instructions were received from the head office. Therefore, the workman filed an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (for short "ID Act") before the Labour Court for recovery of wages from 01.01.1998 to 30.04.2005. The said application under Section 33(C)(2) of the ID Act came to be dismissed by the Labour Court on the ground that the workman did not go to Jharsuguda to join duty. Aggrieved by the same, the workman filed W.P. No. 5271/2009. Both the writ petitions, one, filed by the management against the judgment and award passed by the Labour Court and another, filed by the workman challenging the order passed by the Labour Court dismissing the application under Section 33(C)(2) were heard together. Before the learned Single Judge for the first time the management raised the issue with respect to territorial jurisdiction of the Labour Court. The learned Single Judge dismissed the writ petition preferred by the management by observing that the management shall not be permitted to raise the issue with respect to territorial jurisdiction for the first time before the High Court. At the same time, without any further discussion on merits on the order passed by the Labour Court rejecting the application under Section 33(C)(2) of the ID Act, the learned Single Judge allowed Writ Petition No. 5271/2009 preferred by the workman and set aside the order of the Labour Court rejecting the application under Section 33(C)(2) of the ID Act – M.P. No. 43/2005 dated 16.12.2008. The learned Single Judge observed and held that the workman is entitled for all the benefits in pursuance of the order of the Tribunal in I.D. No. 219 of 1998 with all consequential benefits.

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2.2 Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge of the High Court in Writ Petition Nos. 2955/2001 and 5271/2009, the management preferred writ appeals before the Division Bench of the High Court. By the common impugned judgment and order, the Division Bench of the High Court has

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A dismissed the appeals as not maintainable by observing and holding that the writ petitions were under Article 227 of the Constitution of India and therefore, the writ appeals before the Division Bench of the High Court would not be maintainable. Hence, the present appeals.

3. We have heard Mr. Siddhartha Dave, learned Senior Advocate, appearing on behalf of the appellant(s) and Mr. K. Parameshwar, learned Advocate, appearing on behalf of the respondent.

4. From the judgment and order passed by the learned Single Judge, it appears that what was challenged before the learned Single Judge was the order passed by the Labour Court rejecting the application under Section 33(C)(2) of the Industrial Disputes Act, 1947 preferred by the workman as well as the original award passed by the Labour Court. Learned Single Judge passed the common judgment and order dismissing the writ petition preferred by the Management in which the Management challenged the original judgment and award passed by the Labour Court and allowed the writ petition preferred by the workman rejecting his Section 33(C)(2) application.

4.1 So far as challenge to the award passed by the Labour Court by the Management is concerned, from the judgment and order passed by the learned Single Judge, it appears that there was only one submission made with respect to territorial jurisdiction and the learned Single Judge negatived the same. Therefore, so far as the order passed by the learned Single Judge dismissing the writ petition preferred by the Management against the original judgment and award by the Labour Court is concerned, the same does not warrant any interference.

4.2 However, at the same time, while allowing the writ petition preferred by the workman challenging the dismissal of application under Section 33(C)(2), from the order passed by the learned Single Judge it appears that there is no discussion at all on the order passed by the Labour Court rejecting the 33(C)(2) application and without any discussion and/or recording any specific findings on the merits of the order passed by the Labour Court rejecting the 33(C)(2) application, the writ petition preferred by the workman has been allowed. The learned Single Judge ought to have considered the writ petition preferred by the workman on merits and ought to have given some findings on the order passed by the Labour Court rejecting the 33(C)(2) application.

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5. Under the circumstances, the impugned judgment and order passed by the learned Single insofar as allowing the Writ Petition No. 5271/2009 preferred by the workman is concerned, the same is hereby quashed and set aside. The matter is remitted back to the learned Single Judge to decide Writ Petition No. 5271/2009 afresh in accordance with law and on its own merits and within a period of six months from today. Civil Appeals arising out of the judgment and order passed by the High Court in Writ Petition No. 5271/2009 are accordingly allowed. Civil Appeals arising out of Writ Petition No. 2955/2001 stand dismissed. No costs.

The Registry is directed to communicate this order to the Registry of the High Court forthwith. All concerned are directed to cooperate the learned Single Judge in early disposal of the writ petition and within the time stipulated hereinabove. If the High Court is of the opinion that any of the parties is not cooperating, it will be open for the High Court to proceed further with the hearing of the writ petition ex-parte by recording reasons.

The present appeals stand disposed of accordingly. No costs.