

Employer In Relation To Managment Of ... vs Union Of India And Anr. on 25 January, 2001

Equivalent citations: AIR2001SC883, [2001(90)FLR120], JT2001(2)SC87, (2001)ILLJ1069SC, 2001(1)SCALE374, (2001)2SCC588, [2001]1SCR651, (2001)1UPLBEC825, AIR 2001 SUPREME COURT 883, 2001 (2) SCC 588, 2001 AIR SCW 527, 2001 LAB. I. C. 736, (2001) 4 SUPREME 465, 2001 (2) SRJ 431, (2001) 2 JT 87 (SC), (2002) 1 LAB LN 77, 2001 (4) ANDH LD 62, 2001 (1) SCALE 374, 2001 (2) LRI 979, 2001 (1) UPLBEC 825, (2001) 1 LABLJ 1069, (2001) 1 SCJ 521, (2001) 1 CURLR 704, (2001) 90 FACLR 120, 2001 SCC (L&S) 471, (2001) 98 FJR 353, (2001) 2 LAB LN 122, (2001) 1 SCT 785, (2001) 1 SERVLR 717, (2001) 1 UPLBEC 825, (2001) 1 SUPREME 344, (2001) 1 SCALE 374, (2002) 1 BLJ 231

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Bench: S.S.M. Quadri, S.N. Phukan

JUDGMENT

Syed Shah Mohammed Quadri, J.

1. Leave is granted.

2. This appeal is from the judgment and order of a Division Bench of the High Court of Judicature at Patna, Ranchi Bench, in L.P.A.No.177 of 1999(R) dated August 9, 1999. The appellant is the employer and 28 of its workmen are represented by respondent No.2. The parties are, hereafter, referred to as "the employer" and "the workmen" respectively.

3. The facts giving rise to this appeal lie in a short compass.

4. The Government of India, Ministry of Labour, referred the following question under Section 10(1)(d) of the Industrial Disputes Act, [1947 (for short, 'the I.D.Act')] to the Central Government Industrial Tribunal (No.2) at Dhanbad (for short, 'the Tribunal'),: "Whether the action of the management of Central Mine Planning & Design Institute Ltd., Ranchi in terminating the services of Shri Naresh Jha and 27 others (as per annexure) w.e.f. 1.7.1992 is justified? If not, to what relief the workmen are entitled?" On May 1, 1997 the Tribunal passed the award holding that the termination of 28 workmen was not justified and that they were entitled to reinstatement and regularisation with 40% back wages and other benefits. The validity of that award was assailed by the appellant

before the High Court at Patna (Ranchi Bench) in CWJC No.2406 of 1979(R). The workmen claimed relief under Section 17B of the I.D. Act in that CWJC. On April 26, 1999, a learned Single Judge of the High Court allowed the application and directed the appellant to pay to the workmen full wages last drawn by them on the date of the termination of their services. The appellant challenged the correctness of the order in L.P.A. No.177 of 1999(R) before the Division Bench of the High Court which held that against the order passed by the learned Single Judge in terms of Section 17B of the I.D. Act, the Letters Patent Appeal was not maintainable because that order was not 'judgment' within the meaning of Clause 10 of the Letters Patent. It is that judgment and order of the Division Bench, which is under challenge in this appeal.

5.Mr.Ajit Kumar, the learned counsel appearing for the appellant, contended that the order of the learned Single Judge passed under Section 17B of the I.D. Act is a judgment within the meaning of Clause 10 of the Letters Patent so the High Court ought not to have dismissed the LPA as not maintainable.

6.Mr.P.S. Mishra, the learned senior counsel appearing for respondent No.2, has contended that the order passed by the learned Single Judge is interlocutory order and is not a judgment within the meaning of Clause 10 as explained by the dicta of this Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Anr.

7.The short question that arises in this appeal is: whether LPA 177 of 1999(R), against the order of the learned Single Judge passed on an application under Section 17B of the I.D. Act, under Clause 10 of the Letters Patent of Patna, before the Division Bench of the High Court, is maintainable?

8.We may mention here that Clause 15 of the Letters Patent of Calcutta, Bombay and Madras is in wisdom terminus Clause 10 of the Letters Patent of Allahabad, Patna, Punjab & Haryana and Madhya Pradesh. It will be useful to read it here:

"15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.-

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras, Bombay, Fort William in Bengal from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court Subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, on or after the first day of February 1929 in the exercise of appellate

jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us. Our heirs or successors in Our or Their Privy Council, as hereinafter provided."

9. A close reading of the provision, quoted above, shows that it has three limbs; the first limb specifies the type of judgments of one judge of the High Court which is appealable in that High Court and the categories of judgments/orders which are excluded from its ambit; the second limb provides that notwithstanding anything provided in the first limb, an appeal shall lie to that High Court from judgement of one judge of the High Court or one judge of any Division Court, pursuant to Section 108 of the Government of India Act (now Article 225 of the Constitution of India), on or after February 1, 1929, passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the judge who passed the judgment declares that the case is a fit one for appeal; and the third limb says that the right of appeal from other judgments of judges of the said High Court or such Division Court shall be to "us, our heirs or successors in our or their Privy Council, as hereinafter provided".

10. Here, we are concerned with the type of judgments mentioned in the first limb.

11. The above analysis of Clause 15 of the Letters Patent will equally apply to Clause 10 of the Letters Patent of Patna. It follows that an appeal shall lie to a larger Bench of the High Court of Judicature at Patna from a judgment of one judge of the said High Court or one judge of any Division Court pursuant to Article 225 of the Constitution of India. The following categories of judgment are excluded from the appealable judgments under the first limb of Clause 10 of the Letters Patent:

(i) a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to superintendence of the said High Court in other words no letters patent appeal lies to the High Court from a judgment of one judge of the High Court passed in second appeal;

(ii) an order made by one judge of the High Court in exercise of revisional jurisdiction; and

(iii) a sentence or order passed or made in exercise of power under the provisions of Section 107 of Government of India Act, 1915 (now Article 227 of the Constitution of India) or in exercise of criminal jurisdiction.

12. From the above discussion, it is clear that from all judgments except those falling under the excluded categories, an appeal lies to the same High Court.

13. The next question which needs to be considered is, what does the expression 'judgment' mean? That expression is not defined in Letters Patent. It is now well-settled that definition of 'judgment' in Section 2(9) of Code of Civil Procedure, has no application to Letters Patent. That expression was interpreted by different High Courts of India for purposes of Letters Patent. In *Asrumati Debi Vs. Kumar Rupendra Deb Raikot & Ors.* [1953 SCR 1159], a four-Judge Bench of this Court considered the pronouncements of the High Court of Calcutta in *Justices of the Peace for Calcutta Vs. Oriental Gas Co.* [8 Beng. L.R. 433], the High Court of Rangoon in *Dayabhai Vs. Murugappa Chettiar* [I.L.R. 13 Rang. 457], the High Court of Madras in *Tuljaram Vs. Alagappa* [I.L.R. 35 Mad. 1], the High Court at Bombay in *Sonebai Vs. Ahmedbhai* [9 Bombay H.C.R. 398] as also the High Court at Nagpur, the High Court at Allahabad and Lahore High Court and observed as follows:

"In view of this wide divergence of judicial opinion, it may be necessary for this Court at some time or other to examine carefully the principles upon which the different views mentioned above purport to be based and attempt to determine with as much definiteness as possible the true meaning and scope of the word 'judgment' as it occurs in clause 15 of the Letters Patent of the Calcutta High Court and in the corresponding clauses of the Letters Patent of the other High Courts."

14. Such an exercise was undertaken by a three-Judge Bench of this Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Anr.* *Fazal Ali, J.* speaking for himself and *Varadarajan, J.* after analysing the views of different High Courts, referred to above, observed as follows:

"The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense."

15. It was pointed out that 'judgment' could be of three kinds:

(1) A final judgment. - in this category falls a judgment by which suit or action brought by the plaintiff is dismissed or decreed in part or full;

(2) A preliminary judgment.- this category is sub-divided into two classes:

(a) where the Trial Judge by an order dismisses the suit, without going into the merits of the suit, only on a preliminary objection raised by the defendant/respondent on the ground of maintainability;

(b) where maintainability of the suit is objected on the ground of bar of jurisdiction, e.g., *res judicata*, a manifest defect in the suit, absence of notice under Section 80 and the like; and (3) Intermediary or interlocutory judgment.- in this

category fall orders referred to in clauses (a) to (w) of Order 43 Rule 1 and also such other orders which possess the characteristic and trappings of finality and may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding.

16.Elucidating the third category, it is observed:

"Every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned."

17.In the instant case, we are concerned with the last mentioned category. From the above discussion, it follows that to determine the question whether an interlocutory order passed by one judge of a High Court falls within the meaning of 'judgment' for purposes of Letters Patent the test is : whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case.

18.Adverting to the facts of this case. Section 17B of the I.D. Act confers valuable rights on the workmen and correspondingly imposes an onerous obligations on the employer. The order in question passed by the learned Single Judge determines the entitlement of the workmen to receive benefits and imposes an obligation on the appellant to pay such benefits provided in the said section. That order cannot but be 'judgment' within the meaning of Clause 10 of Letters Patent, Patna. The High Court is obviously in error in holding that the said order is not judgment within the meaning of Clause 10 of the Letters Patent of Patna.

19.For the above reasons, we hold that the order of the learned Single Judge passed on application under Section 17B of the I.D. Act on April 26, 1999 is judgment within the meaning of Clause 10 of the Letters Patent of Patna and is, therefore, appealable. The order of the High Court is accordingly set aside, the Letters Patent appeal is restored to the file of the High Court and the case is remanded to the High Court for deciding the LPA on merits in accordance with law.

20.The appeal is accordingly allowed. In the circumstances of the case, the parties are directed to bear their own costs.