Supreme Court of India
D.P. Maheshwari vs Delhi Admn. & Ors on 14 September, 1983
Equivalent citations: 1984 AIR 153, 1983 SCR (3) 949
Author: O C Reddy
Bench: Reddy, O. Chinnappa (J)

PETITIONER:
D.P. MAHESHWARI

Vs.

RESPONDENT:
DELHI ADMN. & ORS.

DATE OF JUDGMENT14/09/1983

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
DESAI, D.A.
VARADARAJAN, A. (J)

CITATION:
1984 AIR 153 1983 SCR (3) 949
1983 SCC (4) 293 1983 SCALE (2)313
CITATOR INFO :
R 1984 SC1164 (20)
R 1984 SC1683 (1)
D 1988 SC 329 (7,15)

ACT:
Industrial Disputes Act-Adjudication of disputes-Duty of Tribunals and Courts while deciding Preliminary Questions.
Constitution of India-Arts. 226 and 136-Nature of jurisdiction-Courts not to be too astute to interfere with exercise of jurisdiction by Special tribunals at interlocutory stages and on preliminary issues.

HEADNOTE:
An industrial dispute concerning the termination of services of the appellant in 1969 was referred for adjudication by the Labour Court under ss. 10 (1) (c) and 12 (5) of the Industrial Disputes Act in the year 1970. The Management of the company in which he was employed questioned the reference itself by filing a petition under Art. 226 and when it was rejected, the Management raised a preliminary contention before the Labour Court that the appellant was not a 'workman' and therefore the reference

was incompetent. The Labour Court, after a detailed and careful examination of the oral and documentary evidence produced by both the appellant and the Management came to the conclusion that the appellant was a 'workman' under s. 2 (s) of the Act as he was employed mainly for clerical duties. This finding was challenged by the Management once again by filing a petition under Art. 226 and a Single Judge of the High Court allowed the same and quashed the order of the Labour Court as well as the reference made by the Government. On his appeal having been rejected by a Division Bench of the High Court, the appellant approached this Court under Art. 136.

Allowing the appeal,

^

HELD: The nature of jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues. [951 G-H]

Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. Tribunals and Courts who are requested to decide preliminary questions must

950

ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. There was a time when it was thought prudent and wise to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. It is better that tribunals, particularly those entrusted with the task of adjudicating Labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 stop proceedings before a Tribunal so that a preliminary issues may be decided by them. Neither the jurisdiction of the High Court under Art. 226 nor the jurisdiction of this Court under Art 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Articles 226 and 136 are not meant to be used to break the resistance of workmen in this fashion. [951 F, C-D]

The instant case relates to a dispute originating in 1969 and referred for adjudication in 1970 which is still at the stage of decision of a preliminary objection. The Labour

Court considered the entire evidence and recorded a positive finding that appellant who was discharging duties of a clerical nature was a 'workman'. The Single Judge of the High Court did not refer to a single item of evidence while reversing the finding of the Labour Court. He appeared to differ from the Labour Court on a question of fact on the basis of a generalisation without reference to specific evidence. The Division Bench which affirmed the judgment of the Single Judge also read the judgment of the Labour Court in a similar unfair fashion and did not consider any of the evidence considered by the Labour Court and yet characterised the conclusion of the Labour Court as perverse. No appellate Court is entitled to do that less so, a Court exercising supervisory jurisdiction.

[951 C, 953 B, 954 C-D, 955 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3844 of 1983.

Appeal by Special leave from the Judgment and Order dated the 25th July, 1980 of the Delhi High Court in L.P.A. No. 89 of 1976.

A.K. Gupta for the Appellant.

G.B. Pai, S.N. Bhandari and Ashok Grover for Respondent. No. 3.

R.N. Poddar for Respondent No. 1.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be

allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. 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. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

Having sermonised this much, we may now proceed to state the facts which provoked the sermon. The appellant D.P. Maheshwari was an employee of Toshniwal Brothers Pvt. Ltd., when his services were terminated with effect from 28th July 1969. He raised an industrial dispute and on 3rd July 1970 the Lt. Governor of Delhi referred the dispute for adjudication to the Additional Labour Court Delhi under sections 10(1)(c) and 12(5) of the Industrial Disputes Act. The dispute referred for adjudication to the Labour Court was, "Whether the termination of services of Shri D.P. Maheshwari is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect ?" The Management straightaway questioned the reference by filing Writ petition No. 159 of 1972 in the Delhi High Court. The writ petition was dismissed on 22nd May 1972. Thereafter the management raised a preliminary contention before the Labour Court that D.P. Maheshwari was not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act and the reference was therefore incompetent. The Labour Court tried the question whether D.P. Maheshwari was a workman as defined in Section 2(s) of the Industrial Disputes Act as a preliminary issue. Both parties adduced oral and documentary evidence. After referring to the evidence of the employee's witnesses the Labour Court said, "Thus according to the evidence of the claimant's witnesses the claimant was employed mainly for clerical duties and he did discharge the same." The Labour Court then referred to the evidence of the witnesses examined by the management and said, "Thus the said evidence falls far short of proving that the claimant was in fact discharging mainly Administrative of supervisory duties." The Labour Court then proceeded to refer to the documents produced by the management and observed, "Thus the documents filed by the respondent do not go to show that the real nature of the duties discharged by the claimant was supervisory or administrative in nature." The Labour Court next referred to what it considered to be an admission on the part of the management who had classified all their employees into three separate classes A, B and C, Class-A described as 'Managerial' Class-B described as 'Supervisory' and Class-C described as 'Other Staff'. The name of D.P. Maheshwari was shown in Class-C. After reviewing the entire evidence the Labour Court finally recorded the following finding:

> "From the above discussion, it is clear that the claimant's evidence shows that he was doing mainly clerical work of maintaining certain registers preparing drafts and seeking instructions from the superiors and respondents' lawyers during the period

> of his services though designated Accounts Officer or officer in special duty or store purchase officer ....
> As a result, in my opinion it has to be held that the nature of the main duties being discharged by the claimant was clerical and not supervisory or administrative despite his designation as officer. Accordingly, he has to be held to be a workman under section 2(s) of the Industrial Dispute Act."

The management was dissatisfied with the decision of the Labour Court on the preliminary issue. So, they invoked the High Court's extra-ordinary jurisdiction under Art. 226 of the Constitution. A learned single judge of the High Court, by his judgment dated 12th July 1976 allowed the Writ Petition and quashed the order of the Labour Court and the reference made by the Government. A Division Bench of the High Court affirmed the decision of the Single Judge on 25th July 1980. The matter is now before us at the instance of the workman who obtained special leave to appeal under Art. 136 on 4th April 1983. The services of the workman were terminated on 28th July 1969. A year later the dispute was referred to the Labour Court for adjudication. Thirteen years thereafter the matter is still at the stage of decision on a preliminary question. In our view, further comment is needless.

Shri A.K. Gupta, the learned counsel for the appellant submitted that the High Court literally exercised appellate powers and recorded findings of fact differing from those recorded by the Labour Court and this, he complained, had been done by an unfair reading of the order of the Labour Court and without the High Court itself considering a single item of evidence or document. We are afraid there is considerable force in Shri Gupta's criticism.

Curiously enough, the Learned Single Judge of the High Court affirmed the finding of the Labour Court that D.P. Maheshwari was not employed in a supervisory capacity. He said, "In the face of this material and the admitted hypothesis the conclusion that the respondent was not mainly employed in a supervisory capacity is certainly a possible conclusion that may be arrived at by any Tribunal duly instructed in the law as to the manner in which the status of an employee may be determined. It is, therefore, not possible for this Court to disturb such a conclusion having regard to the limited admit of review of the impugned order."

Having so held, the Learned Single Judge went on to consider whether the workman was discharging duties of a clerical nature. He found that it would be difficult to say that D.P. Maheswari was discharging 'routine duties of a clerical nature which did not involve initiative, imagination, creativity and a limited power of self direction.' The Learned Single Judge did not refer to a single item of evidence in support of the conclusions thus recorded by him. He appeared to differ from the Labour Court on a question of fact on the basis of a generalisation without reference to specific evidence. No appellate court is entitled to do that, less so, a court exercising supervisory jurisdiction. Referring to the finding of the Labour Court that the workman was discharging mainly clerical duties the Learned Single Judge observed, "It is erroneous to presume, as was apparently done by the Additional Labour Court, that merely because the respondent did not perform substantially supervisory functions, he must belong to the clerical category." This was an unfair reading of the Labour Court's judgment. We have earlier extracted the relevant findings of the Labour Court. The

Labour Court not only found that the workman was not performing supervisory functions but also expressly found that the workman was discharging duties of a clerical nature. The Division Bench which affirmed the judgment of the Learned Single Judge also read the judgment of the Labour Court in a similar unfair fashion and observed." It is no doubt true that the Labour Court held that the appellant's evidence showed that he was doing mainly clerical work. As we read the order as a whole it appears that in arriving at this conclusion the Labour Court was greatly influenced by the fact that the appellant was not employed in a supervisory capacity." We have already pointed out that the Labour Court did not infer that the appellant was discharging duties of a clerical nature from the mere circumstance that he was not discharging supervisory functions. The Labour Court considered the entire evidence and recorded a positive finding that the appellant was discharging duties of a clerical nature. The finding was distinct from the finding that the appellant was not discharging supervisory function as claimed by the company. We would further like to add that the circumstance that the appellant was not discharging supervisory functions was itself a very strong circumstance from which it could be legitimately inferred that he was discharging duties of a clerical nature. If the Labour Court had drawn such an inference it would have been well justified in doing so. But, as we said, the Labour Court considered the entire evidence and recorded a positive finding that the workman was discharging duties of a clerical nature. The Division Bench, we are sorry to say, did not consider any of the evidence considered by the Labour Court and yet characterised the conclusion of the Labour Court as perverse. The only evidence which the Division Bench considered was that of M.W.I.Shri K.K. Sabharwal and under the impression that the Labour Court had not considered the evidence of K.K. Sabharwal, the Division Bench observed. "The non-reference to the said evidence while discussing the point in issue, would clearly vitiate the order to the Labour Court." This was again incorrect since we find that the Labour Court did consider the evidence of M.W.I fully.

Shri G.B. Pai, Learned Counsel for the company, drew our attention to the qualifications of the appellant and certain letters written by him to the Managing Director and argued that the qualifications and the letters indicated that the appellant was discharging duties, not of a clerical nature but those of a senior executive closely in the confidence of the Managing Director. We are enable to agree with Mr. Pai. First, we are not prepared to go behind the finding of fact arrived at by the Labour Court which certainly was based on relevant evidence and next, all that we can say from the qualifications and the letters is that the appellant was occasionally deputed by the Managing Director to undertake some important missions. The question is what were his main duties and not whether he was occasionally entrusted with other work. On that question, the clear finding of the Labour Court is that he was mainly discharging duties of a clerical nature.

We are clearly of the opinion that the High Court was totally unjustified in interfering with the order of the Labour Court under Art. 226 of the Constitution. We set aside the judgments of the Learned Single Judge and the Division Bench of the Delhi High Court, restore the order of the Additional Labour Court and direct the Additional Labour Court to dispose of the reference within a period of three months from the date of communication of this order to that Court. That appellant is entitled to his costs which we stipulate at Rupees five thousand.

H.L.C. Appeal allowed.