

A TRIVENI ENGINEERING & INDUST. LTD.

v.

JASWANT SINGH & ANR.
(Civil Appeal No. 6523 of 2010)

B AUGUST 11, 2010

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE,
JJ.]

Standing Orders:

C *Clause 'W' – Jurisdiction and power of Labour*
Commissioner to decide on applicability and interpretation of
Standing Orders – HELD: The inquiry before the Labour
Commissioner is of a summary nature and while exercising
D *such power, he cannot decide and examine factual matters*
relating to an issue as to whether the person concerned is a
workman or not - It is a matter to be decided by a competent
court as it relates primarily to facts and circumstances of the
case and is not ancillary to that of the applicability and
E *interpretation of the Standing Orders – The order of*
termination also could not have been examined and
scrutinized as such power and jurisdiction is not vested with
the Labour Commissioner – U.P. Industrial Disputes Act, 1947
– s.11-C – Industrial Employment (Standing Orders) Act, 1946
– s.13-A.

F **Respondent no. 1 filed a writ petition before the High**
Court challenging the order of his transfer and the order
terminating his services passed by the appellant-
employer, as he did not join the duties on his transfer.
G **The writ petition was dismissed with liberty to respondent**
no. 1 to file a representation before the Labour
Commissioner under Clause 'W' of the Standing Orders.
On the representation so filed by respondent no. 1, the
appellant contended that respondent no. 1 was not a

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workman and, therefore, the Labour Commissioner had no jurisdiction to adjudicate upon the representation under the U.P. Industrial Disputes Act, 1947. The Labour Commissioner accepting the plea of the appellant, rejected the representation of respondent no. 1. The writ petition filed by respondent no. 1 was dismissed by single Judge of the High Court. However, the Division Bench allowed his special appeal and remitted the matter to Labour Commissioner to decide the nature of the service of respondent no. 1.

In the instant appeal filed by the employer, the question for consideration before the Court was: the issue whether respondent no. 1 was a workman or not could be said to be related to the applicability and interpretation of the Standing Orders along with the issue of whether the orders of transfer of respondent no. 1 and subsequent termination were justified or not.

Allowing the appeal, the Court

HELD: 1.1 The Labour Commissioner is only a 'Conciliation Officer' as envisaged under the U.P. Industrial Disputes Act, 1947 and 'Certifying Officer' under the Standing Orders. The Standing Orders, particularly, Clause 'W', vests the Labour Commissioner with the jurisdiction and power to decide on the applicability and interpretation of the Standing Orders. On the other hand, s. 11-C of the U.P. Industrial Disputes Act, 1947 and s.13A of the Industrial Employment (Standing Orders) Act, 1946 grant the power and jurisdiction to render a decision on the issue of interpretation and application of the Standing Orders to the Labour Court. A comparative perusal of the provisions of s.11-C as also Clause 'W' would establish that the provisions are almost pari materia. Therefore, the conclusions arrived at by this Court for interpretation of s.11-C would also be applicable to the facts of the present case. [para 11 and 13] [830-E-G; 829-H; 830-A]

A 1.2 The issue of whether or not a person is a
 'workman' within the meaning of U.P. Industrial Disputes
 Act, 1947 is a matter to be decided by a competent court,
 after allowing the parties to lead evidence. Thereafter, on
 proper appreciation of the materials on record including
 B the oral evidence, a decision could be rendered and the
 issue could be determined. The enquiry before the
 Labour Commissioner is of a summary nature and while
 exercising such a power of summary nature, the Labour
 Commissioner cannot decide and examine factual
 C matters relating to an issue as to whether the person
 concerned is a workman or not. [para 14] [831-A-C]

Sharad Kumar v. Govt. of NCT of Delhi 2002 (2)
 SCR 1057 = (2002) 4 SCC 490; and *U.P. State Road
 Transport Corporation vs. U.P. Rajya Sadad Parivahan
 D Karamchanri Union* 2007(4) SCALE 302 – relied on.

1.3 Whether or not a person is a workman is a matter
 that relates primarily to facts and circumstances of the
 case. The same has nothing to do with the application
 and interpretation of the Standing Orders. What needs to
 E be examined and looked into for deciding the issue is the
 nature of job performed by the person concerned, duties
 and responsibilities vested on him and other such
 relevant material. The Division Bench of the High Court
 F committed a mistake in determining the said issue as an
 ancillary to that of the applicability and interpretation of
 the Standing Orders. A perusal of the earlier writ petition
 filed by respondent no. 1 would indicate that what was
 also challenged in the said writ petition was the order of
 G termination passed against the respondent. The order of
 termination also could not have been examined and
 scrutinized as such power and jurisdiction is not vested
 with the Labour Commissioner. [para 16] [831-F-H 832-A-
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Case Law Reference:

2007(4) SCALE 302 relied on para 10

2002 (2) SCR 1057 relied on para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6523 of 2010.

From the Judgment & Order dated 09.09.2008 of the High Court of Judicature at Allahabad in Special Appeal No. 1085 of 2008.

Tanmaya Mehta, B. Ragunath, Vijay Kumar for the Appellant.

D.K. Singh, Pradeep Shukla, Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. By filing the present petition the appellant herein has challenged the legality of the judgment and order dated 09.09.2008 passed by the Division Bench of the Allahabad High Court allowing the Special Appeal filed by Respondent No.1 herein.

3. Respondent no. 1 – Jaswant Singh claims to be a workman of M/s Gangeshwar Limited, Deoband, now known as Triveni Engineering Industries Limited, which was Respondent No. 2 before the High Court and is the appellant herein. During the course of his employment, he was transferred to Ram Kola Chini Mill but as he did not join the place where he was transferred in pursuance of the said order, his services were terminated.

4. Being aggrieved by the order of termination of his services, he filed a writ petition in the Allahabad High Court

A contending inter alia that the Standing Orders contain no provision for the transfer of a workman from one sugar factory to another, and therefore, his transfer was against the law. Consequently, he contended that his services could not have been terminated for not joining at a place of transfer. In the writ
B petition filed, he challenged the transfer order as also the termination order issued by the appellant herein.

5. The said writ petition was registered as Writ Petition No. 8630 of 2008. Notice of the writ petition having been served on the appellant herein, it took up a plea that the
C Respondent is not a workman. The said writ petition was disposed of, leaving the respondent at liberty to move a representation before the Labour Commissioner, Kanpur, U.P. in terms of Clause 'W' of the Standing Orders applicable. A representation in terms of the said order was filed by the
D respondent no. 1 herein. During the pendency of the said representation, it was contended before the Labour Commissioner by the appellant that the respondent no. 1 was not a workman, and therefore, the Labour Commissioner had no jurisdiction to adjudicate the representation under the
E provisions of U.P. Industrial Disputes Act, 1947 and particularly in terms of Clause 'W' of the Standing Orders. The Labour Commission disposed of the petition, concluding that the question at hand related to whether respondent no.1 was a workman under the UP Industrial Disputes Act, 1947.
F Therefore, the Labour Commissioner held that the same could not be decided under Clause 'W' of the Standing Orders, but instead should be determined by the Labour Court/ Industrial Tribunal.

G 6. Aggrieved by the order of the Labour Commissioner dated 14.05.2008, the respondent no. 1 preferred a Writ Petition challenging the aforesaid conclusions. The learned Single Judge, however, dismissed the said writ petition by judgment and order dated 25.07.2008, holding that the

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representation of the respondent no. 1 under Clause 'W' of the Standing Orders was not maintainable and that the Labour Commissioner had rightly rejected the same. A

7. Subsequently, the respondent no. 1 filed a Special Appeal before the Division Bench of the Allahabad High Court, which was registered as Special Appeal No. 1085 of 2008. The Division Bench of the High Court by the impugned judgment and order set aside the orders of the Labour Commissioner as also of the learned Single Judge and remitted the matter back to the Labour Commissioner to decide the nature of service of the respondent no. 1 in accordance with law. The Parties were also placed at liberty to adduce necessary evidence in support of their respective contentions before the Labour Commissioner. B C

8. Being aggrieved by the said judgment and order, the present Special Leave Petition was filed in this Court on which notice was issued and an interim stay of the judgment and order of the High Court was passed. Pleadings having been completed, the matter was listed for final argument during the course of which we heard the counsel appearing for the parties who took us through the documents on record in support of their submissions. D E

9. The counsel appearing for the appellant submitted before us that the effect of the High Court's order would be that the Labour Commissioner who is permitted to receive evidence could also be permitted to decide whether or not the respondent no. 1 is a workman. The Labour Commissioner would also be able to decide whether the order of transfer transferring him to another sugar factory was legal and valid and was justified within the parameters of the Standing Orders with particular reference to Clause 'W' thereof and also whether or not the termination order passed against the workman is justified. The appellant's contention is that the said issues cannot be decided by the Labour Commissioner as power and jurisdiction is restricted and has been so settled by the Division Bench of this F G H

A Court in the case of *U.P. State Road Transport Corporation vs. U.P. Rajya Sadad Parivahan Karamchanri Union*, reported in 2007(4) SCALE 302. It was further submitted that under Clause 'W' of the Standing Orders, only the power and jurisdiction to decide the question with regard to the applicability and interpretation of the Standing Orders is vested with the Labour Commissioner, and therefore he has no jurisdiction and power to decide as to whether the respondent no. 1 falls within the purview of the expression 'Workman'. According to the appellant, the said issue could only be decided and adjudicated upon by the competent court and not the Labour Commissioner. Counsel for the appellant also submitted that the Labour Commissioner is only a "Conciliation Officer" under the Industrial Disputes Act and "Certifying Officer" under the Standing Orders and therefore he cannot have the power and jurisdiction to decide substantive questions as to whether or not respondent no. 1 is a workman and whether or not the termination order is justified.

10. Counsel appearing for the respondent refuted the aforesaid submissions by relying upon Clause 'W' of the Standing Orders, which according to him gives ample power and jurisdiction to the Labour Commissioner to decide the issues raised by the respondent no. 1. Respondent No.1 contended that the only applicable provision, given the facts and circumstances of the case, is Clause 'W' of the Standing Orders. It was therefore submitted that since the service conditions of the workmen in the sugar factory are being regulated through the aforesaid Standing Orders, the Labour Commissioner would be competent to decide the issues raised as to whether or not respondent no. 1 is a workman and whether or not order of transfer was justified.

11. In order to appreciate the contentions raised by the counsel appearing for both parties, we have carefully considered Clause 'W' of the relevant Standing Orders, which reads as follows:

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"If any question arises as to the application or interpretation of these standing orders, any employer/workmen may refer it to the Labour Commissioner of the State and the Labour Commissioner shall after giving the parties an opportunity of being heard, decide the question."

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At this stage, it would also be relevant to extract a similar provision which finds place in Section 11-C of the U.P. Industrial Disputes Act, 1947, which reads as follows:

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"If any question as to the application or interpretation of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946 arises, any employer or workman may refer the question to any one of the Labour Courts specified for the disposal of such proceeding by the State Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

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The aforesaid provision, namely Section 11-C, came to be interpreted and considered by this Court in the case of *U.P. State Road Transport Corporation* (Supra). In the said decision, this Court while setting aside the decision of the Labour Court in a case where it had declared a contractual workman to be treated as regular workman has ruled held thus:

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"In our opinion, the power of the Labour Court under Section 11-C of the U.P. Industrial Disputes Act or under Section 13A of the Industrial Employment (Standing Orders) Act, 1946 is much narrower than the power of the Labour Court on a reference under Section 10 of the Industrial Disputes Act which corresponds to Section 4-K of the U.P. Industrial Disputes Act."

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A comparative perusal of the provisions of Section 11-C as also Clause 'W' would establish that the provisions are almost pari

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A materia. Therefore, the conclusions arrived at by this Court for
interpretation of Section 11-C would also be applicable to the
facts of the present case.

B 12. It is established from the records that the appellant has
raised an issue regarding the applicability of the Standing
Orders to the service condition of the respondent no. 1
contending inter alia that the respondent no. 1 is not a workman
within the meaning of U.P. Industrial Disputes Act, 1947 and
therefore the Standing Orders referred to and relied upon by
C respondent have no application in the case before the Labour
Commissioner. The Labour Commissioner as also the learned
Single Judge upheld the said contention, but the Division Bench
of the High Court set aside the order, holding that the said issue
can be decided by the Labour Commissioner as it is ancillary
D to the issue of applicability and interpretation of the Standing
Orders.

13. We are faced by the question as to whether a person
is a workman or not could be said to be related to the
applicability and interpretation of the Standing Orders along
E with the issue of whether the orders of transfer and subsequent
termination were justified or not. As far as the Labour
Commissioner is concerned, he is only a 'Conciliation Officer'
as envisaged under the U.P. Industrial Disputes Act, 1947 and
'Certifying Officer' under the Standing Orders. The Standing
F Orders, particularly Clause 'W', vests the Labour
Commissioner with the jurisdiction and power to decide on the
applicability and interpretation of the Standing Orders. On the
other hand, Section 11-C of the U.P. Industrial Disputes Act,
1947 and Section 13A of the Industrial Employment (Standing
G Orders) Act, 1946 grant the power and jurisdiction to render a
decision on the issue of interpretation and application of the
Standing Orders to the Labour Court.

14. Without going into the issue as to whether such a
power and jurisdiction could be vested on the Labour
H Commissioner, we may decide the issued raised herein from

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another angle. The issue of whether or not a person is a 'workman' within the meaning of U.P. Industrial Disputes Act, 1947 is a matter to be decided by a competent court, after allowing the parties to lead evidence. Thereafter, on proper appreciation of the materials on record including the oral evidence, a decision could be rendered and the issue could be determined. The enquiry before the Labour Commissioner is of a summary nature and while exercising such a power of summary nature, the Labour Commissioner cannot decide and examine factual matters relating to an issue as to whether or not the person concerned is a workman or not.

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15. In the case of *Sharad Kumar v. Govt. of NCT of Delhi*, reported at (2002) 4 SCC 490, an issue regarding whether or not a person is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 came for consideration before this Court. This Court held that in such a matter the State Government could not arrogate upon itself the power to adjudicate such an issue in as much as the same could be determined by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. In this instance, the Division Bench has erroneously held that the aforesaid issue is an ancillary issue to the issue of applicability and interpretation of the Standing Order.

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16. Whether or not a person is a workman is a matter that relates primarily to facts and circumstances of the case. The same has nothing to do with the application and interpretation of the Standing Orders. What needs to be examined and looked into for deciding the aforesaid issue is the nature of job performed by the concerned person, duties and responsibilities vested on him and other such relevant material. In our considered opinion, the Division Bench of the High Court committed a mistake in determining the said issue as an ancillary to that of the applicability and interpretation of the Standing Order. A perusal of the earlier Writ Petition filed by the respondent no. 1 numbered as Writ Petition No. 8630 of

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A 2008 would indicate that what was also challenged in the said writ petition was the order of termination passed against the respondent. The order of termination also could not have been examined and scrutinized as such power and jurisdiction is not vested with the Labour Commissioner.

B 17. Consequently, we set aside the judgment and order passed by the Division Bench of Allahabad High Court dated 09.09.2008 and uphold and restore the orders passed by the learned Single Judge as also by the Labour Commissioner.

C The present appeal is allowed to the aforesaid extent. There will be no order as to costs.

R.P.

Appeal allowed.