

BEFORE THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

W.P. No. 4977/99

Petitioner : Simplex Engg. & Foundry Works
Employer : Unit III, Tedesera, Rajnandgaon.

Vs.

Respondents : Pragatisheel Engineering Shramik Sangh
Union : And Another.

APPLICATION FOR INTERIM DIRECTION

The answering respondents submit as under: -

1. That the petitioner/employer has challenged the legality and validity of the order passed by Industrial Court in a reference made by the State Govt. It is pertinent to mention here that the State Govt. while exercising its powers under Section 51 of the MP Industrial Relations Act, 1960 referred the dispute for its adjudication to the Industrial Court, Raipur. The reference order is Annexure LA.-1 for kind perusal.

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2. That the petitioner/employer feeling aggrieved with the reference order challenged the propriety and validity of the reference which became the subject-matter of adjudication before the Division bench of the Industrial Court consisting of Hon'ble Shri Justice Shambhoo Singh and Shri S.N.Upadhyay (Member Judge). The Industrial Court vide its order dated 31.5.95 over-ruled objections so raised by the employer and held that the dispute is maintainable and directed to send the same to the Industrial Court, Raipur for its lawful adjudication.

3. The employer feeling aggrieved with this order of the Industrial Court dated 31.5.95, challenged the same by filing a writ petition before the Indore Bench of the High Court. The said writ petition was registered as W.P. No. 1231/95. That the judgement of the Indore Bench (By Hon'ble Shri Justice N.K Jain) is Annexure LA 2. The Indore Bench criticized the stand of the employer and opined as under

“It will be thus seen that the petitioners instead of rushing to this Court at this preliminary stage of hearing before the Industrial Court, ought to have waited for its decision in the matter. Needless to add, “the right to life includes the right to livelihood” (See: Olga Tellis’ case AIR 1986 SC 180). The petitioner employers who can certainly afford to wait, cannot be, therefore, allowed to exploit jurisdiction of this Court under Article 226 to avoid decision of issues more vital to the employees.”

In the result the W.P. No. 1231/95 was dismissed by the Indore Bench of the High Court.

4. Against this the employer filed a LPA before the Indore Bench which was registered as L.P.A. No. 155/96 and other connected LPAs as 156/96, 162/96 & 163/96. Since identical references were made by the State Govt. to the Industrial Court, many employers had chosen to file writ petitions and LPAs to assail the order of the Industrial Court aforesaid. The LPA came up for hearing before the Division Bench of the High Court. But unfortunately the learned judges of the Division Bench differed in opinion. Accordingly the matter was sent for opinion of a 3rd Judge Hon’ble Shri Justice A.R.Tiwari. Shri Justice Tiwari gave opinion on 12.5.97, a typed true copy of which is Annexure I.A -3. When this opinion came before the regular Division Bench hearing the LPA, the Hon’ble Judges again differed in opinion regarding disposal of the case and, therefore, a request was made by Hon’ble Shri Justice R.D.Shukla for referring the matter for Constitution of a larger Bench by the Hon’ble Chief Justice.

5. However for a considerably long time no larger bench was constituted by the Hon’ble Chief Justice and accordingly the Union filed a Special Leave to Appeal (Civil No. 737-740/99) before the Supreme Court. The Supreme Court passed its order dated 18.2.1999 deciding the petition in motion stage itself requesting the Chief Justice of M.P. High Court to constitute a full bench expeditiously.

6. Pursuant to the order of the Supreme Court a full bench was constituted to hear the aforesaid LPA consisting of Hon’ble Justice Shri B.A. Khan, S.B. Sakrikar and V.K. Agarwal. The Full Bench passed the order dated 6th April 1999 in the said LPA which is Annexure I.A -4. Pursuant to the order of the Full Bench the Industrial Court passed its award on 16.10.99, which is impugned in the present writ petition.

7. That a perusal of the order of the Industrial Court goes to show that the Industrial Court found that the termination of the employees by the petitioner was bad in law and was illegal. However, without assigning any cogent reason on the basis of material on record, the Industrial Court deviated from the normal rule of grant of reinstatement with full back wages, and directed a compensation of Rs. 20,000/- per employee. The employer has assailed this order also in the writ petition. The answering respondents respectfully recollect the observation of Hon'ble Apex Court in case reported in 1980 Vol. II LLJ Page 124 (S.C.) which observed that: -

“We cannot sympathize with a party who gambles in litigation to put off the evil day and when that day arrives prays to be saved from his own gamble..... The logistics of litigation for indigent workmen is a burden the management tried to use by a covert blackmail through the judicial process. Misplaced sympathy is a mirage justice.....”.

8. That the conduct of the self-same employers in dragging workmen from Court to Court to break their resistance was commented upon by the Hon'ble Justice N.K.Jain in his dismissal of W.P. No. 1231/95 by quoting D.P.Maheshwari Vs. Delhi Administration (AIR 1984 SC 153) thus:

“Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 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. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion.”

The findings of the above order have been upheld totally by the Full Bench Judgement of 6th April 1999 mentioned at Para 3.

9. That a simple reading of the aforesaid history of the litigation goes to show that poor terminated employees were driven to resist the litigation of the employer in the corridors of the Court in a tiresome manner. The answering respondents submit a list of concerned workmen and their dependents who died during the pendency of the aforesaid proceedings and could not see the day of judgement of the Industrial Court. The said chart is filed herewith as Annexure

I.A. -5. Most of them died because of starvation and due to inadequate means of livelihood and for want of adequate treatment and medical facilities.

10. That the Industrial Court judgement although it holds that the termination of the employees was illegal, denies the back wages in an illegal manner. It is difficult for the Union and the employees to resist the litigation of the employer in absence of any subsistence allowance. More so, when the amount of Rs. 20,000/- granted in favour of the employees has not been deposited by the employer and interest arising out of the said amount is also being enjoyed by the employer.

11. The Union most respectfully submits as under: -

(i) In the peculiar facts and circumstances of the case this Hon'ble Court may exercise its extra-ordinary jurisdiction under Article 226 and 227 of the Constitution of India directing the employer to pay monthly subsistence allowance to the employee from the date of the award of the Industrial Court which will remain operative during the pendency of the present litigation.

(ii) In the interest of justice an ad-interim order may kindly be passed directing the petitioner to pay subsistence allowance to each employees covered in the present case for amount which is deemed fit by this Hon'ble Court and the same may be directed to be continued till final disposal of the matter.

12. An affidavit in support is filed herewith

PRAAYER

It is therefore, prayed that this Hon'ble Court may kindly be pleased to issue an ad-interim order directing the petitioner to pay subsistence allowance to the workers from the date of the award of the Industrial Court as deemed fit by this Hon'ble Court which should continue till the final disposal of the matter.

Bilaspur

Counsel for the Union

Dated: