

Hon'ble Sharad Kumar Sharma, J.

(via Video Conferencing)

Mr. M. C. Pant, Advocate for the petitioner.

Mr. Pankaj Miglani, Advocate for the respondents.

In a proceeding of an Adjudication Case No.19 of 2016, which is pending consideration before the Presiding Officer, Labour Court, Haldwani, District Nainital, an issue was raised by virtue of Paper No.6-D, as to whether, the applicant to the proceedings of the adjudication case would fall to be within the definition of a "workman" or not. And the second issue was raised as to whether, the Labour Court, would have a competence and jurisdiction to deal with the controversy. The aforesaid two applications being Paper No.16-D and 22-D and objections filed on it i.e. 17-D was decided by the Labour Court and ultimately, the matter reached before this Court in a Writ Petition being, Writ Petition No.2595 of 2017. The said Writ Petition was decided by a judgment of 25.10.2017, whereby, this Court has passed the following directions:-

"In that view of the matter, this Court too feels that the Industrial Tribunal before calling upon the parties to address themselves on the merits of the termination order, should decide the issue agitated by the petitioner in his application Paper Nos. 16-D and 22-D at the stage of final hearing first and then only adjudicate the dispute on merits and will make the decision as part of the final decision after hearing parties finally."

As a consequence of the said judgment of 25.10.2017, the proceedings

before the Labour Court in the aforesaid adjudication case revived and quite obviously and in pursuance to the said direction dated 25.10.2017, the Labour Court was bound to decide the propriety of the applications Paper No.16-D and 22-D; before venturing to adjudicate the reference on its own merits. It is at this stage, that the petitioner filed an Application before Labour Court being paper No.36D contending thereof, that since, the aforesaid issues which have been directed to be decided as a preliminary issue by the Hon'ble High Court, since it entails a determination of merits of the matter hence, it may be decided when the reference proceedings itself is decided finally on its own merit. The said application preferred by the petitioner being Paper No.36-D has been rejected by the Labour Court by the impugned order dated 07.09.2018, on the ground that the reference of an earlier judgment of this Court dated 25.10.2017, had specifically provided that the two applications has to be decided as a preliminary issues, the Labour Court held that the Labour Court was bound to the judgment of the High Court, dated 25.10.2017, and the application Paper No.36-D preferred by the petitioner to decide those issues along with the principal reference at final stage was declined.

Procedurally, I do not find any apparent error in the judgment of the Presiding Officer dated 07.09.2018, impugned in the present Writ Petition, because it goes to be inconsonance to the direction issued by the Writ Court vide the judgment dated 25.10.2017,

and hence, I decline to exercise my supervisory jurisdiction under Article 227 of the Constitution of India, because there is no apparent error as such. However, while dismissing this Writ Petition holding thereof that no *lis* has yet been decided, I relegate the matter back to the Labour Court to decide the same strictly in consonance to the judgment of this Court dated 25.10.2017. However, it is made clear and even otherwise, it goes without saying that all contentions pertaining to the fact and law while deciding the aforesaid issues as directed to be decided, would be left open to be argued by the counsel for the parties before the Labour Court, as per law.

Accordingly, the Writ Petition lacks merit and the same is dismissed.

(Sharad Kumar Sharma,J.)

Pant/

31.10.2020