REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3803 OF 2019
(Arising out of S.L.P.(C) No.99 of 2018)

Chairman and Managing Director,
The Fertilizers And Chemicals
Tranvancore Ltd. & Anr. ....Appellant(s)

VERSUS

General Secretary FACT Employees
Association & Ors. ....Respondent(s)

WITH

CIVIL APPEAL No. 3804 OF 2019
(Arising out of S.L.P.(C) No.100 of 2018)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. These appeals are directed against the final judgment and order dated 25.01.2017 passed by the High Court of Kerala at Ernakulam in W.A.

Nos.1820 and 1824 of 2012 whereby the Division Bench of the High Court dismissed the writ appeals filed by the appellants herein and affirmed the judgment dated 21.08.2012 passed by the Single Judge of the High Court in W.P. Nos.33938/2008 and 2556 of 2009.

3. These appeals involve a short point as would be clear from the facts stated *infra*.

4. The appellants herein are the respondents and the respondents herein (respondent Nos.1-10) are the writ petitioners of the writ petitions, out of which these appeals arise.

5. Appellant No.1 is a Public Sector Undertaking and engaged in the business of manufacture and sale of various kinds of fertilizers and chemicals. It has a factory at Travancore in the State of Kerala. Respondent Nos.1 to 10 are the Trade Unions of the workers working in the manufacturing unit of appellant No.1 at the relevant time.

6. On 23.01.1978, a Memorandum of Settlement was executed between appellant No.1 (PSU) and respondent Nos.1 to 10, i.e., (Trade Unions) wherein it was *inter alia* agreed between the parties that the existing superannuation age of 60 years will remain unchanged in respect of all the workers working in the appellant's Undertaking at Udyogamandal Division, Head Office including those who are on the rolls of the Undertaking as on the date of settlement.

7. It was also agreed that those who are recruited on and after Memorandum of Settlement in question shall retire on attaining the age of 58 years.

8. On 19.05.1998, the Central Government issued a direction to all the Public Sector Undertakings of the Central Government and directed them to increase the age of superannuation upto below board-level employees from 58 years to

60 years. This was made compulsory to all the PSUs. Appellant No.1 accordingly ensured its compliance and made it applicable to their employees by a resolution dated 27.05.1998.

9. Since the financial condition of the appellant (PSU) was deteriorating day-by-day, it had become difficult for them to give effect to the aforesaid decision/direction. The appellant (PSU), therefore, brought this fact to the notice of the Central Government. By letters dated 02.09.1999 and 11.07.2001, the Central Government directed the appellant (PSU) to take several measures to improve their financial performance and also undertake the work of rationalization of their workers and bring it to a manageable level. This included lowering of the age of retirement of the employees. After extensive deliberations and making several efforts for reducing the financial losses, the Central Government eventually by letter dated 25.04.2003

directed the appellant (PSU) to change the retirement age of pre-1978 employees from 60 years to 58 years. In compliance with the letter dated 25.04.2003 of the Central Government, the appellant(PSU) issued an order dated 29.04.2003 to reduce the retirement age of pre-1978 employees from 60 years to 58 years.

10. This gave rise to filing of the original petitions by the respondents (Trade Unions) in the Kerala High Court (OP Nos.14598, 14599 & 14976/2003) challenging therein the legality and correctness of the order dated 29.04.2003.

11. The Single Judge by order dated 12.08.2003 upheld the order dated 29.04.2003 and dismissed the original petitions. The Single Judge *inter alia* held that first, the appellant (PSU) was facing acute financial crisis and hence to improve the financial crisis some positive action was also taken for the survival of the appellant's industry; Second, the

Trade Unions had agreed vide settlement dated 28.08.2001 that having regard to the emergent situation which had arisen, the employment strength was reduced by 20% to save the industry; Third, there did not appear any justifiable reason to retain the retirement age of 60 years only to pre-1978 employees; Fourth, the decision to reduce the retirement age was not violative of Article 14 of the Constitution inasmuch as it was done to make the retirement age uniform to all the workers with a view to save the industry; and Fifth, if it had not been done, it would have been impossible to continue with the existing industry. (See Paras 11 and 12 of the order of the Single Judge). However, in the concluding Para, the Single Judge observed that it shall be open to the writ petitioners to work out their other remedies available in law.

12. The respondents (Trade Unions) felt aggrieved and carried the matter in intra court appeal (WA

Nos. 1565,1595, 2112 & 2113/2003) before the Division Bench. By order dated 18.12.2003, the Division Bench dismissed the appeals and affirmed the order of the Single Judge. The Division Bench *inter alia* held that, first, the acceptance of the demand raised by about 10% of the total employees is likely to affect adversely the interest of about 90% of the employees; Second, the appellant (PSU) was facing acute financial crisis and, therefore, having regard to the totality of the circumstances, there are no grounds to interfere; Third, clause 14 of the Memorandum of Settlement provided that the dispute arising between the parties in relation to the settlement should be resolved by means of arbitration, i.e., by the Labour Commissioner and the same having been entertained by the Labour Commissioner, the same be pursued. (See Para 8 of the order of the Single Judge).

13. The Trade Unions (respondents) felt aggrieved and filed special leave petitions (CC Nos.3653-3655/2004) in this Court. By order dated 23.04.2004, this Court dismissed the SLPs.

14. It is with this background, the State Government by order dated 18.05.2004 as amended by GO dated 22.01.2008, made the following industrial reference (No.10/2004) at the instance of the Trade Unions to the Labour Court, Ernakulum to decide the following question:

> **"Whether the action of the management of FACT, Ltd. Udyogamandal in having reduced the age of superannuation of pre 1978 workers from 60 years to 58 years is justifiable or not?'**
>
> **"If not, what relief the workmen are entitled to?"**

15. The State Government also made another reference (No.4/2005) at the instance of the Trade Unions by order dated 02.03.2005 to the Labour Court to decide the following question:

> **"Whether the action of the management of FACT, Ltd. Udyogamandal Ltd. terminating**

the service of 42 workmen is justifiable or not? If not, what relief the workmen are entitled to?"

16. The Labour Court, by award dated 02.07.2008 answered the reference (No.10/2004) against the Trade Unions and in favour of the appellant(PSU). It was held that since the question referred to the Labour Court in the reference was already dealt with in the earlier round of litigation by the High Court and the Supreme Court and the same having attained finality consequent upon the dismissal of the SLPs by this Court by order dated 23.04.2004, the reference made by the State was barred by the principle of *res judicata*. So far as the other reference (No.4/2005) was concerned, it was accordingly disposed of by award dated 02.08.2008 on the same lines.

17. The Trade Unions/employees (respondents herein) felt aggrieved and filed the writ petitions (Nos.33938/2008 and 2556/2009) in the High

Court of Kerala against the award dated 02.07.2008.

18. The Single Judge by order dated 21.08.2012 allowed the writ petitions and quashed the awards dated 02.07.2008 and 02.08.2008 of the Labour Court. It was held that the reference made by the State to the Labour Court was not barred by *res judicata.* The Single Judge then awarded 30% of the wages payable to each employee instead of granting them a relief of reinstatement in service.

19. The appellant (PSU) felt aggrieved and filed intra court appeals. The Division Bench by impugned order dismissed the appeals and upheld the order of the Single Judge, which has given rise to filing of the present appeals by the appellant(PSU) after obtaining the special leave to appeal from this Court.

20. So, the short question, which arises for consideration in these appeals, is whether the High

Court was justified in holding that the reference made by the State to the Labour Court was not barred by the principle of *res judicata*. In other words, a question, which arises for consideration, is when the issue referred by the State in reference was already decided by the High Court between the parties in the writ petitions, writ appeals and lastly in SLPs by this Court in the earlier round of litigation, whether the State had the jurisdiction to refer the same issue to the Labour Court in reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act") for its fresh adjudication.

21. Heard Mr. J.P. Cama, learned senior counsel for the appellants and Mr. P.V. Surendranath, learned senior counsel, Mr. Roy Abraham & Mr. C.M. Patel, learned counsel for the respondents.

22. Having heard the learned counsel for the parties and on perusal of the record of the case

including the written submissions, we are inclined to allow these appeals and while setting aside the impugned order restore the awards dated 02.07.2008 and 02.08.2008 of the Labour Court.

23. In our considered view, the question, as to whether the principle of *res judicata* defined in Section 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") applies to the labour proceedings or not, remains no more *res integra* and stands answered by three decisions of this Court.

24. The first case is **R.C. Tiwari** vs. **MP State Co-operative Marketing Federation Ltd. & Ors.** (1997) 5 SCC 125. In this case, an employee of a co-operative society was dismissed from the services. He, therefore, referred the dispute of his termination to the Registrar under Sections 55 and 64 of the M.P.Co-operative Society Act. The Deputy Registrar upheld the finding of the misconduct

recorded in the domestic inquiry against the employee and upheld the termination as being legal and proper. The State then made a reference to the Labour Court under Section 10 of the ID Act for deciding the legality of the termination by the Labour Court. The Labour Court, however, declared the domestic inquiry invalid and, in consequence, held the termination as bad in law. The employer, therefore, filed a writ petition in the High Court of MP. The High Court allowed the writ petition and set aside the award of the Labour Court. The employee then carried the matter to this Court in appeal. This Court dismissed the appeal and affirmed the view taken by the High Court.

25. This Court ruled that the reference to the Labour Court made by the State under Section 10 of ID Act was hit by the principle of *res judicata* defined under Section 11 of the Code and, therefore, the reference made to the Labour Court was barred.

It was held that the issue of termination of the employee was earlier gone into by the Deputy Registrar on its merits and the same once answered against the employee, it could not be again gone into in the reference proceedings by the Labour Court. This is what is held in Para 4:

> **"4. Admittedly, there is a finding recorded by the Deputy Registrar upholding the misconduct of the petitioner. That constitutes res judicata. No doubt, Section 11 CPC does not in terms apply because it is not a court, but a tribunal, constituted under the Societies Act is given special jurisdiction. So, the principle laid down thereunder mutatis mutandis squarely applies to the procedure provided under the Act. It operates as res judicata. Thus, we find that the High Court is well justified in holding that the Labour Court has no jurisdiction to decide the dispute once over and the reference itself is bad in law."**

26. The second case is **Pondicherry Khadi & Village Industries Board** vs. **P. Kulothangan & Anr.,** (2004) 1 SCC 68. In this case also, this Court again examined the question as to whether the principle of *res judicata* including the principles of

constructive *res judicata* applies to the industrial adjudication or not. Though this Court did not notice the law laid down in the case of **R.C.Tiwari** (supra), yet it took the same view, as is clear from Paras 10 and 11:

> **"10. In our opinion, the appellant has correctly contended that the industrial dispute pertained to the same subject-matter dealt with in the earlier writ proceedings and was barred by the principles of res judicata. It is well established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code are applicable1 including the principles of constructive res judicata. Thus in State of U.P. v. Nawab Hussain2 it was held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal was challenged on the ground that it was incompetently passed. This Court also held: (SCC p. 808)**
>
> **It may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have**

therefore treated such a course of action as an abuse of its process.

11. The principle of res judicata operates on the court. It is the courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the court trying the subsequent proceeding is satisfied that the earlier court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in Workmen v. Board of Trustees of the Cochin Port Trust3 and Pujari Bai v. Madan Gopal4. The "lesser relief" of reinstatement which was the subject-matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The correctness of the decision in the writ proceedings has not been challenged by the respondent. The decision was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to reagitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and redecide the matter in the face of the earlier decision of the High Court in the writ proceedings."

27. The third case is **Executive Engineer, ZP Engg. Divn. & Anr.** vs. **Digambara Rao & Ors.,** (2004) 8 SCC 262. In this case also, this Court placing reliance on the decision in **Kulothangan** (supra) reiterated the same view, earlier taken by this Court in the case of **R.C. Tiwari** (supra) with these words:

> **"15.....It is now well settled that the general principle of res judicata applies to an industrial adjudication."**

28. Now coming to the facts of this case, it is not in dispute that the issue in relation to reduction of age from 60 to 58 years was raised by the Trade Unions/Respondents in the first round of litigation by filing the original petitions (O.P. Nos.14598, 14599 & 14976/2003) in the Kerala High Court. These writ petitions were dismissed by the Single Judge on merits by order dated 12.08.2003. The respondents/Trade Unions then carried the issue in

intra court appeals (No.1565, 1595, 2112 & 2113/2003) before the Division Bench. The appeal was dismissed by the Division Bench by order dated 18.12.2003. The Trade Unions/respondents then filed special leave to appeals in this Court and by order dated 23.04.2004, this Court dismissed the SLPs and affirmed the order of the Division Bench.

29. In our view, the effect of passing of these orders was that the issue in relation to reduction of age from 60 to 58 years including all incidental issues arising therefrom, attained finality because they were already decided on the merits between the parties to the *Lis*.

30. In our opinion, no judicial forum at the instance of any party to the *Lis* had jurisdiction to try these issues again on its merits. It was barred for being tried again by virtue of principles of *res judicata* contained in Section 11 of the Code, which

has also application to the labour/industrial proceedings.

31. In our opinion, the State had, therefore, no jurisdiction to make a reference(s) to the Labour Court under Section 10 of the ID Act to re-examine the question of age reduction made by the appellant(PSU). *A fortiori*, the Labour Court had no jurisdiction to entertain the reference(s) to adjudicate the question(s) referred in the reference(s).

32. In view of the foregoing discussion, we are of the considered opinion that the High Court was not justified in setting aside the awards of the Labour Court, which had rightly held that it (Labour Court) had no jurisdiction to entertain the reference and nor it had the jurisdiction to answer it on merits. The High Court should have upheld the awards of the Labour Court.

33. Once we hold that the references made to the Labour Court by the State were without jurisdiction, it is not necessary to examine the merits of the case. Indeed, it is not legally permissible because it does not survive for consideration having once decided in the earlier round of litigation upto this Court which resulted in termination of the dispute against the respondents/Trade Unions.

34. In the light of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside and the awards of the Labour Court are restored.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[INDU MALHOTRA]

New Delhi;
April 11, 2019