



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 8994/2019

Daikin Air Conditioning Mazdoor Union,

----Petitioner

Versus

1. M/s Daikin Air Conditioning India Private Limited, Sp 2-12 To Sp 2-15 And Sp 2-24 To Sp 2-27, Riico Industrial Complex, Majrakhath, Tehsil Neemrana, District Alwar (Raj.) Through Manager
2. The Additional Registrar Trade Union/ Joint Labour Commissioner, Government Of Rajasthan, Zone Office Address Labour Commissioner Officer, Labour Building, Infront Of N.b.c. Gate, Hasanpura, Jaipur (Raj.)

----Respondents

For Petitioner(s) : Mr. Amin Ali
For Respondent(s) : Mr. Veyankatesh Garg

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Order

RESERVED ON :: 12.09.2023
PRONOUNCED ON :: 05.10.2023
REPORTABLE

1. Instant petition has been filed by the petitioner against the impugned order dated 03.04.2019 passed by the Industrial Tribunal cum Labour Court, Alwar in Appeal No.01/2018 by which application filed by the petitioner Union under order 7 Rule 11 CPC has been rejected.

Submissions by the petitioner:

2. Counsel for the petitioner Union submits that the petitioner Union submitted an application for registration of their Union under the provisions of Indian Trade Union Act, 1926 (for short



the Act of 1926) and the said application was allowed and the petitioner was declared as registered Union by the Additional Registrar, Trade Union by issuing certificate on 29.08.2018. Counsel submits that feeling aggrieved and dissatisfied by the said certificate dated 29.08.2018 the respondent Company submitted an application under Section 10 of the Act of 1926 which is still pending for adjudication before the Additional Registrar. Counsel submits that in pursuance of such application by respondent Company a notice was issued by Additional Registrar to petitioner Union on 12.09.2018 and the petitioner Union assailed the order of issuance of notice before this Court by way of filing **SB Civil Writ Petition No.22454/2018** wherein an interim order was passed on 03.10.2018 and the respondents were restrained to take any proceedings pursuant to the show cause notice dated 12.09.2018. Counsel submits that concealing the above fact the respondent Company submitted an appeal under Section 11 of the Act of 1926 before the Industrial Tribunal challenging the same registration certificate dated 29.08.2018. Counsel submits that appeal under Section 11 of the Act of 1926 was not maintainable, hence under these circumstances, the petitioner Union submitted an application under Order 7 Rule 11 CPC for rejection of the said appeal as the same was barred by law. Counsel submits that the Tribunal has rejected the said application vide impugned order dated 03.04.2019 indicating therein that a mix question of fact and law is involved. Counsel submits that no disputed questions of facts were involved and only a pure question of law with regard to maintainability of appeal under Section 11 of the Act of 1926 is involved, hence the Tribunal has committed an error in rejecting





the said application vide impugned order dated 03.04.2019. Counsel submits that under these circumstances, interference of this Court is warranted.

Submissions by the respondents:

3. Per contra, learned counsel for the respondent Company opposed the arguments raised by the counsel for the petitioner Union and submitted that the appeal was submitted by the respondent Company not only under Section 11 of the Act of 1926 but the same was also submitted with the aid of Section 9 (I) of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'). Counsel submits that the appeal under Section 9 (I) of the Act of 1947 is maintainable against any order passed by the Registrar, hence the respondents have not caused any illegality in filing appeal before the Tribunal against the order dated 29.08.2018 by which the petitioner Union was declared as registered Trade Union under Section 9 of the Act of 1926. Counsel submits that disputed questions of fact and law are involved and the appeal filed by the respondent Company was not barred by any of the provisions of law hence, the Tribunal has not committed an error in rejecting the application filed by the petitioner under Order 7 Rule 11 CPC. Counsel submits that the order passed by the Tribunal is just and proper which needs no interference of this Court.

Analysis and Reasoning:

4. Heard and considered the submissions made at the Bar and perused the material available on the record.

5. Admittedly, the petitioner Union applied for its registration under Section 9 of the Act of 1926 before the Labour Department, Government of Rajasthan and the Additional Registrar cum



Divisional Joint Labour Commissioner, Jaipur passed an order on 29.08.2018 and registered the petitioner Union as 'Registered Union'.

6. Feeling aggrieved by the said grant of Registration Certificate order dated 29.08.2018, the respondent Company submitted an application under Section 10 of the Act of 1926 for the cancellation of said Registration Certificate before the Registrar, Trade Union, who issued notice to the petitioner Union on 12.09.2018. Against the said notice dated 12.09.2018, the petitioner Union submitted S.B.Civil Writ Petition No. 22454/2018 before this Court, wherein the following interim order was passed on 03.10.2018 and respondents were restrained to take any proceedings in pursuance of the notice dated 12.09.2018. For ready reference the interim order dated 03.10.2018 is reproduced as under:

"Counsel for the petitioner submits that the impugned notice has been issued dt. 12th September, 2018, whereby it has been alleged that due to staging 'Dharna' and indulging in illegal activities, the employer-factory has suffered in respect of their production and further the Union is said to be registered by furnishing forged signatures of the members.

Counsel submitted that in the impugned notice, it has been alleged that the alleged activities of the Union have been termed in violation of Section 10 of the Trade Union Act, 1926 and as such notice for cancellation of registration of Trade Union has been given, by asking the explanation within 15 days.

Counsel submitted that as per Section 10 of the Trade Union Act, 1926, the Registering Authority has to give at least two months previous notice in writing and he has also to satisfy as what fraud or mistake has been committed while granting of registration.

Counsel submitted that by putting much efforts and after directions of this Court, the certificate of registration was issued on 29th August, 2018 and now



due to pressure exerted by the employer, the entire exercise of canceling the registration, has been undertaken.

Issue notice to the respondents, returnable within two weeks.

Notices be given 'dasti', if prayed.

In the meanwhile and until further orders, the respondents are restrained to take any proceedings, in pursuance of show cause notice dt. 12th September, 2018."

7. It is worthy to note here that the application filed under Section 10 of the Act of 1926 against the grant of Registration Certificate dated 29.08.2018 is *sub judice* before the Registrar Trade Union and the same is pending for its adjudication but the same could not be proceeded further because of the interim order dated 03.10.2018 passed by this Court in SBCWP No.22454/2018.

8. Again, the respondent Company challenged the same Registration Certificate dated 29.08.2018 before the Tribunal by way of filing an appeal under Section 11 of the Act of 1926 read with Section 9 (I) of the Act of 1947.

9. The petitioner Union submitted an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, 'CPC') for rejection of the above appeal as the same is barred by law as no appeal under Section 11 of the Act of 1926 is maintainable against the order of issuance of Registration Certificate. It was submitted in the application that appeal is maintainable only against the order of refusal, withdrawal and cancellation of registration of the certificate. It was also submitted in the said application that two parallel remedies cannot be availed against the same Registration Certificate dated 29.08.2018 before two different forum of law.



Hence, a prayer was made to reject the said appeal as being barred by law. For ready reference Section 11 of the Act of 1926 is reproduced as under:

11. Appeal-(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal—

(a) where the head office of the Trade Union is situated within the limits of a Presidency town [***] to the High Court, or

[(aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;]

(b) where the head office is situated in any area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the [appropriate Government] may appoint in this behalf for that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1) the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.]





10. After hearing the arguments of both sides, the Tribunal rejected the application filed by the petitioner vide impugned order dated 03.04.2019 indicating therein that mixed questions of fact and law is involved, which would be decided on its merits at the time of decision of the said appeal.

11. Now the question which remains before this Court is 'Whether the respondent Company can avail two parallel remedies against the same registration certificate dated 29.08.2018 before two different forum of law? Whether the appeal is barred by law as the same is not maintainable against the order of issuance of Certificate of Registration?

12. The fact is not in dispute that the respondent Company has challenged the same Registration Certificate dated 29.08.2018 before two different forum of law i.e. before the Registrar under Section 10 of the Act of 1926 and before the Tribunal by way of filing appeal under Section 11 of the Act of 1926 read with Section 9 (I) of the Act of 1947.

13. Appeal under Section 11 of the Act of 1926 is maintainable against the order of refusal of the registration to register Trade Union or against the order of withdrawal or cancellation of a certificate of registration. Here in this order neither the Registrar refused registration of the petitioner Trade Union nor the Registration Certificate is cancelled or withdrawn. Hence, appeal under Section 11 of the Act of 1926 is not maintainable.

14. Respondent Company has filed the appeal before the Tribunal not only under Section 11 of the Act of 1926 but also with the aid



of Section 9 (I) of the Act of 1947 for ready reference Section 9

(I) of the Act of 1947 is reproduced as under:

9(I). Appeal to Industrial Tribunal from order of Registrar. - (1) Any party to a proceeding before the Registrar may, within thirty days from the date of an order passed by the Registrar under this Chapter, appeal against such order to the Industrial Tribunal:

Provided that the Industrial Tribunal may, for sufficient reason admit any appeal made after the expiry of such period.

(2) The Industrial Tribunal may admit an appeal under sub-section (1) if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is contrary to law or otherwise erroneous.

(3) The Industrial Tribunal in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Tribunal shall be sent to the Registrar."

15. Perusal of the provisions of Section 9 (I) of the Act of 1947 clearly indicates that appeal is maintainable against an order of Registrar passed under the Chapter II B of the Act of 1947 for registration of Unions. While in the instant case, no registration has been issued to the petitioner Union under Chapter II B of the Act of 1947 but the petitioner Union has been registered under Section 9 of the Act of 1926. Hence, it is clear that the appeal under Section 9 (I) of the Act of 1947 is not maintainable.

16. When no appeal under Section 11 of the Act of 1926 and under Section 9 (I) of the Act of 1947 is maintainable, then, certainly that amounts to a bar under the law and the same is liable to be rejected.

17. The respondent Company is not remediless, as it has already availed the remedy against the impugned Registration Certificate



dated 29.08.2018 by challenging the same before the Registrar under Section 10 of the Act of 1926.

18. The respondent Company cannot be allowed to pursue two parallel remedies in respect of same subject matter. In the matter of **Arunima Baruah Vs. Union of India (UOI) and Ors.** reported in **2007 (6) SCC 120**, the Hon'ble Apex Court has held that "the Court would not permit a party to pursue two parallel remedies in respect of same subject matter."

19. In **Jai Singh Vs. Union of India** reported in **(1977) 1 SCC 1**, the Hon'ble Supreme Court while dealing with a case wherein the petitioner filed a writ petition which was dismissed in limine, subsequently, he filed a suit agitating the same subject-matter, the Court held that suit was not maintainable as a person cannot be permitted to pursue two parallel remedies in respect of the same subject-matter at the same time.

20. In **Bombay Metropolitan Region Development Authority, Bombay v. Gokak Volkart Ltd.** reported in **(1995) 1 SCC 642**, the petitioner therein had filed a writ petition during the pendency of the appeal before the Statutory Authority. The Hon'ble Apex Court held that such a writ was not maintainable.

21. Thus, from the aforementioned enunciation of law, it is clear that a person may have a right to choose the forum for redressal of his grievance, but he/she cannot be permitted to choose two forums in respect of the same subject-matter for the same relief. If parallel proceedings are allowed, they may give rise to forum shopping/hunting, wherein, a party who filed an application under Section 10 of the Act of 1926 before the Registrar, Trade Union and was not able to get the interim relief abandons the remedy



before him and pursues the remedy of filing the appeal before the Tribunal for the same cause, it will amount to abuse of the process of law.

22. In the light of the principle of law laid down by the Supreme Court in the aforesaid judgments, it is quite vivid that the respondent Company cannot be allowed to pursue two parallel remedies in respect of the same subject matter of the registration certificate dated 29.08.2018 i.e. one by way of appeal before the Tribunal under Section 11 of the Act of 1926 and other by way of application under Section 10 of the Act of 1926 before the Registrar, Trade Union.

Conclusion:

23. As a fallout and consequence of the above stated discussions, this petition stands allowed and the impugned order dated 03.04.2019 passed by the Tribunal is quashed and set aside and the appeal filed by the respondent under Section 11 of the Act of 1926 stands dismissed as "not maintainable". However, it is open to the respondent Company to pursue the application under Section 10 of the Act of 1926 which is pending for adjudication before the Registrar, Trade Union.

24. The parties are left free to bear their own costs.

25. Before parting with this order, it is made clear that the Registrar, Trade Union shall decide the pending application on its merit after hearing both sides without being influenced by any of the observations made hereinabove by this Court.

(ANOOP KMAR DHAND),J

KuD/49/Pcg/

