

**BEFORE K. R. ADAKE, PRESIDING OFFICER,
FIRST LABOUR COURT, KOLHAPUR.
(JO CODE-MH02980)**

REFERENCE (IDA) NO. 11/2017

Shetakari Sahakari Sangh Ltd.

... First Party

And

Shri. Krushna Shankar Malkar

... Second Party

ORDER BELOW EXH. C-16

(Passed on : 21/10/2023)

1. This is an application filed by the First Party Advocate for framing additional issues. The Second Party has submitted reply and resisted contentions of the First Party. Heard Adv. A. D. Patil for the First Party and Adv. B. B. Powar for the Second Party.

2. I have gone through record of proceeding. By way of present application, the First Party has prayed to frame additional issues in respect of maintainability of the Reference on the count of delay and waiver of right of the relief claimed. Adv. A. D. Patil while arguing the matter has submitted that, the First Party has filed amended Written Statement in the matter and in which specific pleadings regarding delay and waiver of right are taken by the First Party. Even, as per the observation of Hon'ble High Court it is necessary to frame the issues prayed for by way of present application. Adv. B. B. Powar while arguing the matter has submitted that, the present application is filed only with intention to prolong the present Reference. The present Reference is referred by government and therefore there is no question of delay.

3. On perusal of record it reflect that, my predecessor was pleased to frame issues in the matter. The issues were framed regarding legality of the termination order and entitlement for the claimed relief. The Assistant Commissioner of Labour has referred the present dispute for adjudication of alleged illegal termination. My predecessor was pleased to finally decide the

present Reference and that Award was challenged before the Hon'ble High Court. The First Party's advocate has relied upon the observation of Hon'ble High Court.

4. I have gone through the judgment and order passed by Hon'ble High Court in Writ Petition. In para no. 24 the Hon'ble High Court was pleased to observe that detailed scrutiny by the Labour Court is necessitated for deciding the question as to whether decisions rendered in respect of differentiate of employees is a judgment in rem or in personam and the consequences thereon of delay and latches. I am of the opinion that, the court frames issues on the basis of pleadings of the parties. In the case in hand, the First Party has taken the pleadings about limitation in their written statement. So, I find substance in the contention of Adv. Patil for the First Party about framing of issue in respect of maintainability of the Reference on the count of delay. However, I don't find any substance in the contention of the First Party's Advocate about framing issue regarding waiver of claimed relief by the Second Party. My predecessor was already framed two issues regarding alleged illegal termination and entitlement for the relief claimed. So, the proposed additional issue is already covered in the framed issues. Hence, I proceed to pass following order :

ORDER

- (i) Application at Exh. C-16 is partly allowed.
- (ii) Additional issue regarding maintainability of the Reference on the count of delay only is hereby framed as Issue No. 1A. Both parties are at liberty to adduce their evidence in respect of additional issue.
- (iii) No order as to costs.

Kolhapur.
Dated : 21/10/2023

(K. R. Adake)
Presiding Officer,
First Labour Court, Kolhapur