

SUPREME COURT OF INDIA

Divyash Pandit

Vs.

Management, Nccbm

C.A.No.450 of 2005

(C. K. Thakker and Ruma Pal JJ.)

11.01.2005

ORDER

1. Leave granted.

2. The appellant before us was an employee of the respondent council. Pursuant to an enquiry held, his services were terminated in 1987. The Labour Court, before which a reference was made challenging the termination, framed four issues for determination on the basis of the pleadings of the parties. These four issues were:

"1. Whether the management is not an industry within the meaning of Section 2(j) of the ID Act ?

2. Whether the Delhi Administration is not the 'appropriate Government' as alleged in preliminary objection 2 ?

3. Whether the petitioner is a 'workman' within the meaning of Section 2(s) of the ID Act ?

4. Whether the domestic enquiry held by the management is improper and invalid and whether the finding is perverse?"

3. The Labour Court decided Issue 4. According to the award the respondent had given up all other issues. By the award it was found that the enquiry was improperly held and that the conclusion reached by the enquiry officer was perverse. The order of termination was accordingly set aside and the appellant was directed to be reinstated with continuity of service and full back wages. We may note at this stage that in the concluding portion of the award the Labour Court has noted that "there was no request till today of the management to lead evidence in support of charges and to prove the same". The Labour Court, despite holding that the enquiry conducted by the management was "non est in the eye of the law", did not also consider the power which it undoubtedly has of allowing the management to

lead additional evidence to establish the charges against the appellant. Be that as it may, immediately after the award was passed an application was made by the respondent for review of the award. In the application the employer stated (1) that it had not foregone the other issues, and (2) that an opportunity should be granted to the management to establish its case. The review application was dismissed by the Labour Court rejecting the first submission. However, the Labour Court did not apply its mind to the prayer of the management that it should have been granted an opportunity of leading evidence.

4. The respondent filed a writ petition before the High Court challenging the award of the Labour Court. The writ petition was allowed and the award was set aside. The High Court was of the view that the Labour Court should adjudicate all the issues afresh. The matter was accordingly remanded back to the Labour Court for deciding "all" the issues afresh. This order was passed on December 2, 2002.

5. When the matter came back on remand, the Labour Court refused to redetermine Issue 4.

6. The respondent then made an application for clarification before the High Court seeking clarification of the order dated December 2, 2002. By an order dated March 3, 2003 the High Court clarified the order dated December 2, 2002 and held that it had in fact directed all four issues to be redecided and also directed the Labour Court to give only one opportunity to the management to lead evidence on Issue 4.

7. An appeal was preferred by the appellant before the High Court. The memorandum of appeal shows that although the challenge was made to the order dated December 2, 2002, in substance the grievance of the appellant was directed to the clarification issued on March 3, 2003. In fact the Division Bench proceeded on the basis that the challenge was to the order of clarification dated March 3, 2003 and dismissed the appeal.

8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated December 2, 2002 as clarified on March 3, 2003 does not need any interference. It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in *Karnataka SRTC v. Laxmidamma* this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.

9. The appeal is accordingly dismissed and the matter is remanded back to the Labour Court for redecision as directed by the order dated December 2, 2002 read with the order dated March 3, 2003.