

* HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : December 24, 2010

+ W.P.(C) No. 16986/2006

I.E.C Air Tools PVT. LTD. Petitioner
Through: Mr. Jay Savla with Mr. Pravin Sharma,
Advocates

-versus-

Guru Dutt Respondents
Through: Mr. Piyush Sharma, Advocate

CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

VEENA BIRBAL, J.

1. By way of this petition, petitioner/management has challenged the impugned award dated 03.10.2006 by which the Labour Court has awarded relief of reinstatement with 50% back wages along with continuity of service and other legal benefits to respondent.

2. As per the case of petitioner/management, respondent was working as a Sales and Service Representative in the Delhi office of petitioner/management. It is alleged that during the course of employment, respondent committed certain acts of misconduct and as such was charge sheeted vide charge sheet dated 23.06.2000. An enquiry was conducted in respect of alleged charges against him by the petitioner/management and thereafter the respondent was removed from the service vide order dated 12.08.2000. Thereafter, respondent raised an industrial dispute. The Secretary (Labour),

Government of NCT of Delhi referred the same for adjudication to the Labour Court with the following terms of reference :

“Whether the termination of services of Shri Guru Dutt Roy is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. Pursuant thereto respondent filed a statement of claim before the Labour Court alleging therein that he had been working with the management from 03.10.1989 on the post of Sales and Service Representative. Respondent along with other employees made a complaint to the petitioner/management against Shri Vivek Kamboj, Regional Manager. Thereafter, management turned hostile and vindictive and started harassing the respondent and other workers. On 19.06.2000, the respondent as well as other two workers were suspended and on 23.06.2000, a charge sheet was issued to him which was duly replied and thereafter Enquiry Officer was appointed. It is stated that no notice was given and an ex parte enquiry was conducted and respondent was removed from service on 12.08.2000. Respondent had prayed for reinstatement with full back wages before the Labour Court.

4. Petitioner/management filed a written statement before the Labour Court wherein the allegations made by the respondent were denied and it was categorically stated that in case of vitiation of domestic enquiry conducted against the respondent/workman, the management be given an opportunity to prove the alleged misconduct before it by leading evidence. It was also alleged that the respondent was a Sales & Service Representative and was not covered under the definition of workman under the Industrial

Disputes Act. The issues were initially framed by the Labour Court on 28.01.2004. On 19.11.2005, issues were amended. In all the following issues were framed:-

- “1. Whether management conducted legal, fair, proper and according to principles of natural justice domestic enquiry?
2. Whether workman is not a workman within definition of Section 2 (s) of the Industrial Disputes Act? OPM
3. Whether the termination of services of Shri Gurudutt Roy is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

5. As noted in the impugned award, Issue no. 1 was treated as a preliminary issue. On 02.12.2005, the Labour Court directed the respondent/workman to file fresh affidavit on enquiry issue. On 21.04.2006, the enquiry issue was decided against the petitioner/management and in favour of workman. The grievance of the petitioner/management is that after deciding the issue of enquiry against the petitioner, the Labour Court passed the impugned award by observing that the management has not averred a single word in the written statement to claim right to lead evidence to prove misconduct in the event of vitiation of enquiry by the court and as such vide impugned award dated 04.09.2006 granted reinstatement to the respondent with 50% back wages.

6. Aggrieved with the same, the present writ petition is filed.

7. Counsel for the petitioner has contended that in the written statement filed before the Labour Court a categorical stand has been taken that fair opportunity has been given to the respondent to defend himself before the Enquiry Officer and if the court arrives

at a finding that the enquiry is not fair, the management seeks liberty to prove the alleged charges of misconduct before the court. It is contended that despite having taken a specific stand in the written statement/reply, the Labour Court has not given any opportunity to petitioner/management of leading evidence before it to prove the alleged charges of misconduct. It is contended that Labour Court failed to read the written statement and after deciding the issue of validity of enquiry against the petitioner/management, passed the impugned award observing that the management has not taken plea in the written statement seeking opportunity to lead evidence before the Court in case enquiry is vitiated as such passed the impugned award against the management. It is contended that failure on the part of the Labour Court to read the written statement filed by it and thereby depriving the petitioner/management of its valuable right to lead evidence to prove the alleged misconduct before Court is a non application of mind, as such the impugned award is liable to be set aside.

8. On the other hand, the stand of the respondent/workman is that after enquiry issue was decided on 21.04.2006, the management did not appear before the court nor apprised that such a stand, as stated above, has been taken in the written statement and as such the impugned award is legal and valid in all respects and does not call for any interference.

10. I have considered the submissions made and perused the material on record.

11. Vide order dated 21st April, 2006, the Labour Court has held that the management has failed to establish that enquiry conducted against the workman is fair and as such, decided the said issue in favour of workman. Thereafter, the Labour Court listed the matter for final arguments. The Labour Court also noted in the order dated 21st April, 2006 that the management has not taken any plea to lead evidence before court in case enquiry is vitiated.

I have perused the written statement on record. There is categorical stand in the written statement that if the court arrives at a finding that the inquiry is not fair the management seeks liberty to prove the charges of misconduct before this court. The relevant portion of the written statement/reply is reproduced which is as under:-

“XXX
However if this Hon’ble court arrives at a finding that
the inquiry conducted by the Management was not fair
or proper, the Management be allowed to prove the
misconduct before this court by leading the evidence.”

In view of the categorical averment in the written statement, the finding of the Labour Court in the impugned award that the management has not taken any plea in the written statement seeking opportunity to lead evidence in the event of vitiation of enquiry, is an apparent error on record. In these circumstances, the Labour Court ought to have listed the matter for leading evidence by the management to prove alleged misconduct before the court as per the settled law. Reference in this regard is made to (i) The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd Vs. The Management & others 1973 (1) LLJ 278; (ii) Karnataka State Road Transport Corpn Vs Lakshmiddevamma AIR 2001 sc 2090; (iii)

Amrit Vanaspati Co.Ltd Vs Khem Chand & Anr 2006 (6) SCC 325 & (iv) Mukesh Tripathi Vs Senior Divisional Manager LIC & Ors 2004(8) SCC 387.

In view of the above discussion, the impugned award is set aside. The matter is remanded back to the Labour Court for proceeding further in the matter in accordance with law. Parties to appear before the concerned Labour Court on 17.01.2011.

Petition stands disposed of accordingly.

VEENA BIRBAL, J

December 24, 2010
kks/ssb