

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 23rd , 2008

WP(C) No.1052/2006

Lloyd Sales Pvt Ltd PETITIONER
! Through: Mr. Deepak Sinha, Advocate.

Versus

\$ Anil Gupta RESPONDENT
^ Through : Nemo.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

1. The petitioner in the present petition has impugned the order of the Industrial Tribunal dated 13th September, 2005 disallowing the amendment to the written statement of the proposed plea that the company is closed and not doing business since 1997.

2. The respondent was in the services of petitioner management since the year 1979 and his allegation was that he was transferred from one place to other frequently against the applicable service conditions. The respondent alleged that he was served with a memo on 12th September, 1987 alleging that he remained absent from duty for about 8 days without prior permission and intimation to the

management and as per standing orders of the company he was liable to be punished subject to disciplinary action. The respondent challenged the same on the ground that the memo tantamount to letter of termination which is in violation of principles of natural justice. It was further alleged by the respondent that despite the repeated demands he has not been reinstated in service.

3. Before the Industrial Tribunal parties led their evidence in support of their contention and the matter was fixed for arguments where the petitioner filed an application dated 12th May, 2005 seeking amendment to the written statement. The petitioner contended that by inadvertence the management could not take legal objection to the effect that the Industrial Tribunal has no territorial jurisdiction and the reference made to the Court under Section 10(1)(C) is ultra virus and that the management has closed down its business since 1997.

4. The application was contested by the respondent workman contending inter-alia that the application for amendment is not bonafide and the petitioner management is delaying the proceedings and the application for amendment is filed after the matter became ripe for arguments merely with a view to delay the whole case.

5. The Industrial Tribunal relying on the fact that the case is very old as the reference was made in the year 1989 held that the plea of

closure of management business since 1997 is not relevant as the reference is made about the legality of the termination of the services of the workman and, therefore, the same cannot be allowed. The Industrial Tribunal, however, allowed the legal objection that the Industrial Tribunal does not have territorial jurisdiction.

6. Aggrieved by the order dated 13th September, 2005 the present petition is filed under Article 226 of the Constitution of India against disallowing the plea of closure of the management business since 1997.

7. The learned counsel for the petitioner is unable to explain as to how the alleged closure of management business since 1997 is relevant. The learned counsel states that no business activity is being carried on. Merely because no business activity is carried on or the company suffering losses is not a ground for negating the rights of a workman whose services is allegedly terminated illegally by the management.

8. The learned counsel for the petitioner/management company admits that there has not been voluntary winding up or winding up or dissolution of the company. It has also not been denied that the company does not have any assets. If a limited company has assets, the alleged closure of the management business since 1997 shall not

be relevant for considering whether the termination of the services of the respondent is legal or not. The services of the respondent workman has not been terminated on the ground that there is no work in the company or the management has closed its business activity but on the ground that the respondent remained absent for about eight days without prior permission and intimation to the management.

9. In the facts and circumstances the learned counsel for the petitioner is unable to show as to how the alleged closure of management business is relevant. The plea itself is vague as no particulars have been given as to what activities were carried on by the company and what activities have been stopped by the company since 1997. The petitioner company is also unable to disclose whether it is following statutory obligation about various meetings and liabilities of a company.

10. The learned counsel for the petitioner is also unable to show any precedent holding that if a company is allegedly not carrying on any business, the same shall be material for determination whether the termination of the workman on the ground that he remained absent from duties without prior permission for 8 days will be legal or illegal.

11. In the circumstances the order dated 13th September, 2005 impugned by the petitioner does not suffer from any manifest error nor there is denial of principles of natural justice to the petitioner in passing the said order so as to entail interference by this Court under Article 226 of the Constitution of India. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court should not interfere with factual findings of the lower courts while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, Government of A.P. and Ors. v. Mohd. Nasrullah Khan reported as (2006) 2 SCC 373. Writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error on the law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court.

12. The writ petition in the facts and circumstances is without any merit and is dismissed and the interim order dated 25th January,

2006 staying the proceedings before the Industrial Tribunal No.I in ID No.615/89 titled The Management of M/s. Lloyd Sales (P) Ltd and Its Workman Sh.Anil Gupta is vacated. Considering the facts and circumstances the parties are left to bear their own cost.

January 23rd, 2008.
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ANIL KUMAR, J.