

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 233/2011**

% **Reserved on: 14th March, 2011**
Date of Decision: 30th March, 2011

R.K. Arora Appellant
Through Mr. S.P. Sharma, Advocate.

VERSUS

M/s Air Liquide India Holding Pvt. Ltd. & Ors. Respondents
Through

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.

CM No. 5203/2011 (for exemption)

Allowed, subject to all just exceptions.

LPA No. 233/2011 & CM No. 5202/2011 (delay)

The appellant R.K. Arora has assailed the order dated 10th January, 2011, dismissing his writ petition impugning the award dated

11th August, 2006, passed by the Labour Court VI. As there is a delay of

28 days in filing of the present intra-court appeal, CM No. 5202/2011 has been filed for condonation of delay under Section 5 of the Limitation Act, 1963. Learned counsel for the appellant has submitted that the Labour Court had proceeded with great haste and hurry in closing the evidence as the appellant had gone out of India in the course of his employment. It is submitted that this has resulted in miscarriage of justice.

2. As per the case made out by the appellant, his services were terminated by the respondent No. 1 herein M/s Air Liquide Holding India Pvt. Ltd. on 11th January, 2005. The appellant claims that he was a workman protected under the Industrial Disputes Act, 1947 (Act, for short) and that the terms and conditions of employment were governed by the standing orders under Model standing orders, he was entitled to retrenchment compensation and the respondent No. 1 had failed to comply with Section 25F of the Act. Respondent No. 1, disputed the claim and accordingly reference was made to the Labour Court.

3. On 31st October, 2005, Labour Court framed two issues namely
(1) Whether the appellant was not a workman within the meaning of Section 2(s) of the Act as claimed by the Management; and (2) whether the termination of services of the appellant by the Management on 11th January, 2005 was illegal and unjustified and if so, what was the effect thereof?

4. The case was fixed for recording of appellant's evidence on 31st January, 2006. On the said date, no witness was present on behalf of the appellant. Adjournment was requested for and accordingly granted subject to final opportunity, as it was not opposed. On the next date of hearing, again the evidence of the appellant could not be recorded as he had filed an application that certified copies of the standing orders had not been placed on record and the management should be directed to place them on record. The request for adjournment was allowed and the case was fixed for the appellant's evidence on 20th May, 2006. On the said date, evidence could not be recorded as the appellant protested that the management had not placed certified copy of the standing orders on record. The Labour Court, however, recorded that

the management did not have certified copy of the standing orders allegedly applicable to the appellant. Final opportunity was granted to the appellant to lead evidence on 7th August, 2006. Again on 7th August, 2006, the appellant did not lead evidence and an application was filed that the management should first lead the evidence on issue No. 1. The application was dismissed and final opportunity was granted to the appellant to lead evidence on 5th October, 2006. On the said date, the appellant had sought an adjournment as he had moved an application for transfer of the case from the said Presiding Officer to another Presiding Officer. At the request of the appellant, the case was adjourned. On 11th December, 2006, no witness of the appellant was present and in the interest of justice, the matter was once again adjourned. On the next date of hearing i.e. 1st February, 2007, the order sheet records that the appellant had filed two affidavits by way of evidence but the copies of the said affidavits were served on the management on the same date. Two applications were filed by the appellant along with documents, 136 in number. Thereafter, the management took adjournment to file reply to the applications and

vide order dated 28th March, 2007, costs of Rs.500/- was imposed on the management. By order dated 11th May, 2007, the application on behalf of the workman for placing on record additional documents was allowed, subject to the management questioning the relevancy of the documents. Application for framing of additional issues was dismissed. The matter was fixed for cross-examination of the workman on 13th July, 2007.

5. On 13th July, 2007 and 10th August, 2007, the workman was not cross-examined as an application was filed by the management. The said application was heard on 29th September, 2007 and was disposed of on 6th October, 2007. On 6th October, 2007, the appellant again filed an application which was dismissed on 31st October, 2007. On 14th December, 2007, the matter was adjourned to 18th January, 2008 as the authorized representative of the management was sick. The right to cross-examination by the management was closed on 18th January, 2008. This order was recalled on 27th February, 2008, subject to payment of costs of Rs.2,000/- which was subsequently reduced to Rs.500/- on 2nd April, 2008.

6. On 17th May, 2008, finally one of the witnesses, Mr. H.S. Mokha was cross-examined by the management.

7. The appellant moved another application for summoning of original documents which was allowed, so that the appellant could be cross-examined comprehensively on 30th July, 2008. On the said date, the cross-examination was not carried out as the authorized representative of the management had fractured his leg. On 18th December, 2008, again, the matter was adjourned to enable the management to cross-examine the appellant. On 6th April, 2009, the representative of the appellant took time to segregate documents and the request was allowed and the case was adjourned to 26th August, 2009. In between on 11th August, 2009 the matter was taken up as the appellant filed an application on 25th July, 2009 seeking permission to exhibit the computer generated documents on record. On 26th August, 2009, the matter was adjourned to 5th November, 2009 for reply and arguments on the application. On the said date, the matter was adjourned to 13th November, 2009. The arguments were finally heard on 9th December, 2009, but the case was again adjourned to 2nd

January, 2010. On the said date, by a detailed order, the application was dismissed and it was noticed that the appellant had been adopting delaying tactics. It was noticed that the matter had been fixed several times for recording of evidence of the workman and the case was adjourned to 7th July, 2010.

8. On 7th July, 2010, the appellant was not present in person for cross-examination. The Labour Court noticed that the issues were framed way back on 31st October, 2005 and sufficient opportunities have been granted. It was further recorded that no justified reasons could be canvassed for non-appearance of the appellant. Accordingly, the evidence of the appellant workman was closed and the case was fixed for evidence of the management on 19th August, 2010. On 19th August, 2010, the appellant filed an application for recall/setting aside the order dated 7th July, 2010. It was stated in the application that “due to unavoidable circumstances, evidence of the appellant could not be produced on 7th July, 2010”. On the said date, as no witness of the management was present, the entire proceedings were closed and the Labour Court, thereafter, proceeded and has adjudicated the claim on

merits on the basis of the available material. In paragraph 11 of the order dated 11th August, 2006, the Labour Court observed as under:-

“11. The respondent/management at the very outset has raised an objection that the claimant does not fall within the category of workman as is defined under Section 2(s) of the Industrial Disputes Act, 1947 and therefore, the provisions of Industrial Disputes Act, 1947 are not applicable in the case of claimant. There appears to be a considerable substance and force in the contention of the management, in as much as, claimant admittedly was appointed as Deputy Management (Administration) by the management, and during the relevant period i.e. w.e.f. 1.4.2000, he admittedly was working against the post of Manager (Administration). Further, the salary drawn by the claimant, admittedly was to the tune of Rs.27,060/- per month, besides being other benefits. It is also not disputed as is evident from the pleadings of the parties on record, that the claimant possessed high qualifications like M.A. in Public Administration, Diploma in office Organization and LL.B. degree. All these qualifications were mentioned by the claimant at the time of his entry into the service of the management. The appointment letter which has been placed on record by the claimant himself, nowhere indicate that he was to work merely as a clerk. In any case, by any stretch of imagination it cannot be made to appear that the claimant was working as a workman with the management.”

9. Learned counsel for the appellant has submitted that some adjournments were taken by the management and twice costs of Rs. 500 were imposed on them. This is no doubt true as is apparent from the facts detailed above. However this is one part of the story. What is also apparent is the repeated and large number of adjournments which have been taken by the appellant or on his behalf. The issues, as noticed above, were framed on 31st October, 2005. Thereafter, on 6 dates, the appellant took adjournments i.e. 31st January, 2006, 13th March, 2006, 20th May, 2006, 7th August, 2006, 19th October, 2006 and 11th December, 2006. On the next date of hearing i.e. 1st February, 2007, appellant filed two applications which were disposed of on 11th May, 2007, one of the applications was dismissed. One of the witnesses of the appellant was cross-examined on 17th May, 2008. The appellant again moved another application for summoning of original documents. On 6th April, 2009, the appellant again prayed for some time to segregate the documents and on his request the case was adjourned to 26th August, 2009. In between on 25th July, 2009, the appellant moved an application which was dismissed on 2nd January, 2010 and the case

was adjourned to 7th July, 2010 for cross-examination of the appellant. On the said date again, the appellant was not present. Accordingly, the evidence of the appellant was closed.

10. The aforesaid facts show that for almost 5 years, the Labour Court could not have proceeded with the case although sufficient opportunities were granted. The above defaults and lapses on the part of the appellant are sufficient and establish that the appeal does not merit interference. The appellant cannot explain and wash away his default by claiming that on a few occasions the respondent was at fault. The case of the appellant has to be decided on the basis of his lapses and conduct. It will not be fair and in the interest of justice to ignore the defaults and delay on the part of the appellant as there were some lapses on the part of the management. Lapses on the part of the management is one aspect and once even costs were imposed on them. These lapses, however, do not show and have the effect of condoning the delay and laches on the part of the appellant, which have their own adverse consequences and result.

11. Accordingly, as we do not find any merit in the appeal, we are not inclined to issue notice on the application for condonation of delay. The application and consequently the appeal are dismissed.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

March 30th, 2011
KKB