

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

Date of decision: 27th April, 2011

+ W.P.(C) 2711/2011 & CM No.5762/2011 (for stay)

% GANDHI SMARAK NIDHI Petitioner
Through: Mr. Janin Zaveri, Adv.

Versus

S. CHANDRAN Respondent
Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the award dated 29th January, 2011 of the Industrial Adjudicator holding the punishment of compulsory retirement imposed by the petitioner on the respondent to be illegal and unjustified and directing the petitioner to reinstate the respondent with full back wages and continuity of service along with other consequential benefits from the

date of compulsory retirement till the date of superannuation.

2. The Industrial Adjudicator found the inquiry conducted by the petitioner to be contrary to the Rules of the petitioner qua the manner/procedure for conducting such inquiry and accordingly held the enquiry to be bad. The petitioner did not opt to prove the alleged misconduct before the Industrial Adjudicator and accordingly the award came to be made.

3. The counsel for the petitioner has at the outset contended that the provisions of the Industrial Disputes Act, 1947 are not applicable to the petitioner which is a Charitable Trust and the petitioner cannot be said to be an “industry” or industrial undertaking or establishment within the meaning of Section 2(j) or Section 2(ka) of the said Act.

4. However, the respondent, prior to raising the industrial dispute, had instituted a civil suit against the petitioner *inter alia* for declaration that the inquiry conducted by the petitioner was illegal and null and void. The petitioner contested the said suit and took a preliminary objection that the

civil suit was not maintainable as the dispute between the parties to the suit was an “industrial dispute”. On the said plea of the petitioner a preliminary issue was framed by the Civil Judge and which was vide judgment dated 25th November, 2005 decided in favour of the petitioner and the suit was held to be not maintainable owing to the dispute raised being an industrial dispute and the adjudication thereof having been provided for under the I.D. Act. It was thereafter that the industrial dispute was raised by the respondent and on which the award impugned in this writ petition came to be published.

5. It has as such been enquired from the counsel for the petitioner as to how the petitioner, after non-suiting the respondent on the plea of the Civil Court not having jurisdiction and the dispute being an industrial dispute and entertainable before the Industrial Adjudicator, can now be heard to contend to the contrary. It is a settled principle of law that a litigant cannot be permitted to blow hot and cold in the same breath to suit his purpose and to thereby leave the other party remediless and without any fora to vent its grievance.

6. The counsel for the petitioner has contended that the said plea was mistakenly taken before the Civil Court; that the suit filed was not maintainable for other reasons also and on which also preliminary issue was framed and for which reason also the suit was held to be not maintainable. It is thus contended that the rejection of the suit was not only on the ground of the said plea of the petitioner.

7. I am unable to accept the aforesaid explanation. The fact remains that the petitioner in the civil suit took a diametrically opposite stand to what is being contended before this Court. The same cannot be permitted. Merely because other grounds as to the maintainability were also taken, would not make any difference.

8. The counsel for the petitioner has next contended that the aforesaid question is a pure question of law and is likely to affect/prejudice the petitioner elsewhere also if allowed to stand. I do not see as to how the petitioner can be affected. In any event the apprehensions of the petitioner can be allayed by observing that the dismissal of the writ petition would

not tantamount to create a precedent on the said question and in an appropriate case it would be open to the petitioner to take the said plea.

9. As far as the challenge to the award on merits is concerned, the Industrial Adjudicator has *inter alia* held that Rule 8 of Chapter 14 of the Service Rules of the petitioner provide for the record of the inquiry to *inter alia* comprise of the oral evidence taken in the course of inquiry. In the present case admittedly no oral evidence was taken by the Inquiry Officer. The plea of the petitioner was that the occasion for oral evidence did not arise owing to the respondent having admitted the charge. The Industrial Adjudicator did not find so and from the reply of the respondent to the charge sheet found the respondent to have contested the charges levelled against him.

10. The counsel for the petitioner before this Court has again contended that in view of the admissions of the respondent before the Inquiry Officer, the question of Inquiry Officer recording oral evidence did not arise and thus the inquiry cannot be said to be violative of the Rules. He has painstakingly taken me through the charge sheet and reply of the

respondent thereto.

11. I am unable to hold the view taken by the Industrial Adjudicator perverse or without any basis. The respondent was charged with having sent a five page cyclostyled letter to the trustees of the petitioner and to the members of the Execution Committee of the petitioner and certain other persons. It is contended that the respondent in the reply admitted sending the said letter. However, in my opinion, the said admission would not obviate the need for inquiry. The charge was of having made baseless, incorrect and defamatory allegations in the said letter and which was denied by the respondent. The Inquiry Officer was thus required to not only inquire into whether the letter had been sent or not but also as to whether the contents of the letter were baseless, incorrect and defamatory and whether such actions constitute a misconduct and all of which has not been done by recording evidence as required under the Rules. No error is thus found in the findings of the Industrial Adjudicator.

12. Though the charge sheet contains other charges also but the same relate to a time much prior to the date of the charge sheet as observed by

the Industrial Adjudicator also and the main charge appears to have been only of sending the letter dated 30th March, 1999 as rightly held by the Industrial Adjudicator.

13. I am pained to see the Gandhi Smarak Nidhi acting as an ordinary litigant. No effort appears to have been made at any stage to resolve the matter amicably. Even by filing the present writ petition, the matter is sought to be kept pending and in which case the petitioner would be required to pay Section 17B wages under the I.D. Act also to the respondent, thereby causing further prejudice to the petitioner. Nobody appears to have applied his mind as to whether the matter should be litigated or not. No attempt was made to prove the alleged misconduct before the Industrial Adjudicator also. The litigation is being carried on for the sake of litigation.

14. There is no merit in the writ petition; the same is dismissed *in limine*, however with the observations aforesaid and leaving the question whether the provisions of the Industrial Disputes Act apply to the petitioner or not for adjudication in an appropriate matter.

15. The counsel for the petitioner has also argued that the award of back wages for eleven years is not justified. However, considering that the respondent was employed with the petitioner since the year 1971 and initially for cleaning utensils, no case for interfering with the said part of the award also is made out.

No order as to costs.

CM No.5763/2011 (for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 27, 2011

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