

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

Date of decision: 9th May, 2011

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W.P.(C) 3086/2011

J K TYRE & INDUSTRIES LTD

..... Petitioner

Through: Mr. Siddharth Dias, Advocate

Versus

SECRETARY (LABOUR) & ANR

..... Respondents

Through: Ms. Purnima Maheshwari, Adv. for
Mr. D.K. Singh, Adv. for R-1.

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 petition impugns the award dated 29th May, 2010 of the

Industrial Adjudicator on the following reference:

“Whether dismissal of Shri Vinod Kumar Sharma is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

2. The Industrial Adjudicator first, vide order dated 16th April, 2010 held that the inquiry conducted by the petitioner employer preceding the dismissal of the respondent workman had complied with the principles of natural justice and was thus not vitiated. Thereafter, the Industrial Adjudicator pronounced the award dated 29th May, 2010 on the proportionality of punishment of dismissal to the misconduct with which the respondent workman was charged.

3. The respondent workman was charged with the following misconduct:

- “a) You have by agreeing to the enhancement of the weight of consignment from 460 Kg. to 650 Kg. and the consequent enhanced freight charges, tried to cause wrongful loss to the Company and wrongful gain to M/s Trans World Express.*
- b) You have by booking the three consignments by air in willful disobedience and disregard of the written directions, tried to cause wrongful loss to the Company.*
- c) You have by verifying the Invoice / Cash Bill No.16 of M/s Trans World Express tried to cause wrongful loss to the Company and wrongful gain to M/s Trans World Express.*

d) *You have colluded and conspired with M/s Trans World Express with the object of obtaining wrongful gain to yourself.”*

4. The Industrial Adjudicator has held that the charge, of the respondent workman having caused financial loss to the petitioner employer, had been made out. It was further held that if the general rules / principles of punishment in such cases are followed, the punishment imposed could not be said to be disproportionate to the misconduct. Nevertheless, the Industrial Adjudicator awarded compensation of ₹2,50,000/- to the respondent workman for the reason that the petitioner employer had not framed any rules describing the categories of misconduct as minor or major and the punishment to be imposed with respect thereto. It was held that had the petitioner employer framed rules defining misconduct, categories thereof and the punishment therefor, the respondent workman would have known the consequences of his acts / omissions. It was further held that the conduct of the petitioner employer of not having its own rules defining misconduct and punishment, the discretion left with the petitioner employer in awarding the punishment is an absolute one and

owing whereto *mala fide* exercise of discretion could not be ruled out. In the circumstances, directions have also been issued to the petitioner employer to frame its own rules.

5. With respect to the compensation awarded of ₹2,50,000/-, it may be mentioned that earlier an *ex parte* award had been passed against the petitioner employer. The petitioner employer had earlier filed W.P.(C) No.878/2006 challenging the same and which was allowed by this Court on 6th May, 2008 on the condition that the petitioner employer pays to the respondent workman two years last drawn wages for causing delay. A sum of ₹1,14,672/- was then paid by the petitioner employer to the respondent workman. The Industrial Adjudicator has allowed the said sum of ₹1,14,672/- to be adjusted out of the compensation awarded and thus all that the petitioner employer is now required to pay under the award of the Industrial Adjudicator is the balance sum of ₹1,35,328/-.

6. The counsel for the petitioner employer has urged that the Industrial Adjudicator has wrongly presumed that the petitioner employer was required to have any rules. It is contended that the petitioner is registered under the Delhi Shops and Establishments Act, 1954 and under Section 30 thereof, is entitled to terminate the employment with one month's notice or on account of misconduct. Attention is next invited to Rule 13 of the Delhi Shops & Establishments Rules, 1954 laying down the "acts and omissions constituting misconduct" including on the ground of willful insubordination or disobedience, theft, fraud, misappropriation or dishonesty in connection with the employer's business or property. It is contended that the same constitute misconduct for which the employment can be terminated and any other misconduct would be a minor misconduct for which the employment cannot be terminated. The counsel further states that he has been instructed that in fact rules also exists though the same are not readily available today. He also contends that the Industrial Adjudicator having found in favour of the petitioner employer on the aspect of the validity of the enquiry as well as on the aspect of proportionality of punishment, ought not to have burdened the petitioner

employer with compensation, and that too in the sum of ₹2,50,000/-. It is contended that at best, compensation ought to have been limited to ₹1,14,672/- already paid.

7. I am not inclined to entertain the writ petition for the following reasons:

- (a) It was the case of the respondent workman that he had consigned the goods by air on the instructions of the General Manager. The Bill / Voucher for payment prepared by the respondent workman was also counter signed by the General Manager under whose supervision the respondent workman was working. The very fact that the General Manager also counter signed the payment shows that the same was with the approval of the General Manager. In fact the bills / vouchers were sent to the accounts department by the General Manager for getting the cheque prepared and were rejected in the accounts department. The counsel for the petitioner employer however states that the General Manager was only required to

counter sign. The General Manager is expected to counter sign the bill / voucher only on satisfying himself with respect to the same and the said fact does certainly show that there was some truth in the version of the respondent workman of his having acted under instructions of the General Manager. The counsel for the petitioner employer on enquiry states that he is not aware as to whether any proceedings were taken against the General Manager or not.

- (b) The writ petition has been filed after one year of the award, only when the respondent workman had initiated proceedings for implementation of the award and when notice thereof was received by the petitioner employer.
- (c) The sum of ₹1,14,672/- was the entitlement of the respondent workman under the order in the earlier writ petition and was not refundable on the award being in favour of the petitioner employer. Thus effectively what the Industrial Adjudicator has awarded as compensation is only the sum of ₹1,35,328/-. Considering the quantum involved, it is not deemed proper to

entertain the petition. It is the settled position in law that (see *Chandra Singh Vs. State of Rajasthan* (2003) 6 SCC 545 and *ONGC Ltd. Vs. Sendhabhai Vastram Patel* (2005) 6 SCC 454) even if an error / mistake is found, this Court is not bound to entertain the petition under Article 226 of the Constitution of India, if in the entirety of the facts, does not deem appropriate. It cannot be lost sight of that this Court is having a large number of pending cases where employees inspite of directions of Industrial Adjudicator of reinstatement are not being reinstated owing to the pendency of the writ petitions in this Court. The said factor is found sufficient for this Court to refuse to entertain this petition.

8. As far as the arguments raised by the counsel for the petitioner employer with respect to the Delhi Shops and Establishments Act, 1954 are concerned, it is felt that the directions issued by the Industrial Adjudicator to the petitioner employer are in any case beyond the reference and which the Industrial Adjudicator was not empowered to issue. It is therefore

clarified that the petitioner employer is not required to act in terms of the said direction for framing the rules. The other arguments raised by the counsel for the petitioner employer are left open for adjudication in a proper case and it is clarified that the dismissal of this writ petition shall not constitute a precedent on the said aspect.

The writ petition is accordingly disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 09, 2011
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