

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

Date of decision: 16th August, 2011

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W.P.(C) 12281/2009

SH. KEWAL KISHORE ARORA

..... Petitioner

Through: Petitioner in person.

versus

M/S. RAJIV MOTORS PVT. LTD. & ANR.

..... Respondents

Through: Mr. S.P. Gautam, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary.
2. To be referred to the reporter or not? Not necessary.
3. Whether the judgment should be reported in the Digest? Not necessary.

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman impugns the award dated 4th October, 2008

of the Industrial Adjudicator on the following reference:-

“Whether the termination of services of Sh. Kewal Kishore Arora is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

and holding that the respondent employer had conducted a valid and proper enquiry in accordance with the principles of natural justice and the punishment of dismissal from service meted out to the petitioner workman was justified and the petitioner workman was thus not entitled to any relief.

2. Notice of the petition was issued. The record of the Industrial Adjudicator has been received and pleadings have been completed. The petitioner workman appearing in person and the counsel for the respondent employer have been heard.

3. The Industrial Adjudicator has in the award noticed that the following issues were framed in the proceedings before the Industrial Adjudicator on 21st December, 1989:-

- “(i) Whether there is no industrial dispute between the parties?”*
- “(ii) Whether the applicant is not a workman within the definition of Section 2(s) of the I.D. Act?”*
- “(iii) As per terms of reference.”*

and subsequently on 27th November, 1991 the following additional issues were framed:-

- “(iv) Whether a valid and proper inquiry was held in accordance with the principles of natural justice?”*
- “(v) Whether the reference is bad for reasons as stated*

in para 2 of preliminary objections?”

4. The Industrial Adjudicator has in the award also noticed that the issue of inquiry was treated as a preliminary issue and the case fixed for evidence thereon and vide order dated 23rd May, 2002 the inquiry conducted by the respondent employer into the charges against the petitioner workman was held to be not in accordance with the principles of natural justice and hence vitiated. The Industrial Adjudicator further notices in the award that vide subsequent order dated 6th May, 2003 the respondent employer was permitted to amend its written statement to seek permission to prove the charges against the petitioner workman before the Industrial Adjudicator and which application was allowed on 6th May, 2003 and whereafter evidence was led by the respondent employer to prove the charges.

5. The Industrial Adjudicator however inspite of holding so, in the award again took up the issue no.(iv) aforesaid as to the inquiry and has concluded in para 26 of the award that a valid and proper inquiry was held against the petitioner workman in accordance with the principles of natural

justice. Having held so, the Industrial Adjudicator proceeded to determine whether the quantum of punishment was proportionate to the charge found to have been made out against the petitioner workman in inquiry and having held it to be, so denied any relief to the petitioner workman.

6. The aforesaid would show a perversity in the award. The Industrial Adjudicator could not have in the award dated 4th October, 2008 decided the issue of validity of the inquiry again after the same had been decided vide order dated 23rd May, 2002. Rather, the Industrial Adjudicator has under issue no. (iii) aforesaid failed to address whether the charge against the petitioner workman stood proved or not. There is no finding whatsoever on the said aspect in the award of the Industrial Adjudicator. This is found to be a grave error in procedure committed by the Industrial Adjudicator concerned. The same shows a total non-application of mind and is reflective of the Industrial Adjudicator having dealt with the matter in a casual and cavalier manner without being seized of the same. The Registrar General of this Court to have a copy of this judgment along with a copy of the award dated 4th October, 2008 placed before the Committee of Judges to write the Annual Appraisal Report of the concerned Industrial

Adjudicator for consideration thereof by the said Committee while appraising the work of the Industrial Adjudicator.

7. The petitioner workman appearing in person also did not highlight the said aspect during the hearing. The counsel for the respondent employer also did not invite attention to the same. The petitioner workman only argued that suspension allowance had not been paid to him. The counsel for the respondent employer highlighted that the petitioner workman after termination of his services in 1985 from the respondent employer had joined M/s Aiyer & Co. in the year 1992 and attained superannuation therefrom in the year 2000 and had also filed industrial disputes against M/s Aiyer & Co. without disclosing the industrial dispute against the respondent employer. He has urged that the petitioner workman is a compulsive/habitual litigant and is not entitled to any relief. The petitioner workman on the contrary contended that even though he had attained the age of superannuation but if his termination by the respondent employer is found to be illegal, he would be entitled to compensation.

8. I am of the opinion that no adverse view can be taken against the petitioner workman for, in the proceedings against M/s Aiyer & Co., not

disclosing the industrial dispute qua the respondent employer. The employment of the petitioner workman with M/s Aiyer & Co. was long after the termination of services with the respondent employer and the dispute of the petitioner workman with the respondent employer had no relevance whatsoever to the dispute against M/s Aiyer & Co. Moreover the dispute with M/s Aiyer & Co. is stated to have been amicably settled.

9. It thus remains to be adjudicated as to whether the respondent employer on the basis of the evidence on record of the Industrial Adjudicator has proved the charge for which the petitioner workman was dismissed from services. Though the record of the Industrial Adjudicator is before this Court and the dispute is old, of the year 1985 and I am tempted to adjudicate the same on the basis of the records which have been perused but opportunity for addressing arguments thereon having not been given, it is deemed expedient to remand the matter to Industrial Adjudicator for hearing arguments on the aforesaid aspect and for decision thereon.

10. The petition accordingly succeeds. The award dated 4th October, 2008 of the Industrial Adjudicator is set aside and the matter remanded to the Industrial Adjudicator for hearing arguments on the basis of the

existing records and to pass an award afresh in accordance with law. The records of the Industrial Adjudicator be returned forthwith and the parties to appear before the Industrial Adjudicator concerned on 20th September, 2011. The Industrial Adjudicator is requested to endeavour to dispose of the matter on or before 31st December, 2011. The respondent employer to also pay costs of these proceedings of ₹15,000/- to the petitioner workman before the Industrial Adjudicator.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 16 , 2011
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