

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

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Date of decision : July 06, 2015

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LPA 412/2015

V G JAGDISHAN

..... Appellant

Represented by: Mr.Vinay Sabharwal and
Ms.Neha Sabharwal,
Advocates.

versus

M/S INDOFOS INDUSTRIES LIMITED & ANR Respondents

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

LPA 412/2015

1. Services of V.G.Jagdishan employed as a driver on December 02, 1983 were terminated w.e.f May 23, 1996. Since the head office of the Management was at Delhi, V.G.Jagdishan sent a demand notice and thereafter filed a claim before the Conciliation Officer at Delhi. In the conciliation proceedings, though retrenchment compensation of ₹22,175/- plus one month notice pay of ₹3,203/- was offered however, he refused to accept the same and the said amount was sent through cheque by registered post.

2. It is the case of V.G.Jagdishan that since the Management had sold off its vehicle and offered alternative jobs to him on lower scale he made

written representation vide letter dated May 13, 1996 to the Deputy Labour Commissioner, Ghaziabad pursuant where to the Labour Inspector, Ghaziabad inspected the factory on May 20, 1996 and whereafter his services were terminated on May 23, 1996.

3. Before the Secretary, Labour Commissioner, Delhi, the Management pointed out that V.G.Jagdishan raised the same disputes as he had already raised before the Deputy Labour Commissioner, Ghaziabad however, the Secretary, Labour continued dealing with the claim of V.G.Jagdishan and sent a reference to the Labour Court. Before the Labour Court, the Management took a preliminary objection that it had no territorial jurisdiction since the workman was appointed at Ghaziabad, was working in the factory of the Management at Ghaziabad and his services were also retrenched at Ghaziabad. The Labour Court vide Award dated April 18, 2006 held that merely because the Corporate Office of the Management was at Delhi the same will not vest the Labour Court with the territorial jurisdiction and held that since substantial cause of action arose at Ghaziabad, the Court at Ghaziabad alone had the jurisdiction to try the case.

4. Aggrieved by the award dated April 18, 2006 V.G.Jagdishan preferred the W.P.(C) No.9452/2006 before this Court which was dismissed by the learned Single Judge vide the impugned order dated April 09, 2015. Hence the present appeal.

5. Relying upon the decisions in 2008 (3) SCC 456 Eastern Coalfields Ltd.and others vs. Kalyan Banerjee, ILR (1976) I Delhi 688 Associated Traders and Engineers vs. Additional Industrial Tribunal and others and 1962 (1) LLJ 409 Indian Cable Co.Ltd. and Its Workmen, it is contended that twin test to determine the jurisdiction of the Labour Court is if the

parties reside within the jurisdiction or if the subject matter of the dispute substantially arose within the jurisdiction. It is contended that since the dispute arose only after the workman gave the notice and no conciliation could take place which happened at Delhi thus substantial cause of action arose at Delhi and the Labour Court at Delhi had the jurisdiction to entertain the reference.

6. The learned Single Judge vide the impugned order noted that as per Section 2(k) of the Industrial Disputes Act, the Union could espouse the cause of substantive number of employees which could be done where the Management's Headquarter is situated however, after the amendment in the Industrial Disputes Act with the insertion of Section 2A an individual dispute relating to discharge, dismissal, retrenchment or otherwise termination of service of an individual workman is deemed to be an industrial dispute. Thus where the trade union is espousing the cause of number of workmen the same can be done in a Court where the Head Office/Registered Office of the Management is situated however, in the present case the issue relates to the termination of services of one workman who was admittedly appointed at Ghaziabad, working at Ghaziabad and was removed from the service at Ghaziabad. Thus the decision reported in Associated Traders and Engineers (Supra) had no application to the facts of the present case. The learned Single Judge also noted that this Court in Associated Traders and Engineers (supra) held that the situs of action and inaction by itself is not sufficient to confer jurisdiction and it is the situs of the dispute which confer jurisdiction and that location of head office or the registered office of the company may not be sufficient for concluding that the State Government where head office or registered office is located has

the jurisdiction.

7. In Indian Cable Company Ltd.(supra) relied upon by the learned counsel for the Appellant, the Constitution Bench of the Supreme Court was dealing with the dispute raised by six out of eleven workmen, which was to be held to be an industrial dispute, however, it was held that a dispute between the employer and a single workman is not an industrial dispute. It could not be urged that a dispute ceases to be an individual dispute and becomes an industrial dispute when more than one workman joins in it. It is true that in the various decisions on this point, the dispute was raised by single workman. But the reason on which these decisions rest, viz., that the policy behind the Industrial Disputes Act is to protect workmen as a class against unfair labour practices and not to enact special provisions for enforcing the claims of individual workman. What imparts to the disputes of a workman the character of industrial dispute is that it affects the rights of the workmen as a class. That is why the decisions on this point lay down that the dispute of a single workman would become an industrial dispute when it is sponsored by a union or by a considerable number of workmen, for it can then be taken that it does affect them as a class. No hard and fast rule can be laid down as to the number of workmen whose association will convert an individual dispute into an industrial dispute. That must depend on the facts of each case and the nature of the dispute.

8. The decision in Indian Cable Co.(supra) was rendered before the insertion of Section 2A to the Industrial Disputes Act w.e.f December 01, 1985 which treats an individual workman's discharge, dismissal, retrenchment or otherwise termination of services as an industrial dispute.

9. The issue in the present case is fully covered by the decision of the

Supreme Court reported in Eastern Coalfields Ltd. (supra) wherein the workman was employed with Eastern Coalfields Limited in Mugma area in the district of Dhanbad, Jharkhand. His services were terminated at Mugma however, workman filed a writ petition before the Calcutta High Court. On a preliminary objection taken the Calcutta High Court held that since the workman was serving at Mugma area under the General Manager of the area which is the State of Jharkhand, the Calcutta High Court had no jurisdiction. The Supreme Court affirming the decision of the Calcutta High Court held that entire cause of action arose in Mugma area within the State of Jharkhand and only because the head office of the company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court particularly when the head office had nothing to do with the order of punishment passed against the workman.

10. Even in the present case, it is not the case of the Appellant that the order of termination was passed by the head office. His only contention is that since the demand notice was sent by him at the head office at Delhi and having declined to accept the demand of the Appellant at Delhi, the dispute arose giving rise to substantial cause of action, hence the Labour Court at Delhi had the jurisdiction to try the case. The fact that V.G.Jagdishan was employed at Ghaziabad, was working at Ghaziabad and his services were terminated at Ghaziabad is not disputed. Hence in view of the decision of the Supreme Court in Eastern Coalfield Ltd.(supra), the impugned order passed by the learned Single Judge suffers from no illegality.

11. Appeal is consequently dismissed.

CM No.11486/2015 (Interim relief)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**JULY 06, 2015
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