

(1988) 04 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 3100 of 1987

Bannett Coleman and Co. Ltd.

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 04-04-1988

Acts Referred:

Citation : (1988) 35 DLT 101 : (1988) 15 DRJ 1 : (1988) RLR 322

Hon'ble Judges : S.B. Wad, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : G.B. Rai, S.K. Gupta, N.B. Shetty and R.K. Agarwal, for the Appellant;

Judgement

N.N. Goswamy, J.

(1) This petition under Article 226 of the Constitution of India by the management is directed against the order dated 8-10-1987 passed by the Labour Court whereby the application of the management requesting for adducing additional evidence if domestic inquiry is found to be vitiated, was dismissed. The application was dismissed on the ground that either the plea for additional evidence should have been taken in the written statement or an Explanation for delay should have been furnished in the application itself and in the absence of the same, no permission could be granted.

(2) The industrial dispute having arisen between the respondent- workman and the petitioner-management, the same was referred to the Labour Court by Delhi Administration on 13-6-1983. The statement of claim was filed by the workman on 26-7-1983. The management filed its written statement on 8-9-1983. Rejoinder was filed on 23-9-1983. Thereafter the documents were filed and the issue in terms of the reference was framed on 3-11-1983 and the matter was adjourned to 20-1-1984 for evidence. However, on that date the management did not produce any evidence and the case was adjourned for evidence of the management to 18-4-1984. On that date i.e. on 18-4-1984 the management

moved the application requesting for adducing additional evidence, if domestic inquiry is set aside. The application, however, remained pending and the Labour Court took up the question of validity and the domestic inquiry as a preliminary issue.

(3) By order dated 2-9-1986, the Labour Court set aside the inquiry on technical grounds, inter alia, by observing that the inquiry officer was biased. Thereafter the concerned workman filed his reply to the application of the management for adducing additional evidence and the management filed its rejoinder. The Labour Court heard the arguments and referred to the various decisions on the subject and came to the conclusion that it was not open to the management to adduce additional evidence when no such plea has been taken in the written statement and no Explanation for the delay in filing the application was furnished in the application itself. Consequently, the application was dismissed. The Labour Court has mainly relied on the observations of their lordships of the Supreme Court in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others, .

(4) The contention of the learned counsel for the petitioner before us was that the application having been filed at the appropriate stage and without any unnecessary delay, the Labour Court was under an obligation to grant the same. Reliance was placed on Delhi Cloth & General Mills v. Ludh Budh Singh, 1972 (1) Lj 180 In that case, the case of the workman was that the departmental inquiry against him was vitiated while the management stood by the departmental inquiry. The parties did not lead any evidence and the matter was considered on the basis of the inquiry report itself. After hearing the arguments, the Labour Court had reserved its judgment. Thereafter before the judgment was pronounced, the management filed an application and stated therein that in case the inquiry was found to be vitiated, the management should be permitted to adduce additional evidence before the Tribunal. Without considering the said application, the Labour Court held that the inquiry was vitiated and reinstated the workman. The grievance was made before the Supreme Court that though the management asked for an opportunity to lead evidence, the opportunity was denied to them and thereby they were prejudiced. The Supreme Court held that the management had the right to file such an application during the course of the proceedings before the Tribunal and if such an application was filed, the Tribunal was bound to give an opportunity to the management to lead evidence to prove the charge. Reliance was also placed on the case of Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, . In that case the High Court had held that after the industrial tribunal adjudicated upon the preliminary issue whether the inquiry was in accordance with the principles of natural justice and having held against the company it was incumbent upon the Industrial Tribunal to give an opportunity to the employer to lead evidence to prove the charges alleged against the workman, in spite of the fact that the employer had never asked for any such opportunity during the course of the proceedings. The Supreme Court, while setting aside the judgment of the High Court, observed :-

"IT is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding, the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo moto to call upon the employer to adduce additional evidence to substantiate the charges."

(5) The learned counsel for the petitioner also relied upon the latest judgment of their lordships in *Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another*. In that case, the services of the workman were terminated but since an industrial dispute was pending an application was filed by the management u/s 33(2)(b) of the Industrial Disputes Act for seeking approval of the Labour Court. The Labour Court held the inquiry to be invalid but granted opportunity to the management to adduce evidence to justify the order of dismissal. It was found that no such request by the management for adducing additional evidence was either made in the petition u/s 33(2)(b) of the Act or by a separate application but an oral request to that extent was made during the course of the proceedings. The Supreme Court cited with approval the case of *Delhi Cloth & General Mills* as also *Shanker Chakarvarty* referred to above to the effect that in proceedings on a reference u/s 10 or by way of an application u/s 33 of the Industrial Disputes Act in cases in which a domestic inquiry has been held it is open to the employer to rely upon it in the first instance and alternatively and without prejudice but its plea that the inquiry was proper simultaneously adducing additional evidence before the Tribunal justifying its action, the employer must avail of the opportunity to lead evidence by making a suitable request before the proceedings are closed.

(6) The learned counsel for the respondent-workman placed his reliance on *Shambhu Nath Goyal Vs. Bank of Baroda and Others*. In that case Veradarajan, J. speaking for the Court, held, as under:-

"WE think that application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage is the application which may be filed by the management during the pendency of its application made before the Labour Court or the Industrial Tribunal seeking its permission u/s 33 of the Industrial Dispute Act 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic inquiry by the written statement of the defense filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right, it must make up its mind at the

earlier stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic inquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman for the defect in the domestic inquiry is pointed out by the workman in his written claim statement filed in the Labour Court or the Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it filed its written statement of defense in the inquiry before the Labour Court or an Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage, it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking morale of the workman and compel him to surrender which he may not otherwise do."

(7) D.A. Desai, J. in his separate but concurring judgment observed :-

"THE statement that if an application is made during the pendency of the proceedings, does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claim relief it must plead for the same. The pleadings can be incorporated in a statement of claim or a written statement of defense. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleadings has to be granted. If a separate application is made it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action. Without being specific, it can be said that such an action has to be examined as if it is an application for amendment of the original pleadings keeping in view of the afore-mentioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the Explanation for the omission of claiming the relief in the initial pleadings is unconvincing the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same."

(8) It is true that the observations of Varadarajan, J. fully support the contention of the learned counsel for the respondent that in a dispute u/s 10 of the Act if the plea in the written statement for adducing additional evidence is not taken, the same cannot be taken at any later stage. However, we are faced with the difficulty of reconciling the earlier judgments referred to above and the latest judgment of their lordships of the Supreme Court in the case of Rajindra Jha (supra). In order to reconcile the judgments, we have taken into consideration the observations of D.A. Desai, J. in the case of Shambhu Nath Goel as his lordship was also a member of the Bench in the earlier case of Shanker Chakarvarty, which has been cited with approval in Rajindra Jha's case which is

the latest judgment on the subject. On giving our careful consideration to the entire case law referred to above, we are of the opinion that if the employer has taken the plea of adducing additional evidence in the written statement itself or has filed the application at the earliest stage, the Labour Court/Industrial Tribunal would be bound to grant the opportunity. However, if the application has been filed at a very late stage but during the pendency of the proceedings, the employer will have to satisfy the Labour Court/Industrial Tribunal for the delayed action and on consideration of the entire circumstances, it will be open to the Labour Court/Industrial Tribunal to decline the request. Needless to say that no such opportunity can be granted if the request is made after the conclusion of the proceedings as the same would be considered to be mala fide.

(9) Now applying the aforesaid principles to the facts of the present case, we find that the petitioner-employer had filed an application for permission to adduce additional evidence before the commencement of the evidence itself. The case was fixed for recording of evidence for 18-4-1984 and on the same date the application was filed. In the circumstances, the application could not be considered to have been filed at a late stage. The pleadings were completed on 23-9-1983 and thereafter only one date i.e. 20-1-1984 was fixed for evidence on which date no evidence was produced by the management and the case was adjourned for recording of evidence to 18-4-1984. Thus the application was filed at an initial stage of the proceedings and as such the Labour Court should have granted the opportunity to the petitioner for producing additional evidence to prove the charges. The Labour Court in the impugned order has attempted to distinguish Rajindra Jha's case on the ground that the same was u/s 33 and the requirement of Section 33 was different from the requirement of Section 10 of the Act where the employer has to file the written statement. He has over-looked the earlier decisions as also Rajindra Jha's decision wherein it has been noticed that as far as this requirement is concerned there is no difference between a reference u/s 10 of the Act and an application u/s 33 of the Act and the same have been considered to be at par.

(10) For the reasons recorded above, we make the rule absolute and quash the impugned order dated 8-10-1987 passed by the Labour Court. The petitioner will be entitled to lead his evidence to prove the charges against the respondent-workman, who will have the right of leading rebuttal evidence. Since the dispute has become rather old, it is desirable that the same is decided at the earliest by the Labour Court. The Labour Court is directed to publish the award within a period of six months from next date of hearing. The parties are directed to appear before the Labour Court on 18-4-1988. In the circumstances, we leave the parties to bear their own costs.