

(1991) 04 DEL CK 0079
In the Delhi High Court
Case No : C.W. No. 1265 of 1990

J.K. Industries Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (1991) 63 FLR 357 : (1994) 3 LLJ 621

Hon'ble Judges : Milap Chand Jain, C.J.; Arun Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.C, Jain C.J.

1. By this writ petition, the petitioner-management seeks to quash the order, dated 21 April 1989, whereby the petitioner's application, dated 6 September 1985, for holding fresh enquiry was dismissed and the order, dated 20 January 1990, whereby the petitioner's review petition in respect of the order, dated 21 April, 1989, was dismissed. The following dispute was referred for adjudication to the Labour Court by the Government.

"Whether the dismissal from service of Sri Mohd. Saleem Ansari is illegal and/or unjustified and if so, what directions are necessary in this respect?"

2. After necessary pleadings were submitted by the parties, four issues were framed. Issue (4) was a preliminary issue which was to the effect"

"Whether the domestic enquiry was unfair, improper and in violation of principles of natural justice ? If so, to what effect?"

3. Parties led evidence on the issue and evidence was completed and thereafter before finding on issue (4) was recorded, an application was moved by the management on 16 September 1985, praying therein that in the case issue (4) is found against the management, fresh enquiry may be held. Finding on issue (4)

was recorded by the Labour Court in favor of the workman. It was held that the enquiry was not fair and proper and so the enquiry was set aside. Later on, the petitioner's application was heard and dismissed on 21 April 1989 and thereafter, the review petition was also dismissed. The question that requires consideration in the present writ petition is, as to whether the Labour Court should have allowed the petitioner's application, dated 16 September 1985. It may be mentioned that the management expressed its intention before pronouncing of the verdict on issue (4) that enquiry may be conducted on the charges against the workman. It is true that such an intention or plea was not raised by the management in the first written statement filed on 5 January 1980, and after amendment of the statement of claim in the written statement filed therewith on 24 May 1983. Such a request was made only when evidence on preliminary issue was recorded by the Labour Court. It is also true that in the application, prayer for holding a fresh enquiry has been made and prayer for leading any additional evidence has not been made nor such a prayer has been made that the management may be allowed to substantiate the charge. Two questions arise for consideration, one at what stage the application has been made, and second the nature of the prayer made in the application. As regards the first, we may state that the management expressed its intention much before the pronouncement of the opinion by the Labour Court on the preliminary issue (4) and as such in our opinion, it cannot be said that the prayer was at a belated stage and should not have been acceded to on this ground. Even if the prayer would have been made at an earlier stage, still the management could lead the evidence only after recording the evidence on the preliminary issue as it was very likely that the preliminary issue might be decided in favor of the management. So, it cannot be said that the application filed by the management was a belated one. As regards the second question, as to the nature of the prayer made in the application, we may state that the management has prayed for holding a fresh enquiry, that would only mean that the management wants to substantiate the charge or charges leveled against the workman. So, making of such a prayer for holding of enquiry would be of no consequence as it would mean only that the management may be given an opportunity to adduce evidence so that the management may substantiate the charge or charges.

4. In our opinion, the Labour Court was not justified in rejecting the petitioner's application for leading evidence in order to substantiate the charge or charges. This writ petition, Therefore, deserves to be allowed. Accordingly, the writ petition is allowed. The orders, dated 21 April 1989 and 20 January 1990, are quashed and set aside. We direct the Labour Court to permit the petitioner-management to adduce evidence in order to substantiate the charge or charges and further opportunity be given to the workman to adduce evidence. Thereafter, award be given in accordance with law. The matter be finally disposed of by the Labour Court after recording fresh evidence within a period of four months.