

(2006) 12 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7414 of 2006

Krishna Kumar Sharma

APPELLANT

Vs

Judge, IT and LC and Another

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33A

Citation : (2007) 113 FLR 146 : (2007) 1 WLN 97

Hon'ble Judges : Mohammed Rafiq, J

Bench : Single Bench

Judgement

Mohammed Rafiq, J.—Challenge in this case has been posed to the order dated 15.09.06 passed by the Labour Court, Jodhpur whereby two applications submitted by the petitioner-workman respectively on 19.02.2004 and 13.01.2005 have been rejected. In those applications, the petitioner prayed for placing transcription of certain tape recorded conversation of the witnesses on record and for recalling those witnesses. These witnesses were examined before the Court during the proceedings u/s 33-A of the Industrial Disputes Act 1947. Learned Counsel argued that these witnesses in their conversation have admitted that they had earlier given affidavits under duress and coercion. In fact, affidavit of one of the witnesses namely Madharam has been filed with the writ petition in which he has given contrary evidence resiling from his earlier version. Learned Counsel for the petitioner therefore, argued that the Labour Court has committed serious error in not recalling those witnesses to be examined afresh According to him, recall and re-examination of those witnesses was necessary with a view to impeaching their credibility. He therefore argued that the impugned order be set aside and the applications above mentioned be allowed.

2. On the other hand, Mr. M.S. Singhvi, learned Counsel for the respondents-management argued that applications filed by the petitioners do not even contain basic details. In fact, those applications are intended to delay the proceedings. Applications do not contain particulars as to when so called conversation was

tape recorded inasmuch as the evidence of the management had been closed on 16.01.2003 but the first application has been filed after the closure of the evidence. Learned Counsel argued that the proceedings before the Labour Court are supposed to be conducted by summary procedure, therefore, are required to be completed expeditiously. Learned Counsel referred to Rule 10-B(7) of Industrial Disputes (Central) Rules which provides that on completion of evidence either arguments shall be heard immediately or a date shall be fixed for arguments which shall not be beyond a period of 15 days from the close of evidence. Re-examination of the witnesses at this stage would further delay the proceedings. Learned Counsel also relied upon the judgment reported in Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, wherein it was held that once a reference is validly made by appropriate government, Tribunal must adjudicate the dispute on merits. He also relied upon the judgment reported in D.P. Maheshwari Vs. Delhi Administration and Others, in D.P. Maheshwari v. Delhi Administration and Ors. in which case it was observed that the Tribunal should dispose of all the issues whether preliminary or otherwise at the same time.

3. He also relied upon the judgment reported in National Council for Cement and Building Materials Vs. State of Haryana and Others, wherein Hon'ble Supreme Court noted that management adopted old tactics of raising preliminary disputes and with a view to delay adjudication, got a preliminary issue framed as to whether its activities constituted an "industry". The Industrial Tribunal rightly decided to hear the same along with and not before the main issue. It was therefore argued that the writ petition may be dismissed.

4. I have carefully considered the arguments advanced by the learned Counsel and perused the material placed on record. Applications which have been submitted by the workmen have also been perused by me. While in the first application, a prayer has been made to place on record the transcription of the tape recorded conversation with its Hindi translation, in the second application, a specific prayer has been made to place on record affidavit of witness Madharam and that of the workman himself and also transcription of the tape recorded conversation of the witnesses of the management namely Om Prakash and Ashok Kumar. The Labour Court while rejecting the applications by order Annexure-7 observed that the scope of enquiry u/s 33-A was only limited to finding whether any change was made in the conditions of service of the petitioner during the pendency of the reference proceedings. This has to be primarily decided on the basis of documentary evidence, if at all the petitioner wanted to impeach the credibility of the witnesses, applications should have been timely filed. The Court also noted that in the applications the workman has not been able to point out as to whether the tape recorded conversation pertains to the period prior to cross examination of the witnesses and or thereafter. The time when the conversation was recorded would be a crucial factor to determine whether such talks took place prior to cross examination or thereafter because in any case cross examination takes place subsequent to the filing of the affidavits, It has not been disclosed in

the affidavit of Madharam as to how he was forced or coerced into giving false evidence earlier. Such documents and affidavits have rightly been refused to be taken on record. Even otherwise, subsequent affidavit of Madharam could have no meaning as he in his cross examination being pointedly asked, has categorically denied that he had deposed wrong facts and had given a false statement under pressure of the management. Although the observations made by the Hon'ble Supreme Court in all the aforesaid cases which learned Counsel for the management has relied emerged in the context of tactics adopted by the management to delay the conclusion of the proceedings but the observations are nonetheless relevant for the dispute like the present one. If what the petitioner is contending is accepted, there is apprehension that a situation may arise where every witness for that matter would be required to be recalled in evidence for fresh examination just because one or the other party has been able to persuade him to file a new affidavit stating contrary to what was stated by him in the earlier affidavit. Such a course would certainly defeat the purpose of making the proceedings before the Labour Court summary in nature and expeditious in disposal.

5. In view of what has been discussed above, I do not find any merit in this writ petition. The writ petition is therefore dismissed with no order as to costs.