
(1991) 05 DEL CK 0065

In the Delhi High Court

Case No : Civil Writ Appeal No. 1804 of 1988

Lipton India Ltd.

APPELLANT

Vs

Industrial Tribunal No. II and Another

RESPONDENT

Date of Decision : 14-05-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 9(A)

Citation : (1991) 45 DLT 452 : (1991) 63 FLR 347 : (1992) 2 LLJ 427

Hon'ble Judges : S.B. Wad, J; Mohd. Shamim, J

Bench : Division Bench

Advocate : Raj Birbal, for the Appellant;

Judgement

S.B. Wad, J.

(1) A reference was made by Delhi Administration to the Industrial Tribunal and Labour Court on 1.1.1985 regarding an industrial dispute between the parties. Reference reads-

" WHETHER the management is justified in discontinuing the basis of determination of the commission part of the wages of the Salesmen/ Divisional Salesmen of the Delhi Branch and if so, what directions necessary in this respect?"

(2) The workmen filed their claim. The management filed its written statement on 2.4.1986. The petitioner filed an application for amendment of the written statement. Through the impugned order the Industrial Tribunal rejected the application for amendment. It is this order which is challenged in this writ petition. The Tribunal has found that the application was belated, repetitive, argumentative, raising legal pleas and was malafide in certain respects.

(3) The petitioner company used to engage Workmen/Divisional Salesmen for sale of Tea produced by the company and certain commission was being paid to

the Salesmen .This was included into the wages payable to the workmen. Sometime in 1979 the company changed this scheme and introduced the system of the Stockists. Although the Stockists were introduced, according to the petitioner, the old arrangement of payment of commission through the Salesmen continued. The reference purports to refer to this change in the arrangement.

(4) The first amendment sought in the amendment application is that the term in the reference that the original practice was discontinued resulting into loss of wages to the workmen is erroneous. The second amendment sought is in relation to absence of any demand by the workmen which should form the basis of conciliation proceedings and then of the reference. It is then sought to be urged in the amendment application that through two settlements workers had agreed not to raise any difference or grievance in terms of their wages. Therefore, the reference was bad. It is then pointed out that the demand of the workmen in the statement of claim is vague as it does not refer to any point of time when the change was brought out. Another amendment sought is to clarify the position in regard to application of Section 9(A) of the Industrial Disputes Act and the submission there to is that Section 9(A) had been substantially complied with. It is then brought on record that in other establishments, namely, Nagpur, Ahmedabad, Bombay, Calcutta and Madrai no such claim or dispute had been raised by the workmen. It is also submitted in the application for amendment that delegation powers to the Secretary(Labor ,Delhi Administration, Delhi is not valid in law.

(5) Having gone through the proposed amendment application we do not find that they are either frivolous or in the nature of surprise to the workmen concerned. They do not amount to withdrawal of any admissions made by the management earlier. The amendment application was made even before the evidence of the workmen was started. In that sense application is not belated application. It is true that part of the amendment application is really repetitive and argumentative and in some parts legal submissions are elaborated but this does not make the amendment application bad in law or malafide. The Industrial Tribunal had acted contrary to the well known principles of law in regard to the amendment of the pleadings. The impugned order is set aside and the amendment application is allowed. The matter is remanded back to the Industrial Tribunal for further proceedings in the light of the observations made above. The writ petition is allowed. No. order as to costs. Rule is made absolute.