

(2006) 04 DEL CK 0077

In the Delhi High Court

Case No : Civil Misc. (Main) No. 1328 of 2004 and Civil Misc. Application No. 12599 of 2004

National Insurance Company Ltd.

APPELLANT

Vs

Sanjeev Kumar Gupta

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2006) 130 DLT 686 : (2006) 110 FLR 912 : (2006) 144 PLR 10

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Rajendra Dhawan and Shafali Dhawan, for the Appellant; Babita Puniya, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—CM(M) 1328/2004 is directed against the order dated 18.08.2004 of the Central Government Industrial Tribunal whereby the Tribunal has on an application for amendment of written statement declined the amendment on the ground that the same has been filed with inordinate delay of nearly five years which has also not been explained.

2. It is contended by counsel for the petitioner that although the law on the subject is that the management is at liberty to incorporate in the written statement and that in the event the enquiry is held to be bad they should be given permission to substantiate their claim by leading further evidence but in the event no application has been moved soon after filing of the written statement or incorporating the written statement there is no bar for the management seeking amendment of the written statement and thereby incorporate the necessary amendment at any stage, provided it shows sufficient cause for delay in doing so. He relies upon a judgment in Shambhu Nath Goyal Vs. Bank of Baroda and Others, .

3. Counsel for the respondent contends that the law on the subject is very clear. She submits that on a reference, u/s 10 of the Industrial Disputes Act, it is incumbent on the management to take up a plea of leading evidence at the time of filing their written statement. They are not permitted to take up this plea at a later stage and certainly by way of an amendment they cannot have a back door entry. She also relies upon judgments of the Supreme Court in Shambhu Nath Goel's case (supra) as also in Karnataka State Road Transport Corporation v. Smt Lakshmi-devamma JT 2001 (Supp.1) SC 461.

4. I have heard counsel for the parties and have gone through the order under challenge as also the judgments referred to by counsel for the parties. From a perusal of the judgment in Shambhu Nath Goel's case (supra), it is evident that the majority judgments delivered by His Lordships, Mr. Justice Vardarajan as he then was has summed up the case as under:-

Then, if the management chooses to exercise its right it must make up its mind at the earliest 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 enquiry 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 enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defense in the enquiry before the Labour Court or 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 the morale of the workman and compel him to surrender which he may not otherwise do.

5. The aforesaid law laid down further stands approved by a Constitution Bench judgment of the Supreme Court in Karnataka State Road Transport Corporation v. Smt Lakshmi-devamma JT 2001 (Supp) 1 SC 461 wherein in paragraph 17, 18 and 19 Justice Santosh Hegde writing for the majority has affirmed the statement of law in Shambhu Nath Goel's Case as has been referred to above.

...17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal's case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other

evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal Court could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal's case, is just and fair.

18. There is no other reason why we should accept the procedure laid down by this court in Shambhu Nath Goyal's case. It is to be noted that this judgment was delivered on 27th of September, 1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others, is the correct law on the point.

6. In view of the law laid down by the Supreme Court, I find that there is no ambiguity and that the management cannot even by way of an amendment do what it could not do by way of an application subsequent to filing of a written statement. Therefore, if the management has not chosen to opt for leading evidence in support of the charge at the stage of filing of the written statement or soon thereafter it cannot do so by way of an amendment.

7. CM(M) 1328/2004 is dismissed. CM.APPL.12599/2004 also stands dismissed.