

(2007) 10 DEL CK 0267

In the Delhi High Court

Case No : Writ Petition (C) No. 16934 of 2005 and C.M. No. 10881 of 2005

Pik-up Ignition Switches Pvt. Ltd.

APPELLANT

Vs

Office of Labour Commissioner and Another

RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 116 FLR 277 : (2008) 1 LLJ 757 : (2009) 2 SLR 319

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Nishit Kush, for the Appellant; Sanjeev Sahay and Aanchal Mullick, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The petitioner has impugned an ex parte award dated July 19,2004 passed by the Labour Court in I.D. No. 113/2002 mainly on the ground that the petitioner herein is not the management referred to in the order of reference passed by the appropriate authority inasmuch as while the petitioner herein is PIK-UP Ignition Switches Pvt. Ltd., the impugned ex parte award has been passed against the management of Pickup Industries Pvt. Ltd., though the address of both the aforesaid entities furnished by the respondent workman is the same.

2. Counsel for the petitioner submits that the petitioner came to know about the impugned award only when recovery proceedings were initiated against it. It is further stated that Pickup Industries Pvt. Ltd. against whom the award has been passed was never running its office from the aforementioned address and that the petitioner not being a party to the award, the same cannot be sought to be implemented against it.

3. It may be noted that it was held in the impugned award that the services of the respondent workman had been terminated illegally by the management, in

violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and he was ordered to be reinstated with full back wages, continuity of service and ancillary benefits.

4. The contention of the Counsel for the petitioner that service was not effected on the petitioner at the address given, is not borne out from the records. On the contrary, a perusal of the record of the Labour Court shows that notice: was issued to the management vide order dated October 18, 2002 and on February 10, 2003 it was directed that as notice was not received back, fresh notice be issued to the respondent by registered AD as also dusty. On May 16, 2003, notice was directed to be served by affixation on the last known address of the management.

5. It is stated by the Counsel for the petitioner that though affixation did take place as the petitioner herein was not the management in the award proceedings, Therefore, it did not appear before the Labour Court. However, Counsel for the petitioner seeks one last opportunity to establish its case on merits before the Labour Court.

6. The petition is opposed by the Counsel for the respondent on the ground that if such is the position, then the petitioner ought to have participated in the proceedings before the Labour Court and taken a plea that it is not the management in question against whom the award could have been passed in the first instance. Having been aware of the said proceedings and having failed to take any steps in this regard, he submits that the petitioner has lost its right to raise any such plea at this belated stage. He submits that because of the aforesaid inaction on the part of the petitioner, the matter is dragging since the year 2000.

7. I have heard the counsels for the parties and also perused the records. The petitioner has filed a copy of its certificate of incorporation which shows that the petitioner was incorporated by the Registrar of Companies, Government of NCT of Delhi and Haryana on February 9, 1998, whereas in the claim petition, the respondent workman has stated that he has been working with the management in question since the year 1978. This Court is of the prima facie view that there is some force in the contention of the petitioner that the petitioner ought to be granted an opportunity of hearing on merits before the Labour Court to substantiate its claim that the petitioner is not the management with whom the respondent workman was employed. The said issue is required to be decided on merits by the Labour Court.

8. For the aforesaid reason, the impugned ex parte award dated July 19, 2004 is set aside. However, to balance the equities and considering the fact that eight long years have elapsed since the termination of the services of the respondent workman, it would be appropriate to compensate the respondent workman by directing the petitioner to pay the respondent workman a sum of Rs. 10,000/- as costs, apart from a sum of Rs. 7,500/- towards litigation expenses. The said

amounts shall be paid by the petitioner to the respondent workman through Counsel within a period of four weeks.

9. The parties are directed to appear before the Labour Court on December 5, 2007, on which date, the petitioner shall file its written statement to the statement of claim and the Labour Court shall proceed further in the matter. In view of the fact that much time has been lost since the reference was made to the Labour Court, the Labour Court is requested to expedite the hearing and make an endeavor to dispose of the industrial dispute preferably within a period of six months.

10. The writ petition and application are disposed of. A copy of this order be forwarded by the registry directly to the Labour Court for information. Lower Court records be also sent back.