

(2006) 10 DEL CK 0083

In the Delhi High Court

Case No : LPA 1977 and CM No. 13719 of 2006

R.K. Arora

APPELLANT

Vs

Air Liquide India Holding

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2006) 10 DEL CK 0083

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.

CM No. 13720/2006

Allowed, subject to all just exceptions.

LPA No. 1977/2006 and CM No. 13719/2006

1. This LPA arises out of the Judgment of learned Single Judge dated 15.9.2006. In the writ petition before the learned Single Judge, the order of Labour court framing following two issues was challenged:

1. Whether the claimant was not a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947 as claimed by the management

2. Whether the services of the claimant were terminated by the management on 11.1.2005 illegally and unjustifiably? And if so, to what effect.

2. The learned Single Judge has relied upon Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan and Another, , Workmen of Nilgiri Coop. Marketing Society Ltd. v. State of Tamil Nadu and Ors. 2004 LLR 351 , Manager, R.B.I., Bangalore Vs. S. Mani and Others, and Sunder Nagar District Panchayat v. P.

Jethabhai and Pitamarbhai 2006 LLR 175.

3. The learned Single Judge dismissed the writ petition with the following observations :

Today Mr. S.P. Sharma, being confronted with these Judgments, does not make any more submission about the onus of proof in respect of the petitioner's claim of being a workman. He, however, only submits that the Issue No. 1 has not been correctly framed in as much as the emphasis in the Issue No. 1 is on the meaning of Section 2(s). According to him, in the Issue No. 1 instead of "within the meaning of Section 2(s)" the Labour Court should be said "within the definition of Section 2(s)". There is no difference between the two expressions.

4. The main contention of the learned Counsel for the appellant before the learned Single Judge was about the directions of the Labour court to the petitioner to lead evidence. After the learned Counsel for the petitioner was confronted with the established law as laid down in the above mentioned Judgments, the learned Counsel shifted his arguments on the phraseology of the issue and wanted to distinguish the terms "within the meaning of Section 2(s)" and "within the definition of Section 2(s)" of the Industrial Disputes Act.

5. We are of the opinion that this aspect is not germane to the issues to be decided by the Labour court because the appellant's whole case stands on the foundation that he was a workman. The learned single Judge has rightly held that there is no difference in the phrases "within the meaning of" and "within the definition of" and the appellant is ill advised to embark in this appellate venture. In these facts and circumstances, we are of the view that this appeal was entirely frivolous and vexatious and in fact we were inclined to impose costs but since the appellant is said to be out of employment, we refrain from doing so.

6. The appeal is dismissed and stands disposed of accordingly.