

(2011) 05 DEL CK 0009
In the Delhi High Court
Case No : Writ Petition (C) 3028 of 2011

Smt. Kamlesh Purohit

APPELLANT

Vs

Jay Pee Exports Ltd.

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2011) 05 DEL CK 0009

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjoy Ghose, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the award dated 25th September, 2009 of the Industrial Adjudicator on the following reference:

Whether the services of Smt. Kamlesh Purohit have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect?

2. The Industrial Adjudicator, first vide order dated 24th November, 1998 also impugned in this petition, held that the inquiry conducted by the Respondent employer preceding the termination of the Petitioner workman was fair and proper. Thereafter vide award dated 25th September, 2009 it was held that the punishment meted out to the Petitioner workman was not disproportionate to the misconduct of which the Petitioner had been found guilty.

3. It has as such been inquired from the counsel for the Petitioner workman as to why the long delay of 11 years happened between the findings as to the validity of the inquiry and the award inasmuch as the only question to be gone into after the order dated 24th November, 1998 was to the proportionality of the punishment.

4. The counsel for the Petitioner workman has fairly stated that he has not inspected the proceedings sheet so as to give the reasons for delay but admits the delay to be unusual.

5. This writ petition has been preferred after one and a half years of the award against the Petitioner workman. The Petitioner workman being out of service, was expected to act diligently. The writ petition explains the delay for the reason of poverty and old age of the Petitioner workman.

6. However, it is borne out from the paper book that the Petitioner workman is a Union Leader and has been the General Secretary of the Delhi Government Export Employees Union. Thus the reasons attributed for delay cannot be accepted. The writ petition is liable to be dismissed on grounds of laches alone.

7. Be that as it may, the award dated 25th September, 2009 and the order dated 24th November, 1998 have also been examined on merits to find out whether any case for judicial interference under Article 226 of the Constitution of India is made out.

8. The Petitioner workman was charged with acts of quarrelsome, violent, un-social and uncivilized attitude and use of indecent language, threats, provocation of colleagues, attack and breach of discipline.

9. The Industrial Adjudicator in the order dated 24th November, 1998 has recorded that Sh. V.K. Gupta retired Assistant Labour Commissioner was appointed as the Inquiry Officer; that he examined eight witnesses on behalf of the Respondent employer; all the said witnesses were cross-examined by the representative of the Petitioner workman; thereafter the Petitioner workman examined two witnesses; that the Inquiry Officer had found the charges to have been established against the Petitioner workman.

10. The counsel for the Petitioner workman has drawn attention to paragraph 10 of the order dated 24th November, 1998 as to the validity of the inquiry. The Industrial Adjudicator has therein observed that it is settled law that the Industrial Adjudicator is not to act as Appellate Authority over the report of inquiry and has not to assess the evidence adduced in the inquiry and to find out whether conclusion other than that reached by the Inquiry Officer can be arrived at. It was further observed that the Industrial Adjudicator is to only see whether the inquiry has been conducted in accordance with the principles of natural justice, is not perverse and is not based on no evidence at all.

11. The counsel for the Petitioner workman has invited attention to concurring but separate opinion of Justice S.B. Sinha in Cellular Operator Association of India v. Union of India AIR 2003 SC 899 laying down that having regard to Section 11A of the I.D. Act, the jurisdiction of the Industrial Adjudicator is akin to the appellate power. He has also invited attention to Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, also observing that in exercise of the jurisdiction conferred by Section 11A of the I.D. Act,

reappraisal of evidence led in domestic enquiry is permissible to satisfy itself whether the evidence led by the employer established misconduct against the workman.

12. The counsel for the Petitioner workman has fairly admitted that the view of law taken by the Industrial Adjudicator in the order dated 24th November, 1998 is also not unknown and there are judgments supporting the same also. He has further contended that there are conflicting judgments as to the scope of powers u/s 11A of the I.D. Act.

13. However, the matter having remained pending for long, it is not deemed expedient to consider the matter for remand on the said ground and the report of the Inquiry Officer, the evidence recorded etc. has been looked into. Even if appellate powers were to be exercised, no case for interference is made out. The witnesses have deposed of the acts with which the Petitioner was charged and which deposition could not be shaken in cross-examination.

14. Therefore it is not deemed expedient to in view of the conflict of judgments cited, entertain this writ petition.

15. As far as the proportionality is concerned, no error is found in the award, considering the charge of which the Petitioner workman was found guilty.

16. Accordingly, no merit is found in the writ petition; the same is dismissed. No order as to costs.