

(2011) 08 DEL CK 0312

In the Delhi High Court

Case No : Writ Petition (C) 8216 of 2008 and CM No. 15811 of 2008 (for stay)

The Punjab State Co-Operative Supply and Marketing
Federation Ltd.

APPELLANT

Vs

Dilbagh Singh

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0312

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Mohd. Ehras Zafar, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The challenge in this petition is to the order dated 10th August, 2006 of the Industrial Adjudicator deciding the preliminary issue (as to the legality and validity of the domestic inquiry held by the Petitioner employer) framed in adjudication of the dispute raised by the Respondent workman against the Petitioner employer. The Industrial Adjudicator has concluded that the Petitioner employer had failed to prove that the domestic inquiry was conducted in a fair and proper manner. After holding so, opportunity was given to the Petitioner employer to prove the misconduct alleged, before the Industrial Adjudicator.

2. This petition was preferred after more than two years of the aforesaid order of the Industrial Adjudicator. Though notice of the writ petition was issued but no stay of proceedings before the Industrial Adjudicator was granted.

3. The counsel for the Respondent workman contends that since then the parties have led their evidence before the Industrial Adjudicator and the matter is at the stage of final arguments.

4. It has been enquired from the counsel for the Petitioner employer as to how the challenge is maintainable at the intermediary stage. He has contended that

since the issue of legality and validity of the domestic enquiry has been finally adjudicated, the challenge would be maintainable.

5. I am of the opinion that such challenge to the inter mediate orders in the proceedings before the Industrial Adjudicator cannot be entertained and in fact such practice has been deprecated by the Apex Court in National Council for Cement and Building Materials Vs. State of Haryana and Others, I have also recently in Glaxo Smithkline Consumer Healthcare Limited Vs. Presiding Officer Labour Court-IX and Another, held that challenge in such a situation is not maintainable. If the final award is in favour of the Petitioner employer, the occasion/need for the Petitioner employer to challenge the same would not arise.

6. The counsel for the Petitioner employer at this stage contends that the notice of the petition was issued only after he had satisfied this Court on the said aspect. However the order issuing notice is silent in this regard. The counsel for the Petitioner employer today is unable to show as to how the challenge is maintainable at this stage. Moreover merely because notice of a petition is issued, cannot ensure success thereof.

7. The counsel for the Petitioner employer now states that he be permitted to file before this Court a copy of the subsequent proceedings before the Industrial Adjudicator as well as the report of the Inquiry Officer and the matter be adjourned. No such adjournment can be granted to keep the petition alive when the counsel is unable to satisfy the very maintainability thereof.

8. The petition is therefore dismissed as not maintainable with liberty to the Petitioner employer to challenge the order dated 10th August, 2006 if remains aggrieved from the final award, including on the same grounds as taken in this petition.

9. No litigation costs having been paid till now, the Petitioner employer to pay costs of these proceedings of Rs. 10,000/- to the Respondent workman.