

(2002) 01 DEL CK 0130
In the Delhi High Court
Case No : CW. No. 1023 of 1989

Tin Box Company

APPELLANT

Vs

Inderjit Singh and Others

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 10B, 10B(1)

Citation : (2002) 01 DEL CK 0130

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; Nemo, for the Respondent

Judgement

Badar Durrez Ahmed, J.—In this petition the petitioner has prayed for a Writ of Certiorari for quashing the reference dated 15.1.1987 made by the Delhi Administration and also the order passed by the Labour Court dated 22nd February 1989 asking the petitioner to lead evidence first. The learned counsel appearing for the petitioner has submitted that at this stage he is not pressing the first part of the prayer but is only asking for the second part of the prayer that is the quashing of the order dated 22nd February, 1989, reserving, however, his right to agitate with respect to the first part at an appropriate stage.

2. He pointed out the terms of reference of the industrial dispute in question which are as under:

" Whether the termination of Services of Shri Inderjit is legal and justified and if not to what relief is he entitled and what directions are necessary in this respect?"

3. After the dispute was referred, an application dated 22nd February, 1989 was moved by the petitioner for examining the workman first. In the said application, it was averred that it is the workman who has raised the dispute and it is he who as per the statement of claim is claiming that the termination of the service is illegal and unjustified and against the provisions of law. So, it is for him to prove the same in the first instance. This application was considered by the Labour

Court on 22nd February, 1989 itself and was rejected on the ground that " the onus of all issues is on the Management Therefore the management was rightly asked to open evidence."

4. The learned counsel for the petitioner has drawn my attention to Rule 10-B of the Industrial Disputes (Central) Rules 1957 which prescribes the procedure for proceedings before the Labour Court, Tribunal or National Tribunal. In sub-Rule 1 of Rule 10-B it is prescribed that the party raising the dispute is required to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court within 15 days of the receipt of the order of reference. In the present case, the learned counsel submits that apart from filing a statement of claim the workman i.e. the respondent has not filed any relevant documents, list of reliance or witnesses which he was bound to do under the provisions of law.

5. He has also placed a decision of the Allahabad High Court in *Airtech Private Ltd. vs. State of U.P. & Ors* reported in 1984 (49) F.L.R. 38 wherein a similar fact situation had arisen. In the said decision, it has been observed that the statement of claim supported by the affidavit of the workman constitute the preliminary evidence and it is upon the Management/employer to controvert the same and if not so controverted then nothing further needs to be proved and done by the workman. However, the primary responsibility of establishing his case rests on the workman. And in that case, the Allahabad High Court held that the Labour Court had patently erred in holding that the burden of proof lay upon the employers. It further held that the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led. The party making the allegation and seeking redressal must seek an opportunity to lead evidence. A similar view was taken by the Division Bench of the said Allahabad High Court in the case of *V.K. Raj Industries vs. Labour Court & Ors* reported in 1981 (43) F.L.R. 194.

6. Agreeing with the view taken in the said decisions of the Allahabad High Court, I hold that the impugned order dated 22nd February, 1989 passed by the Labour Court asking the petitioner to lead evidence first cannot be sustained in law and, I, accordingly quash the same. The workman is to lead evidence first as it is he who has to establish his allegations. The matter is remanded to the Labour Court for adjudication as per provisions of law. It is made clear that this court has not expressed its views on the merits of the reference. In these circumstances there shall be no order as to costs.