

Mr. Ashok Kumar Vs. P.O. and anr.

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SooperKanoon Citation : sooperkanoon.com/697821

Court : Delhi

Decided On : Jul-22-2003

Reported in : 2003VIAD(Delhi)85; 109(2004)DLT548

Judge : Mukul Mudgal, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : CWP No. 6684/2001

Appellant : Mr. Ashok Kumar

Respondent : P.O. and anr.

Advocate for Pet/Ap. : J.M. Bari, Adv

Disposition : Appeal dismissed

Judgement :

Mukul Mudgal, J.

1. This writ petition challenges Order dated 3. 9. 2001 passed by Industrial Tribunal by which the application filed by the petitioner-workman seeking amendment to Statement of Claim was disallowed.

2. The history of this case deserves to be noticed. On 20. 5. 1995, Industrial Tribunal had found flawed a domestic enquiry held by the respondent no. 2 on the

ground that the enquiry was not conducted validly and legally and was not in accordance with the principles of natural justice. The main grievance of the petitioner was that he was not served with the notice of the enquiry proceedings and he was not informed about the pendency thereof and hence he was disabled to take part in the disciplinary proceedings. This plea was earlier noticed and decided by a Division Bench of this Court in CW 4109 of 1995 on 23rd September, 1997 in a writ petition filed by the respondent No. 2/Management while recording the following finding:-

'In the above said facts and circumstances and keeping in view the law laid down by their Lordships of the Supreme Court, we are of the opinion that the petitioner-employer had done all which could be expected to be done by it for serving the respondent No. 2 inviting his participation in the domestic enquiry proceedings. It is difficult to believe that the workman who was also an office bearer of the Union would not have been aware of any of the three notices published in the newspapers in English and Hindi. Moreover the present one is not a case where the inquiry had proceeded ex-parte from the very beginning. Admittedly the employee workman was served with a charge sheet. He was well aware of the inquiry proceedings. There is no attempt on his part ever made to inquire from the management or from the Inquiry Officer as to the progress of the Inquiry and whether it was at all proceeding and if so, in what manner. This would have been the ordinary human conduct of the respondent no. 2 being well aware of an Inquiry having been initiated by the Management against him by serving on him a charge sheet setting out serious charges.

All the above said material being available on record of the Industrial Tribunal no finding of the nature as arrived at by the Industrial Tribunal could have been arrived at, acting reasonably and judiciously. Such perverse finding is not binding on this Court exercising its writ jurisdiction and is liable to be set aside. '

3. Thus the above clear finding was recorded by the Division Bench of this Court while setting aside the earlier award in favor of the writ petitioner invalidating the domestic enquiry on findings that the petitioner was aware of the proceedings and chose to avoid it. By the present application, the petitioner-applicant has sought

the following amendment to the Statement of Claim:-

'That the workman made his personal investigations in the matter and found that no such enquiry at all was held by the management. Even most of the witnesses who have allegedly deposed before the said enquiry are prepared to file their affidavits before this Hon'ble Court and even ready to put themselves to any cross examination. They are specifically stating that they have not appeared in any such enquiry and have not made any statement before the enquiry officer and even otherwise there was no misconduct at all on the part of the workman. One of the such witnesses is Shri Naresh Kumar (Management's witness No. 4 in the alleged disciplinary enquiry). The other witnesses are Shri Chander Bahadur, Shri Dayal Singh, Shri Dharamvir Singh, Shri Ram Bahadur Adhikari ex and present employees of the management. A fraud has been committed by the management. As there was no enquiry and as there was no act of any misconduct on the part of the workman, the claim of the workman may be allowed forthwith. There was no enquiry at all. The alleged enquiry proceedings filed before this Hon'ble Court are a fabrication and concoction. '

4. By the impugned Order the Tribunal had dealt with the aforesaid plea for amendment as follows :-

'There is no doubt that the amendment has been sought after more than eleven years of filing of the statement of claim. The statement of claim does not contain anything to show that the workers who appeared for the management during the enquiry had revealed to the workman that they had not made statements before the enquiry officer. The workman has taken such defense only after the writ petition of the management was allowed with the observation that the workman had due notice of holding of the enquiry, but still he did not participate in the enquiry. Further, the Hon'ble High Court passed the order on 23. 9. 97. However the workman took more than three years to file the application for permission to lead fresh evidence to show that the management played fraud upon him as its witnesses had not made statements before the enquiry officer. He has taken the plea that he made personal investigations and came to know about such fraud played by the management only in September, 2000. The workman has pleaded

fraud in the statement of claim. It is in relation to non-service of the notice of the enquiry upon him. Now, when that plea of the workman has been rejected, he wants to re-start the whole trial by introducing new plea of fraud. He is trying to make out new case which was not pleaded in the original statement of claim. It will require fresh pleadings, fresh trial and fresh evidence. Such amendment cannot be allowed even after considering that principles of liberal construction should be used in dealing with the application for the amendment of the pleadings. The application of the workman is for creating new case after the rejection of his earlier plea by the Hon'ble High Court. Hence, the application is devoid of merit and it cannot be allowed. The application is rejected. '

5. The learned counsel for the petitioner has assailed the aforesaid Order of the Tribunal by placing reliance on a judgment of this Court in the case of India Export House Pvt. Ltd. versus M/s. Orient Enterprises and others reported in : 81(1999)DLT438 . The learned counsel has submitted that the delay if occasioned on account of fraud ought not to come in the way of an amendment as held in the above judgment. I am of the view that the aforesaid judgment is not applicable in the present case inasmuch as by this application seeking amendment an attempt is made to get over the finding of the Division Bench to the effect that the petitioner was well aware of the proceedings. The question of laches on account of fraud therefore is not involved. In any case it is not laches which I am holding against the petitioner. In this view of the matter since the application is made for a collateral purpose, the impugned Order is fully sustainable. The impugned order has rightly recorded that the application for amendment seeks to create a new case after the rejection of the earlier plea by the High Court. This finding is unassailable particularly in the writ jurisdiction under Article 226 of the Constitution. Accordingly there is no merit in this petition which stands dismissed in liming.