

ORDER ON I.A.No.V

The respondent No.1 by filing application U/O.47 R.1 r/w S.151 of CPC, request the Court to review the order dated 22.11.2016.

On the basis of pleadings of both the parties, issue came to be framed on 19.1.2016. Issue No.1 reads thus:-

“Whether the appellant proves that the domestic enquiry conducted by the respondent No.1 is not just and fair?”

Subsequently, the application was filed by the appellant, which came to be allowed on 22.11.2016 and Issue No.1 is recasted as under:-

“Whether the Domestic enquiry conducted by the respondent No.1 is just and fair?”

Now respondent No.1 requests the Court to recast this issue. In support of his contention, he relies on decision of Hon’ble Punjab and Haryana High Court reported in (2008) 149 PLR 342. Whereas this application is opposed by the appellant by placing reliance on the decision of Hon’ble High Court of Karnataka reported in 1979 ILR 526.

Perused both the decisions. In the Karnataka High Court decision, it was held that “the nature and object of the jurisdiction and powers exercisable by Educational Appellate Tribunal is similar to jurisdiction and powers conferred on Labour Court or Industrial Tribunal under Sec.10 r/w Sec.11 & 11A

of Industrial Disputes Act.” In Punjab & Haryana High Court decision it was held that “the onus of proof of preliminary issue that the domestic enquiry is vitiated, shall lie on the person who has approached the Labour Court as the burden will lie on the person who would fail if no evidence is led.”

The appellant contends in the appeal memo that the domestic enquiry conducted by respondent No.1 is not just and fair. In view of both the decisions, the recasted issue dated 22.11.2016 in the form of additional issue requires to be deleted. The appellant who challenges the legality of domestic enquiry is to prove that domestic enquiry conducted by respondent No.1 is not just and fair. Therefore, I.A. No.5 requires to be allowed.

Hence, I proceed to pass the following:

ORDER

I.A.No.V is allowed.

Additional issue is deleted and following issue is framed:-

“Whether the appellant proves that the domestic enquiry conducted by the respondent No.1 is not just and fair?”

It is treated as preliminary issue.

For evidence on preliminary issue by
2.3.2017.

Prl. District Judge,
D.K., Mangaluru.