

ITEM No.105

Court No.11

SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

C.A. Nos. 3723-3724/2001

Management of M/s.Essee Courier ...Appellant

VERSUS

Sushil Sharma & Anr. ...Respondents

(With Office Report)

Date: 14.01.2003: This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE P. VENKATARAMA REDDY

For Appellant (s) Capt.K.K.Rohtagi,Adv.
for Mr. Praveen Jain,Adv.

For Respondent (s) Mr. Ashok Bhan,Mrs. V.Bhandari Gugnani &
Mr. Satbir Pillania,Advs.for
Mr. D.S. Mahra,Adv.

UPON hearing counsel,the Court made the following
O R D E R

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.SP2

Heard the Cap. K.K. Rohtagi, the learned counsel
for the appellant for twenty five minutes.
The appeals are disposed of.

.SP1

(Y.P.Dhamija) (K.K. Chadha)@@
AAA
COURT MASTER Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.3723-3724/2001@@
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Management of M/s Essee CourierAppellant(s)

Vs.

Sushil Sharma & Anr.Respondent(s)

O R D E R@@
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The appellant M/s. Essee Courier challenges the judgment dated 1.09.1999 and 1.5.2000 passed by the Delhi High Court. In those proceedings, the appellant had challenged an award passed by the Presiding Officer, Labour Court at Tis Hazari, Delhi. The respondent Sushil Sharma contended before the Labour Court that he was engaged by the appellant as a courier, and he was being paid wages at the rate of Rs.900/- per month, and on 10.12.1991 his services were terminated by the employer. The Labour Court by its award dated 15.10.1998 held that the retrenchment of the respondent workman was without following the procedure under section 25(f) of the Industrial Disputes Act, 1957 and therefore illegal and the appellant herein was directed to reinstate the respondent with full back wages. Before the Labour Court, the appellant herein had filed a counter statement wherein it is contended that the respondent had voluntarily left the service of the appellant without any notice and that he had taken up

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employment with another concern. After filing the counter statement, the appellant did not participate in the proceedings, and therefore it was declared ex-parte on 27.7.1998. The order setting aside ex-parte was challenged by the appellant in a Writ Petition being CWP No. 6436/94. The learned Single Judge of the Delhi High Court declined to interfere with the order and ultimately the award was passed.

The award passed by the Labour Court was challenged by the appellant in a separate Writ Petition, and that petition was also dismissed.

We have heard the learned counsel for the appellant and the respondents.

The contention of the appellant is that M/s. Essee Courier is not the employer of the respondent, and according to the appellant, the respondent was employed by M/s. SAICO Enterprises & Co. to which the appellant M/s. Essee Courier has no connection. The appellant contended that the ex-parte award should have been set aside by the High Court and the appellant must have been given an opportunity to contest the proceedings. The contention advanced before us that M/s. SAICO Enterprises & Co. is the employer of the respondent cannot be accepted for the reason that no such plea was

advanced by the appellant before the Labour Court. From the impugned award, it is clear that the contention of the appellant herein before the Labour Court was that the employee had voluntarily left the services and after having filed the counter statement, the appellant should have adduced evidence

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to that effect. No such evidence was adduced before the Labour Court, and we see no reason to interfere with the impugned judgment.

The counsel for the appellant lastly contended that the termination was in 1991 and the appellant has to pay huge amount as back wages. It is also contended that the appellant is a small concern and only 15 employees are working in the appellant organisation. It is also to be noted that the first respondent had not adduced any specific evidence to the effect that he was not gainfully employed elsewhere. It is quite possible that the respondent might have been employed elsewhere.

Having regard to the facts and circumstances of the case, we modify the award passed by the Labour Court to the extent that the appellant shall pay back wages to the extent of 50% for the entire period during which the respondent was out of service

The appeals are disposed of accordingly.

.SP1

.....J.
(K.G. BALAKRISHNAN)

NEW DELHI,
JANUARY 14, 2003

.....J.
(P.VENKATARAMA REDDY)