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LAWS(GJH) 2010 10 108

HIGH COURT OF GUJARAT

Coram :- A. L. DAVE, M. D. SHAH, JJ.

Decided on 2010 October 06

LETTERS PATENT APPEAL No. 1552 of 2010 In SPECIAL CIVIL APPLICATION No. 13098 of 2008 With CIVIL APPLICATION No. 7538 of 2010 In LETTERS PATENT APPEAL No. 1552 of 2010

GOVINDBHAI BUDHABHAI VALAND

VERSUS

ELECTORTHARM (INDIA) LTD

Advocates:

N. D. SONGARA, PRATIK P. THAKKAR

Citations:

LAWS(GJH) 2010 10 108,

Expert View:

- A. **Under the circumstances justice would meet, if this appeal is disposed of with a direction for de novo proceedings from the stage after submission of the report of the Inquiry Officer requiring the respondent to ensure that decision on the inquiry report is taken by a competent person, who is not involved in the inquiry proceedings directly__ .**
- B. **13098 of 2008, which are subject matter of challenge in the appeal, are hereby set aside__ .**
- C. **This defect would vitiate the decision making process of punishment and, therefore, it cannot be permitted to stand__ The appeal is therefore, allowed__**
- D. **Under the circumstances justice would meet, if this appeal is disposed of with a direction for de novo proceedings from the stage after submission of the report of the Inquiry Officer requiring the respondent to ensure that decision on the inquiry report is taken by a competent person, who is not involved in the inquiry proceedings directly. -- Order passed by Labour Court on 13.06.2008 in Reference (LCK) No.499 of 2000 and order of the learned Single Judge dated 09.07.2009 in Special Civil Application No.13098 of 2008, which are subject matter of challenge in the appeal, are hereby set aside.**

JUDGMENT / ORDER

1. Appeal admitted and taken up for final hearing at the request of learned Counsel for the parties. Heard Mr.N.D.Songara for the appellant and Mr.Pratik Thakkar for the respondent.
2. This appeal arises out of order passed on 09.07.2009 in Special Civil Application No.13098 of 2008. The said petition was preferred by the appellant to challenge the order passed by the Labour Court on 13.06.2008 in Reference (LCK) No.499 of 2000 whereunder the Labour Court rejected the Reference.
3. We do not propose to go into the merits of the case of either side as major procedural defect is pointed out to us by the learned Counsel for the appellant. Learned Counsel for the appellant indicates that in the departmental proceedings the officer representing the management was Mr.Paresh B. Pandit and he is the person who has passed the order (Annexure D) rejecting the reply filed by the delinquent appellant and dismissing him from service. Above facts are shown to us from the record (Annexure C and Annexure - D) and they appear to be correct. This defect would vitiate the decision making process of punishment and, therefore, it cannot be permitted to stand. From the order of Labour Court as well as learned Single Judge, it is clear that the appellant delinquent has nowhere challenged departmental inquiry proceedings. Under the circumstances justice would meet, if this appeal is disposed of with a direction for de novo proceedings from the stage after submission of the report of the Inquiry Officer requiring the respondent to ensure that decision on the inquiry report is taken by a competent person, who is not involved in the inquiry proceedings directly.
4. The appeal is therefore, allowed. Order passed by Labour Court on 13.06.2008 in Reference (LCK) No.499 of 2000 and order of the learned Single Judge dated 09.07.2009 in Special Civil Application No.13098 of 2008, which are subject matter of challenge in the appeal, are hereby set aside. Respondent is directed to start de novo proceedings from the stage after submission of report of Inquiry Officer. Decision would be taken without being influenced by any extraneous circumstances. No order as to costs. As the appeal is disposed of, Civil Application stands disposed of.

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