

(1992) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1206 of 1982

Badri Lal

APPELLANT

Vs

The Prescribed Authority under the Rajasthan Shops and
Commercial Establishments Act and Another

RESPONDENT

Date of Decision : 28-10-1992

Acts Referred:

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 28A

Citation : (1992) WLN 568

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—The petitioner in this writ petition has challenged the judgment dated October 31, 1981, passed by the Authority under the shops and Commercial Establishment Act, by which the learned Authority maintained the order dated November 15, 1978, passed by the Chairman, Mewar Textile Mills Staff Cooperative Consumers" Stores, Bhilwara, terminating the services of the petitioner and directed the defendant to make payment of Rs. 800/- as compensation to the petitioner.

2. Petitioner was working as Helper to the Salesman at M.T.M. Staff Consumers Cooperative Stores, Bhilwara. Some reports of embezzlement were received against one Jagdish Chand. An enquiry against him was held. During the course of the enquiry, it came to the notice of the defendant that the petitioner was knowing regarding the embezzlement made by Jagdish Chandra, but knowingly he did not disclose it to the Authorities and, therefore, a notice (Annexure. 1) was issued to the petitioner on September 19, 1978, to show cause why action may not be taken against him. He filed reply. The reply sent by the petitioner was considered by the Chairman, but it was not found convincing and, therefore, an enquiry was held against the petitioner, also, and after holding the enquiry, the petitioner"s services were terminated by the Chairman vide its order dated

November 15, 1978 (Annexure.5). The petitioner was, also, held guilty for embezzlement of a sum of Rs. 20,141.40p. and the liability of the petitioner was fixed at Rs. 6713.68, which amount was recovered from the petitioner. Dissatisfied with the order dated November 15, 1978, passed by the Chairman (Annexure. 5) dismissing the petitioner's services, the petitioner made a complaint before the Authority under the Shop and Commercial Establishment Act, Bhilwara. The notice of this complaint/application was given to the defendant and they filed reply and contested the complaint. Before the Authority, the petitioner examined himself. The defendant, also, examined Mr. Ram Prasad the Chairman, M.T.M. Staff Consumers Cooperative Stores, Bhilwara and, also, placed on record several documents including the proceedings of the enquiry conducted against the petitioner, as well as the relevant documents including the two reports of the Special Auditor, Cooperative Societies, Bhilwara, dated 18.8.80 and 31.8.81, which were given by the Special Auditor after holding detailed enquiry, in which the petitioner was found guilty for embezzlement. The learned Authority, after considering the evidence produced by both the parties, came to the conclusion that the petitioner was found guilty for embezzlement and has lost the confidence of his employer and, therefore, it will not be proper to order for his reinstatement, but since the dismissal has been made without following the procedure provided under the law, therefore, the petitioner is entitled for a sum of Rs. 800/- as compensation, which should be paid to him by the defendants within fifteen days. Dissatisfied with the judgment dated October 31, 1981, passed by the Authority, the petitioner has preferred this writ petition.

3. It is contended by the learned Counsel for the petitioner that no proper enquiry was made against the petitioner and even the charge-sheet was not served. He has further submitted that there is no direct evidence against the petitioner connecting him with the charges and no charge stands proved against him. It is, also, contended that before passing any order terminating the services of the petitioner, the petitioner was not supplied with the copy of the enquiry report and, therefore, the order of dismissal deserves to be quashed and set-aside. It is, also, contended that the documents, on which reliance has been placed before this Court, were not produced by the defendant before the Authority and, therefore, they cannot be taken on record. Lastly, it is contended that the provident fund and the gratuity payable to the petitioner, have been forfeited by the defendant, which should be restored to him. The learned Counsel for the respondents on the other hand, has supported the order passed by the Authority concerned. A preliminary objection was, also, taken by the learned Counsel for the respondents that the application u/s 28-A of the Rajasthan Shops and Commercial Establishment Act was not even maintainable before the learned Authority and, therefore, the present writ petition deserves to be dismissed.

4. I have considered the rival submissions made by the learned Counsel for the parties.

5. The first contention, raised by the learned Counsel for the petitioner, is that no

proper enquiry was made by the defendant before terminating the services of the petitioner and no proper opportunity of hearing was given to him. I have perused the record produced by the defendant before the Authority as well as the original concerned file. The petitioner was served with a notice (Annexure. 1) and he filed reply to that notice, which was not found convincing and proper and, therefore, an enquiry was initiated against the petitioner and notice Annexure. 3 was Issued to him. Thereafter a proper enquiry against the petitioner was conducted by Mr. Ram Prasad the Chairman. The petitioner participated in the enquiry and even cross-examined the witnesses. The enquiry was conducted on 22.9.78, 25.9.78, 26.9.78, 27.9.78 and 28.9.78. On 22.9.78, the statement of Mr. Modi was recorded in the presence of the petitioner Badri Lal, On 25.9.78, the enquiry was conducted in the presence of Badri Lal petitioner. His own statement was, also, recorded. It is, therefore, clear that proper opportunity was given to the petitioner and the proper enquiry was held, in which the petitioner participated and even cross-examined the witnesses. The defendants have produced before the learned Authority two documents, i.e., Annexure. 2 dated 17.7.75 and Annexure. 4 dated 25.7.75. In these two documents, the petitioner admitted his guilty regarding the embezzlement made by him on the earlier dates. The services of the petitioner were terminated on account of the embezzlement made by him. He was even found guilty by the Special Auditor for the embezzlement, also. That order, passed by the Special Authority, holding the petitioner guilty, is appealable u/s 75 of the Rajasthan Cooperative Societies Act, but that order was not challenged by the petitioner. Even the petitioner concealed this fact from this Court. From the perusal of the record, I am of the opinion that the enquiry held by the defendant was a proper enquiry and was conducted after giving proper opportunity of hearing to the petitioner. There is sufficient evidence on record connecting the petitioner with the charges and the charges against the petitioner stand proved in the enquiry and his services were rightly terminated by the defendant. A person, who has been found guilty for embezzlement, cannot be retained in service.

6. The next contention raised by the learned Counsel for the petitioner is that the petitioner was not supplied with the copy of the preliminary enquiry report submitted by the Enquiry Officer and, therefore, the enquiry stands vitiated. The petitioner did not make any such complaint before the learned Authority regarding the non-supply of the copy of the preliminary enquiry report. Even after completion of the enquiry and before the dismissal order was passed, the petitioner made a representation and asked the Chairman to inform him about the result of the decision. No request for the supply of the copy of the enquiry report was made. Even before the Authority, no such grievance was raised by the petitioner. Even in this writ petition, in the factual aspect, no such averment has been made, but in the Ground No. "D", this stand has been taken. When no such grievance was made by the petitioner before the learned Authority regarding the non-supply of the copy of the enquiry report nor was any request made before the Disciplinary Authority for the supply of the copy of the enquiry report and a

request was made only to inform him about the result of the enquiry, therefore, the petitioner cannot be allowed to raise this grievance at this stage. This non-supply of the copy of the preliminary enquiry report, thus, does not affect the enquiry against the petitioner. Even the Rules do not require the supply of the copy of the enquiry report to the delinquent official. This contention, raised by the learned Counsel for the petitioner, is, therefore, of no avail to him.

7. The next point, raised by the learned Counsel for the petitioner is that the documents Annexure R. 1 and Annexure R. 2, on which reliance has been placed by the defendants, were not produced before the Authority and, therefore, they cannot be taken on record and the defendants cannot be permitted to place reliance over these documents. The contention, raised by the learned Counsel for the petitioner is contrary to the record. Both Annexure.R. 1 and Annexure.R.2 were produced before the Authority under the Shops and Commercial Establishment Act and they are on record bearing pages No. 52 to 57 and 59 to 60. The contention raised by the learned Counsel for the petitioner is, thus, wholly unfounded.

8. Lastly, it is contended by the learned Counsel for the petitioner that the amount of provident fund and gratuity of the petitioner have been forfeited by the defendants and have not been paid to him, which should be paid to him. In this connection, suffice it to say that the defendant has denied that provident fund and gratuity amounts, permissible to the petitioner, have not been forfeited but the same have been adjusted only against the embezzled amount, which was to be recovered from the petitioner. The defendants are entitled to recover the embezzled amount from the petitioner, which was found recoverable from him as per the report of the Special Auditor. Those orders have not been challenged by the petitioner. If any amount of provident fund and gratuity is found due after the adjustment of the embezzled amount then the same may be paid to the petitioner.

9. The question, therefore, now remains in : whether the Authority under the Shops and Commercial Establishment Act has jurisdiction to entertain the application filed by the petitioner? Section 2(17) of the Act defines the word "shop", which reads as under:

The definition of "shop " does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefit provided for the workers under the Factory Act.

Admittedly, the shop in question, over which the petitioner was working, was attached to the factory and is a staff consumers cooperative society established for the benefit of the workers employed in the Mewar Textiles Mills and, therefore, this consumers cooperative store, where the petitioner was working as a Helper to the Salesman, does not fall within the definition of the word "shop" as provided under the Rajasthan Shops and Commercial Establishments Act, 1958, and, therefore, the application moved by the petitioner before the

Authority was not even maintainable and the application should have been dismissed. But even on merit, as discussed above, the petitioner has got no case and his services were terminated in accordance with law and after holding a proper enquiry. The findings arrived-at by the learned Authority that the Rules have not been followed, is contrary to the facts and circumstances of the case and the observations made by the learned Authority on this point, therefore, deserve to be quash and set-aside.

10. In the result, I do not find any merit in this writ petition and the same is hereby dismissed.