

(2012) 05 RAJ CK 0079

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 489 of 2012 and Civil Miscellaneous stay application No. 4852 of 2012

Brij Behari Sharma

APPELLANT

Vs

Chief Manager, Kota and Another

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2012) 134 FLR 656

Hon'ble Judges : Mahesh Bhagwati, J;Arun Mishra, J

Bench : Division Bench

Advocate : Rajendra Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Mahesh Bhagwati, J.—Challenge in this intra-court appeal is to the order dated 5.1.2012, whereby the learned Single Judge allowed the writ petition and set-aside the order dated 16.12.2008, rendered by the Industrial Tribunal, Jaipur rejecting the application u/s 33 (2) (b) of the Industrial Disputes Act, filed by Chief Manager, Rajasthan State Road Transport Corporation, Kota seeking approval of the dismissal order of the appellant-workman. Adumbrated in brief, the facts of the case, are that a charge sheet was served upon the appellant-workman alleging therein that on 24th April, 1996 he was carrying 42 passengers to Aklera Khanpur without ticket in a break down bus bearing registration No. 2968. It is alleged that the appellant collected express bus fare from all, but did not issue ticket to any of them. on surprise check, the bus stopped but the appellant alighted and fled into Jungle. The inspection party waited but he did not return. An inquiry was initiated against him for the alleged charge. After completion of enquiry, the appellant-workman was found guilty and he was dismissed from service vide order dated 19.8.1998 along-with the forfeiture of balance amount of the suspension period. The Rajasthan state Road Corporation filed an application u/s 33(2)(b) of the I.D. Act before the Industrial

Tribunal for approval of the dismissal order. The learned Tribunal vide its award dated 16.12.2008 dismissed the application and gainsaid to grant approval to the dismissal order of the appellant-workman. Being aggrieved by the award dated 16.12.2008, the Corporation filed S.B. Civil writ Petition No. 2135/2009. The single Bench vide its order dated 5.1.2012 allowed the writ petition and set-aside the award dated 16.12.2008 passed by the Industrial Tribunal. Hence, this appeal.

2. Learned counsel for the appellant canvassed that the Presiding officer of the Industrial Tribunal assigned detailed reasons for holding that the Corporation utterly failed to produce any legal evidence to prove the alleged charge despite the fact of having granted ample opportunities in this regard, but the learned Single Judge did not appreciate the same while exercising the jurisdiction under Article 227 of the Constitution and committed grave error in allowing the writ petition. Hence, the impugned order passed by the learned single Judge be set-aside and order passed by the Industrial Tribunal be upheld.

3. Having heard the learned counsel for the appellant and carefully scanned the relevant material on record, it is noticed that the learned Single Judge having analyzed the matter ad-longum, rightly observed that it was a well settled law that strict rule of evidence did not apply in the case of domestic inquiry. The instant case pertains to the application u/s 33 (2)(b) of the Industrial Disputes Act, 1947, where Tribunal's jurisdiction to interfere in the finding of fact is very limited. It is permissible only when no material existed so as to arrive at the conclusion about misconduct of the employee. otherwise too, if two views are possible based on some material, interference in the finding of fact by the Tribunal while adjudicating approval application u/s 33(2)(b) of the Act of 1947 is not permissible. The Tribunal was found by the learned single Judge to have acted beyond its jurisdiction to dismiss the application erroneously holding that the statement of M.L. Khatri could not be considered to be the legal evidence, whereas Shri Khatri unequivocally stated about the alleged misconduct of the respondent - workman.

4. The learned single Judge placing reliance on the judgments of this Court as also of Hon''ble Apex Court is found to have rightly allowed the writ petition and set-aside the order of the Tribunal. The impugned order passed by the learned single Judge is well merited and based on cogent finding, with which we fully concur and the same warrants no intervention.

5. For the reasons stated above, the appeal fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly. Consequent upon the dismissal of special appeal, the stay application, filed therewith, does not survive and that also stands dismissed accordingly.