

(2008) 09 RAJ CK 0044
In the Rajasthan High Court

Chiranji Lal Jain

APPELLANT

Vs

Judge, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)

Citation : (2008) 119 FLR 1077 : (2009) 1 LLJ 654

Hon'ble Judges : Narayan Roy, C.J; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This appeal is directed against the judgment of the learned single Judge dated September 2, 1998 whereby the writ petition of the appellant was dismissed. The appellant in the writ petition challenged the award of the Industrial Tribunal, Jaipur dated October 23, 1991. The appellant was appointed as Shop Incharge with Khetri Copper Complex Welfare Trust on July 14, 1976. His services were terminated on July 2, 1980 by respondent No. 2. Aggrieved thereby, appellant approached the Conciliation Officer and consequent upon failure report submitted by him, reference of the industrial dispute was made by the appropriate government to the Industrial Tribunal. The Tribunal in its order dated May 20, 1987 held that since no enquiry was conducted by the management against the appellant-workman and therefore, the respondent-Trust could lead evidence to prove the charges against the appellant workman before the Tribunal itself. The charges against the appellant were found proved by the evidence led by the respondent-Trust and opportunity of rebuttal was given to the appellant. The Tribunal therefore by its award dated October 23, 1991 held that in view of the nature of charges and misconduct of the appellant, termination of his services by the respondent-trust was justified. However, since the termination was made without holding any enquiry and charges were proved before the Tribunal only, Tribunal by applying relation back theory awarded to the appellant wages and other benefits from the date of termination i.e. July 2, 1980 till the date of award dated October 23, 1991. Respondent-trust separately filed

writ petition being SBCWP No. 7044/1991 which was dismissed by the learned single Judge of this Court vide order dated January 21, 1992. Special appeal filed there against being DBSAW No. 262/1992 was dismissed by our order dated September 3, 2008.

2. Shri Vigyan Shah, learned Counsel for the appellant has challenged the judgment of the learned single Judge of this Court as also the award of the Tribunal on various grounds. He argued that the Tribunal was wholly unjustified in permitting the respondents to lead evidence as no such request was made by the respondents before the Tribunal. Once, it was proved that no enquiry was held, order of termination was liable to be set-aside. Learned single Judge has failed to consider this important aspect of the matter. It was contended that the evidence that was produced before the Tribunal did not prove charges against the appellant. Major charge against the appellant was the alleged embezzlement which was not proved. Reference was made to the findings recorded by the Tribunal in paras 8 and 9 of its award. Other charges were minor in nature which in the first place were not proved and secondly, even if it is taken as proved, it cannot be said on that basis that appellant lost the confidence of the respondents. It was argued that the Tribunal was not justified in relying on the statements of other witnesses, Shri R.K. Varshney, Secretary to the respondent-Trust, Shri Ashok Gupta and Shri Lal Chand Verma, who were the employees of the respondents and were therefore the interested witnesses. Once it was established that the appellant was removed by the respondents without any enquiry, termination of the appellant in view of definition of "retrenchment" in Section 2(oo) of the Industrial Disputes Act, 1947 (for short, the "Act of 1947"), would amount to retrenchment without compliance of the provisions of Section 25-F of the Act of 1947, which being void ab initio and thus was liable to be declared as such. Learned Counsel argued that alleged charge of misbehaviour by the appellant with the employees and customers of the respondent-Trust was not at all proved as two witnesses namely; Shri Ashok Gupta and Shri Lal Chand Verma alleged so only before the Tribunal and did not ever make any complaint and there was no documentary evidence to prove such charge. It was argued that the learned single Judge has failed to consider all these aspects of the matter and that award passed by the learned Tribunal is liable to be set-aside and consequently, the writ petition may be allowed.

3. Shri Abhay Bhandari, learned senior counsel appearing for the respondent-Trust opposed the appeal and argued that the Tribunal vide its order dated May 20, 1987 held the enquiry unfair and allowed opportunity to the respondent-Management to lead evidence. Both, the respondents and the appellant were given opportunity to adduce their evidence. While the respondents produced the evidence to prove the charges, the appellant was given opportunity to rebut such evidence. The appellant having not challenged that order, acquiesced in the proceedings. He cannot be now permitted to question the correctness of that order and argue that the Tribunal should have then directed for his reinstatement due to violation of provisions of Section 25-F of the Act of 1947. It was argued

that the contention of the appellant that there was no evidence to prove the charge of misbehaviour, is wholly unfounded. Apart from the witnesses to prove those charges, number of documents were also produced. Reference was made to the evidence of Shri Lal Chand Verma, who was salesman in the shop of the trust of which the appellant was In-charge. He has clearly stated that behaviour of the appellant with the employees was not good and he used to abuse the employees and sometimes, even the customers. Complaints were made to Shri R.K. Varshney Secretary to the respondent-Trust number of times who warned the appellant. Reference was made to the affidavit of Shri Ashok Gupta who was also salesman and made similar assertions. Shri Abhay Bhandari, learned senior counsel argued that the department has produced on record number of memos/ complaints and warning letters to the appellant which were exhibited in evidence as Exhibit M-I to Exhibit N-13. Tribunal was therefore justified on evidence in holding that charges as to carelessness of the appellant and that he used to misbehave with the staff and customers and was not reliable person, as proved. Tribunal was therefore also justified in upholding the termination of the appellant.

4. We have given our anxious consideration to the arguments made by the learned Counsel for the parties and perused the material on record.

5. Contention of Shri Vigyan Shah, learned Counsel for the appellant that since it was proved before the Tribunal that no enquiry whatsoever was held prior to terminating services of the appellant, termination of the appellant should have been treated as retrenchment without compliance of the provisions of Section 25-F of the Act of 1947 and such, termination should have been declared void and illegal, cannot be accepted because it is now no longer open to the appellant to raise this argument having acquiesced in further proceedings wherein respondent-Management was provided opportunity to adduce evidence to prove the charges. Appellant was also given opportunity to rebut the evidence produced by the respondents. Tribunal vide order dated May 20, 1987 held the so-called enquiry of the respondents to be unfair and permitted the respondents to adduce evidence before it. This argument was available to the appellant at that stage and having not challenged the said order of the Tribunal at that stage, he cannot now be permitted to agitate this issue at this belated stage. Now that the Tribunal has by invoking the relation back theory made the termination effective from the date of award by granting wages and other benefits to the appellant from the date of termination till date of award, this issue even otherwise has become inconsequential because appellant having received those wages and other benefits of all this intervening period, would in any case be deemed to have continued, though notionally and for limited purpose, in the services till award was passed.

6. Adverting now to the argument that there was no evidence as to the carelessness of the appellant, his misbehaviour with the staff and even with the customers and the fact that he was not reliable person, the contention of the appellant that those charges were not proved and even if proved, would not

justify loss of confidence and refusal to direct retrenchment of the appellant, also cannot be accepted. This argument is made by the appellant only on the basis of failure of the management to prove charges of embezzlement and financial irregularities and it is argued that for this reason, it cannot be a case of loss of confidence so as to deny him retrenchment. It may be noticed that the evidence was led on as many as five charges in which only first two charges were not proved. Rest three charges were proved on the basis of evidence adduced before Tribunal. Standard of proof applicable in the departmental enquiries is by preponderance of probabilities and that very standard of proof would equally apply to the enquiry of this nature held before the Tribunal. Apart from the evidence of Shri Ashok Gupta and Shri Lal Chand Verma, the statement of Shri R.K. Varshney, Secretary of the respondent-Trust clearly prove the fact that the appellant was a person of quarrelsome nature and that not only he used to misbehave with the staff but also with the customers and that he was on number of occasions given memos and warnings. All these were proved not only by oral evidence but also by documentary evidence produced by the management before the Tribunal in the shape of Exhibit M-1 to Exhibit M-13. Copies of some of the complaints, memos and warnings etc. have also been produced by the respondent-management with the reply to the writ petition. Document Ann.R.2/1 is the complaint dated October 5, 1976 from the Junior Accountant of the Trust against the misbehaviour of the appellant. Document Ann. R.2/2 is the explanation called from the appellant on June 14, 1979 by the management. Document Ann.R.2/3 is the warning given to the appellant by the management on July 13, 1979. Again, document Ann.R.2/4 is a complaint dated September 17, 1979 from one Shri Chaju against the misbehaviour of the appellant. Explanation of the appellant vide document Ann. R.2/5 was called on March 14, 1980. Document Ann.R.2/6 is a Note prepared by the Board of Trustees of the respondent Management vide which, performance of appellant was analyzed and after theory analysis, the Board of Trustees by the said arrived at a conclusion that bad perform(sic) and activities of the appellant were again(sic) interest of the Trust therefore they opined (sic) said Note to terminate his services after g(sic) him notice.

7. In view of all the aforesaid evidence both oral and documentary, it cannot be that it was a case of either no evidence or lack of evidence. The sufficiency of evidence cannot be a ground for interfering with the order of termination if on the basis of ava(sic) evidence, an ordinary man of reason prudent could come to such a conclusion (sic) has been arrived at by the disciplinary aut(sic) or in the present case by the Industrial Tribunal Findings recorded by the Tribunal on fac(sic) neither be said to be perverse nor other erroneous. This Court by re-appreciation evidence cannot arrived at a diff(sic) conclusion than the one reached by the Tribunal just because it is possible to take another v(sic).

We are therefore not persuac accept those arguments of the appellant. (sic) of what we have discussed above, we (sic) find any merit in this appeal which accordingly dismissed. No costs.