
(1984) 09 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3051 of 1983

Chittorgarh Prathmik Sahkari Bhumi Vikas Bank Ltd.

APPELLANT

Vs

Prescribed Authority and Others

RESPONDENT

Date of Decision : 12-09-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1984) WLN 235

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—The petitioner has filed this writ this writ petition under Arts. 226 and 227 of the constitution for quashing the order Anx-19 dated October 24 1983 of the prescribed Authority, Bhilwara and Under the Rajasthan shops and commercial Establishments Act (for short the prescribed authority ") and for dismissing the claim of non petitioner No. 2 filed vide application Anx. 1 dated January 17, 1982

2. Non petitioner No. 2 Amarsingh led an application u/s 28A of the Rajasthan shops and commercial Establishment Act 1958 (Article No. xxxi of 1958) (for short "the Act ") before the prescribed Authority (non-petitioner No. 1) on august 27, 1982. It was amongst other alleged that the petitioner cooperative bank in a shop and commercial establishment covered and governed by the Act. It was stated that non-petitioner No. 1 was first a pointed as a lower division clerk vide letter dated April 11 1981, along with other persons. His employment was terminated on December 22, 1981. He was further re-employed on January 1, 1982 and claims that he continued in the employment until July 28, 1982. In this way the petitioner alleged that he has been in continuous employment of the petitioner alleged that he has been in continuous employment of the petitioner for a period not less than six months. According to him the termination of the employment after July 28, 1982 was without cause and also not proper without

payment of one month's salary. It was also stated that on reasons for terminating his employment were mentioned to him. He Submitted an application Anx. 1 supported by his affidavit to the prescribed authority. The petitioner contested the application alleging inter alia there there provisions of the Article ere not applicable to it and that initial appointment of the petitioner was not proper. It was alleged that he was in reviewed for regular selection in February, 1982 but his result was received in July 1982 and he was found amongst rejected candidates. It was contended that non petitioner No. 2 had not been in continuous employment since April 12, 1981. It was proved in the application that the termination of his employment with effect from July 28, 1952 is void and he is entitled to be reinstated with back wages, with effect from July 28, 1982. The petitioner contested the application by filing reply Anx. 2. The principal objection taken was that the initial appointment of non-petitioner No. 2 is null and void and that he was interviewed for normal selection on February 1982 and when his result was received in July 1982 he was found initially rejected. Non-petitioner No. 2's appointment was challenged on the ground that on the post of lower division clerk the regular appointment could be made by a Selection Committee constituted by the Registrar, Cooperative Societies, Rajasthan Jaipur. The invalid appointment cannot be validated and non-petitioner No. 2 is not entitled to any relief u/s 28 A of the Act. It has been stated that non-petitioner No. 2 was only temporary for a fixed period and, therefore, he is not entitled to file the application u/s 28 A of the Act. The parties led evidence and placed on record documentary evidence. The Prescribed Authority non-petitioner No. 1) held vide order Anx. 9 dated October 24, 1983 that the petitioner had been in continuous employment for a period of more than six months and as such Section 28A of the Act was attracted and as there was non-compliance of Section 28A of the Act, the termination of the employee's (non-petitioner No. 2) services was illegal and, therefore, he should be reinstated with back wages from the date of his termination. The petitioner has filed writ petition for quashing the order Anx. 19 as aforesaid.

3. Show cause notice was issued to the non-petitioners. On behalf of non-petitioner No. 2 reply has been filed praying that writ petition filed by the petitioner be dismissed. It was stated in the reply that in this case this Court should not interfere with the order of he Prescribed Authority, for, the writ jurisdiction should not be allowed to be used by the employer for the purpose of canvassing questions of fact when the judgment rests on the question of fact. It was also submitted that in the reply Anx. 2 it was not stated that employee's claim relating to continuous employment is wholly faked and based on concocted evidence. On account of the conduct, the petitioner has disentitled himself to the relief and the writ petition merited dismissal.

4. I have heard Mr. D.S. Shishodia for the petitioner and Mr. M. Mridul for non-petitioner No. 2 and considered the pleadings and the documents filed by the parties.

5. Mr. D.S. Shishodia, learned Counsel for the petitioner, submitted that by means of Anx. 9 dated July 15, 1982, the service period of non-petitioner No. 2 was only extended up to July 28, 1982 and as such after the expiry of this date it was an automatic cessation of service. He relied on *Associated Traders & Engineers v. Workman (I)*.

6. Mr. M. Mridul supported the order of the Prescribed Authority.

7. Before dealing With the contentions raised by the learned Counsel appearing for the parties, it will be proper to quote Section 28A of the Act, which.

28-A. Notice of Dismissal or discharge by employer : - (1) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving Such employee at least one month's prior notice or on paying him one month's wage in lieu of such notice:

Provided that such notice shall not be necessary where the Services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.

2. Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely:

(a) that there was no reasonable cause for dispensing with his services;

or

(b) that no notice was served upon him as required by Sub-section (1)

or

(c) that he had not been guilty of any misconduct;

Provided that the Prescribed Authority may condone delay in filing such a complaint if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

(3) the Prescribed Authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefore.

(4) While passing an order under Sub-section (3), the prescribed authority shall have power to give relief to the employee by way of re-instatement or by awarding money compensation or by both

(5) The decision of the prescribed authority under this section shall be final and

binding both on the employer and the employee.

According to this section an employer cannot dismiss or discharge an employee from employment who has continuously served for a period of not less than six months without cause and also after giving him at least one month's prior notice or giving him one month's wages in lieu thereof. In para No. 4 of the application it was stated by non-petitioner No. 2 that he was re-employed from January 1, 1982, on the post of a lower division clerk and thereafter he continued as such upto July 28, 1982, and so his period of service is more than six months, the employer has, however, by Oral order dated July 28, 1982, without giving any reason and without paying one month's salary terminated his service and, therefore, it is void. A reply was filed. It was pleaded that the employment of non-petitioner No. 2 was only for a fixed period which automatically came to an end on July 28, 1982, and, therefore, there is no question of giving him one month's notice or wages in lieu thereof and as such the termination of the services of non petitioner No. 2 was legal. The Prescribed Authority formulated points for determination. Issue No. 1 when translated into English reads as under.

Whether the services of the applicant (non-petitioner No. 2) were wrongfully and illegally terminated?

The Prescribed Authority held that non petitioner No. 2 had been in service of the petitioner for a continuous period of six months. Mr. D.S Chishodia, learned Counsel, contended that no order could be passed u/s 28A of the Act, for, non-petitioner No. 2 has not been in continuous service of the petitioner for a period of not less than six months, and that as non-petitioner No. 2's appointment was only upto July 28, 1982, his services automatically came to an end after July 28, 1982, and, therefore, there was no necessity of complying with the provisions of Section 28A of the Act.

8. On behalf of non-petitioner No. 2 reply to the show cause notice has been filed stating that the questions raised in the writ petition are of facts and that the writ jurisdiction, cannot be, allowed: to be used by an employer for the purpose of canvassing question of facts particularly when the order has been made in favour of the workman. It was also stated in the reply that for the reason mentioned in para 2 of the reply that the petitioner has disintitiled himself to file the writ petition because of its conduct, While repelling the contention raised by the learned Counsel for the petitioner, it was submitted that Section 28A is applicable and before discharging non-petitioner No. 2, the petitioner should have complied with it.

9. The question is whether non-petitioner No.2 has been in continuous employment for a period of not less than six months? Non-petitioner no.2 was first appointed as a lower division clerk vide order Anx 4 dated April 11, 1981. His employment was terminated on December 22 1981. He was further employed vide, order Anx. 5 dated January 1, 1982. The appointment was to last upto February 28, 1982. The order Anx. 5 was amended by order Anx. 6 dated

March 12, 1982 and service period was extended upto March 12, 1982. On March 12, 1982 by means of Anx. 7 the period was extended by 60 days. By Office Order Anx. 8 dated May 17, 1982 the service period was again extended for 60 days. By a general order Anx. 6 dated July 15, 1982, the service period of all the temporary employees inclusive of non-petitioner No. 2 was extended upto July 28, 1982. Thus from the perusal of Anx. 5 to Anx. 9 it is clear that non-petitioner No. 2 has been in employment from January 1, 1982 to July 28, 1982. This period is more than six months.

10. The word "employee" has been defined in Section 2 (5) of the Act as under:

(5) employee means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice but does not include a member of the employers' family; it also includes any clerical or other staff or a factory or industrial establishment who falls outside the purview of the Factories Act. 1948 (Central Act IXIII of 1948).

11. It is not in dispute that cot-petitioner No. 2 was an employee. Non-petitioner No. 2 had been in continuous employment of the petitioner as employee for a period of not less than six months. His services could only be discharged if there was a reasonable cause and that too after giving him at least one month's prognostics or on paying him one month's wages in lieu, such notice. Admittedly, no notice was given and it appears from the Anx. 19 dated October 24, 1983 of the Prescribed Authority that by an oral order he was discharged i.e. his services were terminated. It was not disputed that there was non-compliance of Section 28A of the Act. Section 28A of the Act is also applicable to temporary employee who has been in the employment for not less than six months. In this view of the matter it cannot be said that "any illegality has been committed by the Prescribed Authority in passing the order Ank. 19 dated October 24, 1983.

11. laamed counsel for the petitioner has relied on The Management of Associated Traders and Engineers Pvt. Ltd. Vs. Basant Lal Bhambri and Others, In that case, the services of the respondent were renewed from time to time November the Inst renewal of service was: according to letter dated November 10, 1964, which was, addressed by the employer to the employee (respondent No. 2). That letter has been reproduced in para 3 of the report. On behalf of the employee, a contention was raised that he was appointed With effect from September 15, 1960 for a "period of two years as is evident from the letter dated November 5, 1960 (Anx. A), and, therefore the renewal of his service could come to an end only on September 14, on any particular year and so the notice terminating his service with effect from November 5, 1966 was not in terms of the agreement and was invalid. This contention was repelled by observing as under:

It must be borne in mind that the test of the sufficiency of a notice is not what it would mean to a stranger ignorant of the facts and circumstances of the case but what it would mean to the person to whom it has been addressed and who is

presumably conversant with all the facts and circumstances. The notice cannot be construed with a desire to find out, how it can be made inflexible. On the other hand, it has to be construed a manner in which it could be rendered valid. Unnecessary hypertechnical interpretation cannot be resorted to. In this case the service of the respondent worker being admittedly for a fixed period, did not require a notice of termination. Both parties had notice on the commencement of the service that it was to come to an end on the expiry of the limited period.

12. The dispute was examined in the light of Section 13 of the Delhi Shops and Establishments Act (No. V of 1954). This decision is not of much assistance to the learned Counsel for the petitioner, for in the present case, it is clear from Anx. 5 to Anx. 9 that non-petitioner No. 2 has been in continuous employment from January 1, 1932 to July 28, 1982 and as such, he has been in employment for more than six months. The services of the petitioner could not be terminated without complying with Section 28A of the Act.

The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of facts decided by those Tribunals.

13. In this view of the matter, it is not necessary to deal with the preliminary objections raised by the learned Counsel in reply to the show cause notice.

14. No other point was pressed by the learned Counsel for the petitioner.

15. The direction made by the Prescribed Authority is in accordance with Section 28A (4) of the Act. The petitioner is not entitled to any relief.

16. The writ petition is dismissed. There shall be no order as to costs.