
(2011) 04 DEL CK 0029

In the Delhi High Court

Case No : Regular Second Appeal No. 95 of 1988

Delhi Transport Corporation

APPELLANT

Vs

Shri Ram Phal

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 144, 148, 302, 304, 323

Citation : (2011) 04 DEL CK 0029

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : J.N. Aggarwal, for the Appellant; P.K. Aggarwal, Anju Bhushan and Mohit Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 13.09.1988 which had endorsed the findings of the trial Judge dated 29.10.1986 whereby the suit filed by the Plaintiff Ram Phal against the Defendant/Delhi Transport Corporation (DTC) seeking a prayer that his termination order 21.08.1984 be declared null and void had been decreed in his favour.

2. Present suit was a suit for declaration and injunction. The Plaintiff was an employee of the DTC. He was working as a conductor. He had been appointed on 18.06.1983; he was put on probation w.e.f. 08.04.1983 for a period of one year. His probation was extended for the second time w.e.f. 24.04.1984 to 07.04.1985.

The probation was extended for the reason that an FIR had been registered against the Plaintiff under Sections 304/148/144/323/324 IPC at police station Rahi, Sonapat. The Plaintiff had been acquitted on 17.01.1985, this was admittedly in the intervening period of the second extended probation period. His services however already stood terminated on 21.08.1984. These are admitted facts.

3. The contention of the Plaintiff is that his termination order is illegal and

arbitrary; it is liable to be set aside. It was malafide and violative of the statutory rules and regulations governing the service conditions of the Plaintiff i.e. violative of Rule 7 of the Delhi Road Transport Authority Condition of Service Regulations, 1952 (hereinafter referred to as the "DRTA"). The defence of the Defendant was that a civil Court has no jurisdiction to entertain the suit of such a nature; labour court could alone adjudicate upon this dispute. The probation of the Plaintiff was validly extended; his termination was also legal.

4. On the pleadings of the parties, the following five issues were framed:

1. Whether the suit is not maintainable in view of preliminary objection No. (A) to (C) in the written statement? OPD 2. Whether the order of termination of Defendant dated 21.08.19984 by the Defendant is illegal and invalid? OPP 3. Whether the Plaintiff is entitled to relief as claimed in para 9 (A) of the Plaintiff? OPP 4. Whether the Plaintiff is entitled to the relief claimed in par 9E of the plaint? OPP 5. Whether the Plaintiff is entitled to relief claimed in para 9-C of plaint? OPP

5. Oral and documentary evidence was led. Both the concurrent findings were in favour of the Plaintiff. Both the courts below held that the civil court has the jurisdiction to entertain the suit of such a nature; since the claim of the Plaintiff was that his termination is violative of the statutory rules and regulations governing his service conditions such a suit was maintainable. Further the probation of the Plaintiff could not have been extended for the second time without recording reasons; this was violative of Rule 7 of the DRTA.

6. This is a second appeal. It had been admitted and on 20.10.2010, the following two substantial questions of law were formulated:

1. Whether the Civil Court has jurisdiction to entertain a suit for declaration filed by the workman challenging his discharge? If not, its effect?

2. Whether it was incumbent upon the Delhi Transport Corporation (DTC) to give reasons for extension of the period of probation as alleged in terms of Rule 7 of the Delhi Road Transport Authority (DRTA) Condition of Service Regulations, 1952? If so, its effect?

7. On behalf of the Appellant, it has been urged that the civil court did not have the requisite jurisdiction to entertain the present suit. Attention has been drawn to the second schedule of the Industrial Disputes Act, 1947 (hereinafter referred to as "IDA") which reads as under:

Matters with the jurisdiction of Labour Courts.

1. The propriety or legality of an order passed by an employer under the standing orders;

2. The application and interpretation of standing order;

3. Discharge or dismissal of workmen including re-instatement of, or grant of

relief to, workmen wrongfully dismissed;\

4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lock-out; and 6. All matters other than those specified in the Third Schedule.

8. It is pointed out under Clause 3 discharge/dismissal of a workman including reinstatement is within the jurisdiction and domain of a labour court, civil court was precluded from going into this issue. Reliance has been placed upon 1997 (40) DRJ Lahori Singh v. Larsen & Toubro Ltd. to support this submission. It is pointed out that the landmark judgment of the Apex Court reported as The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, which was subsequently reiterated by the Apex Court in 1995 (4) SC 348 Rajasthan State Road Transport Corporation v. Krishna Kant has culled out the principles which are applicable to the jurisdiction of the civil court in relation to an industrial dispute. They read as under:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to act an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such a Chapter V-A then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

9. Vehement submission of learned Counsel for the Appellant is that present is clearly a case of an industrial dispute and what the Plaintiff has sought for is his enforcement of rights which being an industrial dispute could only be adjudicated upon by the Industrial Tribunal. On the second substantial question of law No. 2, it is pointed out that there has been no violation of Rule 7 of DRTA.

10. Relevant would it be extract Rule 7 which reads as under:

7. (1) Probation:

All appointments shall be made on probation for a period of one year. The period of probation may be extended by the Appointing Authority in the case of particular individual if the Appointing Authority considers it necessary for reasons which should be recorded provided that in no case shall the period of probation exceed two years.

(2) Confirmation:

After the satisfactory completion of the period of probation in a post an employee who is found fit for confirmation may be confirmed in that post provided that post is included in the sanctioned permanent establishment of the Delhi Road Transport Authority.

11. This rule stipulates that in case the period of probation is extended after first year, reasons should be recorded. The contention of the Appellant is that although reasons are required to be recorded yet they do not have to be conveyed to the Plaintiff; there has been no violation of this rule.

12. Arguments have been refuted.

13. Record has been perused. There is no dispute to the second schedule of the IDA, matters within the jurisdiction of the labour court have been detailed therein. The principles laid down by the Apex Court in the case of Premier Automobiles Ltd. are the guiding principles. They have been quoted hereinabove. The second option contained therein is a right of election; if the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil court is in the alternative; suitor has right to elect his remedy. The averments in the plaint and the prayer clause have been perused. Contention of the Plaintiff is that the statutory Rules and Regulations governing his service conditions including rules 7 & 9 have been violative. The Standing Orders have also not been adhered to. For all the aforesaid reasons, the termination order dated 21.08.1984 is liable to be set aside.

14. The impugned judgment had rightly noted that the Respondent is a statutory body and is governed by the statutory rules and regulations. Even if the dispute raised is an industrial dispute arising out of a right under general common law, the civil court would have the jurisdiction to entertain such a suit. In Ram Kumar Vs. State of Haryana, where a bus conductor had filed a suit

15. The finding in the impugned judgment qua this issue was returned as follows:

Coming to the facts of the present case, DTC is a statutory body and if the statutory body acts in the breach of any of its regulations, the affected party has a right to come to the civil court. The Hon'ble Supreme Court in AIR 1970 1244 held that when a statutory statute is given to any employee then there has been any violation while determining the service of such employee, such employee is to get relief of declaration that order is null and void and that he continues to be in service. The remedy under the termination of service lies under the Industrial Dispute Act but remedy for declaration is in contravention of certain statutory rules is within the jurisdiction of the Civil Court. Thus the labour court and civil courts have concurrent jurisdiction in the matter and as the case of the Plaintiff falls under second category as laid down by the Hon'ble Supreme Court in The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd., . In Ram Kumar Vs. State of Haryana, the Hon'ble Supreme Court while dismissing the suit on merits did not set findings of the Id. ADC that the civil

court had jurisdiction to try the suit in which termination of a conductor of Haryana Roadways was challenged. I, therefore, hold that the civil courts have jurisdiction to try the suit. The Id. Trial court rightly decided issue No. 1 in favour of the Plaintiff and against the Defendant and the present suit is not marred as alleged by the Defendant.

16. There is no perversity in this finding. A civil suit was maintainable; jurisdiction of the civil court was not ousted.

Substantial question of law No. 1 is answered in favour of the Respondent.

17. On the second substantial question of law, the impugned judgment had on the applicability of Rule 7 a finding as follows:

Thus as per rules normally period of probation is one year and some can be extended for another one year to but such extension can only be done by the authority with reasons which should be recorded. Letter dated 24-4-84 whereby the period of probation of Plaintiff was extended upto 7-4-85 is exhibit DW1/7 and there are no reasons in this letter which weighed with the authority to extend the probation of Plaintiff. Thus the very expansion period of probation of the Plaintiff by the Appellant vide Ex. PW1/7 is illegal and without jurisdiction and the same is in contravention of Rule 7(1) governing the service rules of the employees of the D.T.C. Once the expansion of period is held to be illegal and without jurisdiction, the Plaintiff is deemed to have been confirmed to the post of conductor in terms of rules 7 (2) of service rule. The service of the Plaintiff in this case have been terminated vide letter dated 21.04.1984 under regulation 9 (A) (i) of the DRTA. Regulation, 1952 i.e. service has been terminated without assigning any reason and without any notice during the period of probation but as already discussed above, extension of period of probation of Plaintiff is without jurisdiction and against the rules and Plaintiff is deemed to have been confirmed under Rule 7 (2) as no reason were given for extending the period of probation as required under Rule 7(1) and as such Rule 9 (A) (i) has got no application. It is not disputed that the Plaintiff in fact was later on acquitted by the trial court of the criminal case. Even if that was a case u/s 302 IPC. The Id. Trial court has thus rightly decree the suit of the Plaintiff and the findings of the Id. Trial court are based upon evidence and documents on the record. The judgment of the Id. Trial court is in consonance with rules and regulations governing the service conditions of the Plaintiff.

10 Coming to the cross-objection filed by the Plaintiff, the Id. trial court though passed judgment for declaration declaring that termination and extension of probation of the Plaintiff are held to be illegal and inoperative and Plaintiff still continues to be in service as the employees of the Defendant but declined to issue declaration that the Plaintiff was also entitled to full salary and allowances and other benefits, from the date of termination of the service. The judgments relied upon by the Id. Trial court are not applicable to the facts of the present case. I fail to make out what weighed with the trial court to refuse to grant

benefit of full salary and allowances especially when the trial court had granted declaration that order terminating the service and extension of period of probation of the Plaintiff was illegal and without jurisdiction. What the Plaintiff was seeking was an essential collar which was to follow and in this suit for declaration he was not required to pay the court fees as held by the Id. Trial court. The cross objections are, therefore, allowed. The judgment and decree of the trial court is modified and decree for declaration is passed in the following terms that the suit of the Plaintiff is decreed that termination of the Plaintiff and extension of period of probation are held to be illegal and Plaintiff is deemed to continue in service and is entitled to full salary and allowances and other benefits from 21.08.1984 onwards.

18. There is no perversity in this finding. Rule 7 of the DRTA has been quoted hereinabove. Admittedly in terms thereof reasons had to be recorded at the time of second extension of probation. Contention of learned Counsel for the Appellant that even if the reasons were required to be recorded, they did not have to be conveyed is also not supported by any evidence. There was no evidence forthcoming by the Appellant/Defendant in the courts below to substantiate this submission. Nothing was brought on record either oral or documentary to show that these reasons had even been recorded in the record of the Defendant. This was rightly observed and noted in the impugned judgment.

19. In DRJ 1985 (9) 118 Richpal Singh v. Secretary (Labour) and others while dealing with the Rule 7 of the said regulations of the DRTA, the Court had returned a finding that since the DTC had not placed on record reasons for extending probation, the said regulation being mandatory, the Petitioner was entitled to the relief of reinstatement.

20. In instant case as well in the absence of reasons having been recorded, the second extension of probation of the Appellant was violative of Rule 7 of the DRTA. The Plaintiff was rightly granted relief by the impugned judgment.

21. Substantial question of law No. 2 is also answered in favour of the Respondent and against the Appellant. These two concurrent findings of fact cannot be interfered with. They in no manner can be said to be perverse. Appeal has no merit. Dismissed.