

(2020) 01 RAJ CK 0380
In the Rajasthan High Court
Case No : Special Appeal Writ No. 16 Of 2020

General Manager, Tilam Sangh, Kota Project, Kota
Vs

APPELLANT

Rambabu Saxena

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 RAJ CK 0380

Hon'ble Judges : Sangeet Lodha, J; Mahendar Kumar Goyal, J

Bench : Division Bench

Advocate : Vinayak Kumar Joshi

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against order dated 25.11.19 passed by the learned Single Judge of this Court, whereby the writ petition preferred

by the appellant assailing the award dated 20.5.2019 passed by the Labour Court, Kota in Industrial Dispute Case No.372/95, has been dismissed.

2. The respondent employed as ETP Operator-cum-Analyst in the Rajfed Soyabin Project, Kota (now known as TILAM Sangh Rajasthan, Kota), on

being found guilty of charges of misconduct in a domestic enquiry conducted by the employer was dismissed from service vide order dated 6.7.1994.

Being protected workman, the employer-TILAM Sangh sought approval of the Industrial Tribunal under the proviso to Section 33(2)(b) of Industrial

Disputes Act, 1947 (for short "the Act"). During the pendency of the proceedings, the TILAM Sangh was declared 'Relief Undertaking' and

proceedings under Section 33(2)(b) were put in abeyance. Aggrieved thereby, the respondent preferred the writ petition being No.4293/97 before this

Court, which was dismissed by the learned Single Judge vide order dated 10.9.1997 observing that during the pendency of the proceedings under

Section 33(2)(b) of the Act, the writ petition was not maintainable. The legality of the order passed by the learned Single Judge was questioned by the

respondent by way of special appeal, which was allowed by a Bench of this Court vide order dated 19.2.2008 with the directions in the following

terms:

(i) Impugned order of learned single Judge shall stand set aside.

(ii) Respondent Employer is directed to provisionally reinstate the appellant workman within thirty days from today.

(iii) Reinstatement of appellant workman shall be prospective and he will not be entitled to back wages.

(iv) This order shall remain in force till the adjudication of the proceedings pending under Section 33(2)(b) of ID Act before the Industrial Tribunal

Kota.

(v) There shall be no order as to costs.

3. Before filing the writ petition before the learned Single Judge as aforesaid, the respondent had raised an industrial dispute before the Conciliation

Officer. On failure of the conciliation proceedings, the Conciliation Officer submitted the failure report to the State Government, which in its turn

referred the dispute for adjudication to the Labour Court, Kota vide notification dated 5.10.1995.

4. The respondent filed his statement of claim before the Labour Court and the appellant-employer filed a reply thereto. After due consideration, the

Labour Court while adjudicating the dispute raised also proceeded to decide the application preferred by the appellant-employer under Section 33(2)(b)

of the Act and passed the award dated 20.5.2019, whereby while holding the termination of the respondent as bad in law and reinstating him in

service, held him entitled for 50% back wages for the period from 6.7.1994 to 8.3.2008 with interest @ 9% per annum.

5. It was contended on behalf of the appellant before the learned Single Judge that the Labour Court ought to have decided the application preferred

by the appellant-employer under Section 33(2)(b) of the Act first and thereafter, only it could have decided the reference made to it by the State

Government with regard to the dispute raised by the workman.

6. The learned Single Judge observed that if the application under Section 33(2) (b) and the dispute referred both were before the Labour Court, it

cannot be said that the Judge, Labour Court has committed an error in deciding both by way of award impugned. The learned Single Judge observed

that admittedly, the record relating to enquiry conducted was not available with the appellant-employer, the enquiry was held to be unfair and the

employer was extended an opportunity to lead evidence to prove the charge and if after due consideration of evidence on record, the charges were

not found proved, the Labour Court has committed no error in holding the order of dismissal to be illegal.

7. Learned counsel appearing for the appellant while reiterating the contention raised before the learned Single Judge submitted that at the stage of

consideration of the application under Section 33(2)(b), the Court cannot examine the validity of the enquiry and thus, the Labour Court has erred in

adjudicating the dispute on merits without first deciding the application preferred under Section 33(2)(b) of the Act.

8. Indisputably, on account of the pendency of the industrial dispute before the Labour Court, the respondent being a protected workman, could not

have been dismissed from service without approval in terms of Section 33(2)(b) of the Act. It is not disputed that both the applications under Section

33(2)(b) and the industrial dispute were pending before the Labour Court. It was a categorical stand of the employer before the Labour Court that the

record of enquiry and related documents are not traceable. Obviously, in absence of the record, the application preferred by the employer seeking

approval under Section 33 (2)(b) could not have been allowed by the Labour Court. Further, notwithstanding the approval being granted, the

respondent was not precluded from questioning the legality of order of dismissal by raising the industrial dispute and the industrial dispute had already

been referred to the Labour Court for adjudication by the appropriate Government. It is pertinent to note that in absence of the record of enquiry, at

the instance of the appellant-employer, the enquiry conducted was declared unfair and the appellant-employer was extended an opportunity to lead

evidence and prove the charge. The allegation against the respondent-workman was that he used abusive language and misbehaved with an employee

Shri K.B. Gautam. Before the Labour Court, the employer got examined two witnesses namely, Sunil Agarwal, General Manager and Aditya Kumar

Jain, General Manager (Retd.), however, K.B.Gautam with whom the respondent alleged to have misbehaved was not produced for examination

before the Labour Court. Be that as it may, after due consideration of the evidence on record, the Labour Court arrived at a categorical finding that

the charge against the respondent-workman is not proved. It is not the case of the appellant that the findings arrived at by the Labour Court is

capricious and perverse. In this view of the matter, in the considered opinion of this Court, the Labour Court has committed no error in holding the

dismissal of the respondent from service to be illegal and directing his reinstatement in service.

9. In the considered opinion of this Court, on the facts and in the circumstances of the case, when the action of the appellant- employer in dismissing

the appellant from service is found to be illegal by the Labour Court, the award of 50% back wages from the date of dismissal till the reinstatement in

service pursuant to order passed by a Bench of this Court also cannot be said to be unjust so as to warrant interference by this Court.

10. There is yet another aspect of the matter. Pursuant to the order dated 19.2.2008 passed by a Bench of this Court, the respondent-workman was

reinstated in service on 8.3.2008 and thereafter, on attaining the age of superannuation, he has retired from service on 31.3.2009 and therefore, even

otherwise, there is no reason as to why at this stage, this Court should grant any indulgence to the appellant so as to interfere with the impugned

award passed by the Labour Court invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India.

11. For the aforementioned reasons, we are in agreement with the view taken by the learned Single Judge.

12. No case for interference by us in exercise of intra court appeal jurisdiction is made out.

13. The special appeal is therefore, dismissed.