
(2003) 05 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2725 of 2001

Harbhaj Ram

APPELLANT

Vs

The Labour Court and Others

RESPONDENT

Date of Decision : 26-05-2003

Acts Referred:

Utri Rajasthani Milk Producers Union Employees (Conduct, Discipline and Appeal) Regulations, 1992 — Regulation 13, 13(4), 39, 50

Citation : (2004) 2 RLW 919 : (2003) 3 WLC 772

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vijay Bishnoi, for the Appellant; D.K. Parihar, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner on 11.7.2001 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 23.9.1995 (Annex. 3) passed by the respondent No. 2 Managing Director, Paschami Rajasthan Dugdh Utpadak Sahkari Sangh Limited, Jodhpur by which the services of the petitioner were terminated and the judgment and award dated 23.11.2000 (Annex. 11) passed by the respondent No. 1 Labour Court, Jodhpur by which the order Annex. 3 dated 23.9.1995 terminating the services of the petitioner was found valid and proper, be quashed and set aside.

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

The petitioner was working as Helper Gr.I at Milk Chilling Centre, Phalodi which is under the Paschami Rajasthan Dugdh Utpadak Sahkari Sangh Limited, Jodhpur (hereinafter referred to as "the Sangh").

The further case of the petitioner is that General Panchayat Raj Elections were held in the State of Rajasthan in the month of February, 1995 and he wanted to

contest the election for the post of Sarpanch Gram Panchayat Nokhda.

The further case of the petitioner is that the service conditions of the petitioner are governed by the Uttari Rajasthan Milk Producers Cooperative Union Employees (Conduct, Discipline and Appeal) Regulations, 1992 (hereinafter referred to as "the Regulations of 1992") and as per Regulation 13 of the Regulations of 1992, an employee of Sangh was not allowed to take part in election and Regulation 50 of the Regulations of 1992 provides that the Board may exempt any employee from the application of any particular regulation and therefore, he applied to the respondent No. 2 Managing Director of Sangh for seeking permission to contest the election for the post of Sarpanch, Gram Panchayat Nokhda through application Annex. 1 dated 17.1.1995.

The further case of the petitioner is that the respondent No. 2 Managing Director of Sangh granted permission to the petitioner through order Annex. 2 dated 28.1.1995 to contest the Panchayat Raj Election.

The further case of the petitioner is that thereafter, he contested the election and he was elected as Sarpanch of Gram Panchayat Nokhda and this fact was informed by the petitioner to the respondent No. 2 Managing Director of Sangh.

The further case of the petitioner is that thereafter, the respondent No. 2 Managing Director of Sangh issued a show cause notice dated 27.3.1995 (Annex. R/1) to the petitioner asking him to submit explanation why his services be not terminated because as per the Regulations of 1992, he was prohibited from contesting the election. A reply to the said show cause notice Annex. R/I was filed by the petitioner on 11.4.1995 (Annex. R/2).

Thereafter, another show cause notice dated 22.7.1995 was issued to the petitioner and the petitioner submitted the reply to the said show cause notice on 1.8.1995.

Thereafter, the respondent No. 2 Managing Director of Sangh passed the impugned order Annex. 3 dated 23.9.1995 by which the services of the petitioner were terminated mentioning therein that as per Regulation 13 of the Regulations of 1992, the petitioner could not contest the election and the provisional permission which was given to the petitioner through order Annex. 2 should be treated as void.

Thereafter, the Labour Department of the Government of Rajasthan through Notification dated 5.3.1997 (Annex. 4) made the reference to the respondent No. 1 Labour Court, Jodhpur to the effect whether the termination of services of the petitioner through order Annex. 3 dated 23.9.1995 was valid and proper or not and on that reference, a case being No. 23/97 was registered by the respondent No. 1 Labour Court, Jodhpur and notices were issued to both the parties.

Thereafter, the petitioner submitted his claim before the respondent No. 1 Labour Court, Jodhpur through statement of claim Annex. 5 and a reply to the claim of the petitioner was filed by the respondent No. 2 through Annex. 6.

After hearing both the parties and considering the material available on record, respondent No. 1 the Labour Court, Jodhpur through judgment and award dated 23.11.2000 (Annex. 11) came to the conclusion that the termination of services of the petitioner through order Annex. 3 dated 23.9.1995 was valid and proper holding inter-alia that as per the Regulation 13 of the Regulations of 1992, an employee of the Sangh was debarred from taking part in any election and since the petitioner took part in the election, therefore, in such circumstances, the termination of his services through order Annex. 3 was proper and valid. Hence, this writ petition with the prayers as stated above.

In this writ petition, the order Annex. 3 dated 23.9.1995 passed by the respondent No. 2 Managing Director of Sangh by which the services of the petitioner were terminated and the judgment and award dated 23.11.2000 (Annex. 11) passed by the respondent No. 1 Labour Court, Jodhpur by which termination of services of the petitioner through order Annex. 3 was found proper and valid, have been challenged by the petitioner on various grounds and the main ground is that since the penalty of removal from service is a major penalty and since it was imposed upon the petitioner without holding an enquiry, therefore, the termination order Annex. 3 is bad in law and similarly, the findings of the learned Labour Court are wholly perverse and erroneous one and should be set aside as without holding enquiry, the services of the petitioner could not be terminated. In this respect, the petitioner has placed reliance on Regulation 39 of the Regulations of 1992 which provides disciplinary procedure and also on Regulation 50 where there is a provision for relaxation under special circumstances.

A reply to the writ petition was filed by the respondent No. 2 Managing Director of Sangh and the case of the respondent No. 2 Managing Director of Sangh is that as per Regulation 13 of the Regulations of 1992, the termination order Annex. 3 was rightly passed against the petitioner and in such circumstances, there was no need to hold enquiry as envisaged in Regulation 39 of the Regulations of 1992. Hence, the writ petition filed by the petitioner be dismissed.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

6. There is no dispute on the point that the petitioner was an employee of the Sangh and he sought permission through application Annex. 1 dated 17.1.1995 for contesting the Panchayat Raj Election and the provisional permission was granted by the respondent No. 2 Managing Director of Sangh through order Annex. 2 dated 28.1.1995.

7. There is also no dispute on the point that the petitioner contested the election and he was elected as Sarpanch, Gram Panchayat Nokhda and as per the impugned judgment and award (Annex. 11) of the learned Labour Court, Jodhpur, the petitioner performed both the duties of Sarpanch as well as

employee of the respondent No. 2 for sometime.

8. There is also no dispute on the point that before passing the termination order Annex. 3, two show cause notices were issued by the respondent No. 2 Managing Director of Sangh to the petitioner, first on 27.3.1995 (Annex. R/1) and reply to that show cause notice Annex. R/1 was filed by the petitioner on 11.4.1995 through Annex. R/2 and second on 19.7.1995 and reply to that show cause notice was filed by the petitioner on 1.8.1995 and thereafter, the impugned termination order Annex. 3 dated 23.9.1995 was passed by the respondent No. 2 Managing Director of Sangh by invoking the power under Regulation 13 of the Regulations of 1992.

9. For convenience, Regulation 13 of the Regulations of 1992 is quoted here:- "13. Prohibition against participation in election:

(1) An employee shall not take part in an election to any legislature or to any local authority.

(2) Nothing contained in Sub-regulation (1) shall be deemed to affect the right of any employee to vote at an election and where he does so, he shall give no indication of the manner in which he proposes to vote or has voted.

(3) Every employee shall strictly refrain from being a worker or officer bearer of any political party.

(4) If any question arises whether any conduct falls within the scope of this regulation, the decision of the Competent Authority shall be final."

10. A perusal of Regulation 13 of the Regulations of 1992 reveals that there is absolute bar for an employee for taking part in any election. From this point of view, the petitioner was not at all entitled to contest the election of Sarpanch, Gram Panchayat Nokhda.

11. So far as granting of permission through order Annex. 2 dated 28.1.1995 is concerned, a perusal of that order Annex. 2 reveals that permission was granted to the petitioner provisionally and it was limited to filing of nomination and in that order Annex. 2, it was further written that the said provisional permission would be subject to the terms and conditions to be decided by the organisation subsequent to election and the petitioner was also directed to contact the office after election.

12. Therefore, to say that through order Annex. 2 permission was given to the petitioner to fight the election cannot be accepted and that permission should be restricted to the stage of filing of nomination. This is one of the aspects of the matter.

13. The respondent No. 1 Labour Court while passing the impugned judgment and award dated 23.11.2000 (Annex. 11) has observed that the impugned termination order Annex. 3 passed against the petitioner was proper and justified in view of Regulation 13 of the Regulations of 1992.

14. The question for consideration is whether the above findings of the respondent No. 1 Labour Court are correct one or not or are erroneous or suffer from basic infirmity and illegality or not.

15. In this respect, before proceeding further it may be stated here that the main case of the petitioner is that since the penalty of removal from service is a major penalty, therefore, in every situation, his case would be covered by the Regulation 39 of the Regulations of 1992.

16. In my considered opinion, the above argument of the petitioner does not appear to be sound one and cannot be accepted because of the following reasons:-

(i) That since the permission granted to the petitioner through Annex. 2 was only limited to the filing of the nomination and since there is absolute bar for taking part in any election as per Regulation 13 of the Regulations of 1992, therefore, in these circumstances, the fact of contesting the election by the petitioner itself is sufficient to prove the charge of misconduct against the petitioner.

(ii) That Sub-clause (4) of Regulation 13 of the Regulations of 1992 clearly provides that if any question arises whether any conduct falls within the scope of this Regulation, the decision of the Competent Authority shall be final meaning thereby dealing with the case of the Regulation 13, the decision of the Competent Authority (respondent No. 2 Managing Director of Sangh) would be final and when this being the position, if the respondent No. 2 Managing Director of Sangh, after giving two show cause notices to the petitioner, had passed the impugned termination order Annex. 3 against the petitioner, such act on the part of the respondent No. 2 Managing Director of Sangh cannot be said to be tainted with malafide or furthermore, it cannot be said that no opportunity was given to the petitioner before passing the impugned termination order Annex. 3. Thus, in this case, no question arises that principles of natural justice have been violated.

(3) That since that power has been given to the Competent Authority to pass appropriate order in a case falling under Regulation 13, Regulation 39 would not be applicable in such a situation. Therefore, the argument of the petitioner that his case is covered by Regulation 39 of the Regulations of 1992 cannot be accepted and stands rejected, it was not necessary on the part of the respondent No. 2 Managing Director of Sangh to conduct disciplinary proceedings against the petitioner as provided in Regulation 39 of the Regulations of 1992. From this point of view also, impugned termination order Annex. 3 cannot be assailed.

17. So far as Regulation 50 of the Regulations of 1992 is concerned, it has got no relevancy and at the most the provisional permission which was granted to the petitioner through Annex. 2 may fall under the provisions of Regulation 50, but not beyond that.

18. Thus, if the learned Labour Court through impugned judgment and award Annex. 11 held that the termination order Annex. 3 passed against the petitioner

was proper and justified in view of Regulation 13 of the Regulations of 1992, no illegality or irregularity has been committed by the learned Labour Court in doing so.

19. It may be stated here that under Article 226 of the Constitution of India, the High Court does not sit or act as an appellate Authority over the actions of the subordinate authorities or tribunal.

20. It is well established that it is only when an order of a tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution of India.

21. The power of general superintendence conferred by Article 227 involves a duty on the part of the High Court to keep all courts and tribunals within its territorial jurisdiction within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. This means that the High Court can interfere in cases of-

(a) Erroneous assumption or excess of jurisdiction.

(b) Refusal to exercise jurisdiction.

(c) Error of law apparent on the face of the record, as distinguished from a mere mistake of law or error of law relating to jurisdiction.

(d) Violation of principles of natural justice.

(e) Arbitrary or capricious exercise of authority, or discretion. CO Arriving at a finding which is perverse or based on no material.

22. In the present case, no illegality or irregularity has been committed by the learned Labour Court in holding that the termination of services of the petitioner through order Annex. 3 was proper and valid. These findings of the learned Labour Court cannot be said to be erroneous or perverse one. Hence, no interference is called for with the findings of the learned Labour Court.

23. So far as the rulings relied upon by the learned counsel for the petitioner in *Pratap Singh v. Superintendent of Police and Ors. (I)*, *Jagdish Prasad v. State of Rajasthan and Ors. (2)*, and *Kaushalya Devi v. District Judge, Tonk and Anr. (3)*, are concerned, they would not be helpful to the petitioner as in the present case it was found that no action was required to be taken under Regulation 39 of the Regulations of 1992.

24. For the reasons stated above, there is no merit in this writ petition and the same deserves to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.