
(2015) 02 RAJ CK 0176
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5812 of 1997

Hotel Man Singh Palace

APPELLANT

Vs

Authority under the Shops and Commercial Establishment Act
and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10
Limitation Act, 1963 — Section 5
Rajasthan Shops and Commercial Establishments Act, 1958 — Section 28A

Citation : (2015) 02 RAJ CK 0176

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Vinendra Agarwal and Manoj Goyal, for the Appellant

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J.—The instant writ application witnesses a challenge to the order dated 30th June, 1997, passed by the Authority under the Rajasthan Shops and Commercial Establishment Act, 1958, Ajmer, wherein the management of the Hotel Mansingh Palace, Ajmer (hereinafter referred to as the petitioner-employer), has been directed to reinstate Shri Amar Singh (hereinafter referred to as respondent-employee), with continuity of service and further to make payment for the period, he worked in the month of March and April, 1991.

2. Briefly, the indispensable skeletal material facts necessary for appreciation of the controversy raised herein needs to be first noticed. The respondent-employee was engaged as a casual worker on daily wages basis. The employment was terminated in the month of April, 1991. The respondent-employee instituted proceedings under Section 28A of the Rajasthan Shops and Commercial Establishment Act, 1958 (hereinafter referred to as "Act of 1958", for short), assailing his alleged termination from services as illegal and invalid. The respondent-employee also filed an application under Section 5 of the Limitation

Act, 1963, for condonation of delay in instituting the complaint. The delay was condoned. Taking into consideration pleadings of the parties, evidence tendered and after hearing the counsel for the parties; the Authority vide impugned order dated 30th June, 1997, held the termination of employment of the respondent-employee, by a verbal order dated 26th April, 1991, as illegal and invalid.

3. Learned counsel for the petitioner-employer reiterating the pleaded facts and grounds of the writ application contended that the impugned order is illegal, arbitrary and contrary to the settled principles of law declared by the Hon''ble Apex Court of the land. It is further contended that the complaint instituted under Section 28A of the Act of 1958, was not maintainable for the respondent-employee did not work for six months and further there was no order of dismissal or discharge rather the respondent-employer abandoned the job. The impugned order dated 30th June, 1997, has also been assailed for that there is no evidence about the alleged date of termination of the employment of the respondent-employee. The findings arrived at by the authority as to the date of termination being 26th April, 1991, are perverse and contrary to the material available on record. Further, the respondent-employee has pleaded contrary facts in the face of evidence brought on record.

4. It is further urged that the respondent-employee failed to prove the factum of termination of his employment on 26th April, 1991. Referring to the statements of the respondent-employee and the Assistant Personal Manager, the learned counsel would submit that the entire record with reference to attendance of the petitioner was available and produced before the Authority; but no effort was made on behalf of the respondent-employee to prove the factum of date of termination of his employment allegedly by a verbal order on 26th April, 1991. In support of his submissions the learned counsel has placed reliance on the opinion of the Hon''ble Supreme Court in the case of Manager, R.B.I., Bangalore Vs. S. Mani and Others, AIR 2005 SC 2179 : (2005) 105 FLR 1067 : (2005) 3 JT 248 : (2005) 2 LLJ 258 : (2005) 5 SCC 100 : (2005) SCC(L&S) 609 : (2005) 2 SCR 797 : (2005) 2 SLJ 309 : (2005) AIRSCW 1728 : (2005) 2 Supreme 589 ; R.M. Yellatti Vs. The Assistant Executive Engineer, AIR 2006 SC 355 : (2006) 108 FLR 213 : (2005) 9 JT 340 : (2006) 1 LLJ 442 : (2005) 9 SCALE 139 : (2006) 1 SCC 106 : (2006) SCC(L&S) 1 : (2006) 2 SLJ 1 : (2005) AIRSCW 6103 : (2005) 8 Supreme 586 ; and in the case of U.P. State Electricity Board and Another Vs. Aziz Ahmad, (2009) 121 FLR 177 : (2009) 1 JT 553 : (2009) 2 LLJ 315 : (2009) 1 SCALE 689 : (2009) 2 SCC 606 : (2009) 1 SCC(L&S) 418 : (2009) 2 SCR 373 : (2009) 2 SLJ 487 : (2009) 2 SLR 230 : (2009) 1 UJ 353 .

5. In response to the notice of the writ application, none appeared on behalf of the respondent-employee. Mr. Rajesh Sharma, Advocate, was appointed as counsel to defend the case by the Legal Aid Services Authority, Jaipur, on behalf of the respondent-employee.

6. The learned counsel appearing on behalf of the respondent-employee supporting the impugned order dated 30th June, 1997 and the stand as pleaded,

on behalf of the respondent-employee, before the Court below, strenuously argued that the petitioner-employer was in possession of the entire record with reference to the attendance of the petitioner as well as payment made, but did not produce the relevant record before the Court below, in evidence, for the reasons best known to it, and therefore, the authority committed no error while holding the action of the petitioner-employer as illegal and invalid in terminating the employment of the respondent-employee by a verbal order on 26th April, 1991.

7. I have heard the learned counsel for the parties and with their assistance perused the materials available on record.

8. From the pleadings of the respondent-employee it is evident that he specifically pleaded his date of first appointment as 17th August, 1990, but there was no evidence brought on record to substantiate the pleaded fact. It is also not disputed that the respondent-employee did not move any application before the Authority for summoning of the relevant record from where the correct date of his initial engagement could be ascertained and so also the date of termination of his employment.

9. The petitioner - employer specifically pleaded the date of initial appointment of the respondent-employee as 10th November, 1990. However, the witness, who appeared on behalf of the petitioner-employee, deposed his date of initial appointment as 1st November, 1990 and his continuance in employment up to 13th March, 1991. There is no material available on record to determine the correct date of initial appointment of the respondent-employee and termination of employment as well.

10. At this juncture, it will be relevant to consider the text of Section 28A of the Act of 1958, read with Rule 24-B of the rules made thereunder, which reads thus:--

"28-A. Notice of Dismissal or Discharge by employer:

(1) No employer shall dismiss or discharge from his employment any employment 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 wages 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;
- b) That no notice was served upon him as required by sub-section(1);
- c) That he had not been guilty for 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."

Rule 24-B (1) provides for filing of complaint to the prescribed authority and reads thus:--

"Rule-24-B (1) Any employee aggrieved by an order of dismissal or discharge under sub-section (1) of Section 28A, may file a complaint to the prescribed authority either himself or through an agent within thirty days from the date on which the order of dismissal or discharge has been communicated to him in writing by the employer."

11. A glance of the text of Section and Rule aforesaid, would reveal that a complaint could be sustained under Section 28A provided the order of dismissal or discharge has been communicated by the employer to the employee and further, the employee had been in such employment continuously for a period of not less than six months. Be that as it may, the respondent-employee has failed to tender any evidence in order to substantiate the pleaded facts on there material aspects. The arguments advanced to the effect that burden to proof of a particular fact is always on the person who alleges the same, has substance. It was for the respondent-employee to prove the pleaded facts with reference to his engagement and termination of his employment by a cogent on convening evidence. The authority under the Act of 1958, committed a manifest error of law and of fact initially by placing burden of proof on the petitioner-employer to establish the fact of initial engagement as well as termination of the employment of the respondent-employee. In absence of any evidence, the authority was not justified to arrive at the findings to conclude the date of termination of the employment as 26th April, 1991.

12. In the case of Manager RBI Bangalore (supra), after a survey of earlier judgments the Hon"ble Supreme Court held that pleadings are not substitute for proof. Paragraph 18 of the judgment reads thus:--

"Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore, not correct to contend that the plea raised by the respondents herein that they have worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. In any event the contention of the respondents having been denied and disputed, it was obligatory on the part of the respondents to add new evidence. The contents raised in the letters of the Union dated 30th May, 1988 and 11th April, 1990, containing statements to the effect that the workmen had been working

continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved particularly in view of the fact that the contents thereof were not proved by any witness. Only by reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so."

13. In the case of U.P. Electricity Board and Another (supra), reiterating the legal position, their lordships observed that in absence of evidence no conclusion could be arrived at and the pleaded facts are required to be proved. Unless evidence is tendered in support of the pleadings no reliance can be placed on the findings without there being any cogent evidence in support of the pleadings.

14. In the instant case at hand there is no cogent evidence available on record with regard to the correct date of either initial appointment or termination of the employment of the respondent-employee.

15. In the case of R.M. Yellatti (supra), the Hon'ble Supreme Court again reiterated the law declared in the case of Municipal Corporation, Faridabad v. Sri Niwas; Range Forest Officer, Rajasthan State, Ganganagar Sugar Mills Limited, and M.P. Electricity Board, and held thus:--

"17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the matter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case."

16. For the reasons and discussions hereinabove, I am of the opinion that the

impugned order passed by the authority under the Act of 1958, cannot be sustained.

17. Consequently, the writ application succeeds and is hereby allowed. The impugned order dated 30th June, 1997, is hereby quashed and set aside.

18. However, it will be open for the respondent-employee to avail of the alternative legal remedy available to him in accordance with law.

19. The record of the authority be sent back.

20. No costs.