
(1996) 05 RAJ CK 0028
In the Rajasthan High Court
Case No : C.W. Petition No. 2706 of 1985

Kalyanmal

APPELLANT

Vs

R.S.R.T.C. and Others

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (1996) 2 RLW 472 : (1996) 3 WLC 153 : (1996) 1 WLN 347

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—The petitioner who was a government servant opted for service in the RSRTC on 30.6.1966 and retired on 31.12.1991 as Supdt. Gr. I at Pali while he was drawing Rs. 1180/- per month but equivalent amount of accumulated leave was not granted on the ground that there is no provision in the Employees Service Regulations of RSRTC about the earned leave. The Tribunal vide order dt. 24.9.1985 (Ex.7) rejected the application of the petitioner. Hence, this writ petition.

2. Reply was filed stating that communication was given to the petitioner vide letter dt. 19.6.85 (Anx.R./1) that he is not entitled for any benefits as per Clause 58 and 62 of Service Regulations, 1965 and application u/s 33C(2) of the I.D. Act is not maintainable. It has also been stated that the Tribunal has come to the conclusion that on the basis of the provisions of Ss. 13 and 14 of the Raj. Shop & Commercial Establishment Act, 1958 the petitioner is not entitled to get encashment In the absence of there being any provision in the rules.

3. Mr. Parihar, learned counsel for the petitioner submits that the Tribunal has erred In dismissing the application of the Rajasthan Shops and Commercial Establishment Act," 1958 the petitioner is entitled for encashment of the leave and the Rajasthan State Road Transport Corporation Employees Service

Regulations, 1965 is a subordinate legislation and cannot override the provisions of Rajasthan Shops and Commercial Establishment Act, 1958.

4. Mr. Bhati, learned counsel for the respondents submits that the Tribunal has rightly dismissed the application of the petitioner. He submits that Section 3 of the said Act of 1958 specifically exempts the respondent-corporation being "office of or under the State Government", therefore, the petitioner cannot take any advantage of Sections 13 and 14 of the Act of 1958. He also submits that under the Service Regulations of 1965 the petitioner could avail the privilege leave if so applied and refused but he did not apply for availing the same. Therefore, the petitioner is not entitled for encashment of leave.

5. I have heard learned counsel for the parties and perused the material on record as well as the relevant provisions of the R.S.R.T.C. Employees Service Regulations 1965 and the Rajasthan Shops and Commercial Establishment Act, 1958. I find no good ground to interfere in the order of Tribunal dt. 24.9.85.

6. Section 3(a) of the said Act of 1958 specifically provides that the provisions of this Act shall not apply to the offices of or under the Central or any State Government or local authorities. The respondent Corporation being a State undertaking does not come within the purview of the Act of 1958, therefore, the petitioner cannot claim any relief under the provisions of the Rajasthan Shops and Commercial Establishments Act, 1958. Even if it is assumed that these provisions are applicable then too the petitioner cannot take any advantage for the reason that an employee can claim payment of earned leave if the employee applies to avail leave and the same is refused but in the case in hand the petitioner did not make any application to avail the earned leave and there is no allegation that the respondent-Corporation refused the same. Therefore, the contention of Mr. Parihar that in view of Sections 13 and 14 of the Act of 1958, the petitioner, is entitled for encashment of earned leave has no substance as he has not been able to show that the petitioner had applied for leave and the same was refused. Apart from that Section 13 provides that the provision of chapter "Annual leave with Wages" shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, agreement or contract of service." In the instant case the Corporation has also analogous provisions viz. 58 and 62 of the Service Regulations, 1965 and according to the provisions of these Regulations an employee is entitled to avail the earned as well as the privilege leave due to him but there is no provision of encashment of leave. Therefore, in the contract of service when there is no such provision for encashment of earned leave, the Tribunal has rightly dismissed the application of the petitioner moved u/s 33C(2) of the I.D. Act.

7. The respondent-corporation has questioned maintainability of the application u/s 33C(2) on the ground that the petitioner was working as an Office Superintendent Grade I drawing basic salary of Rs. 1190/-, therefore, he was not a workman as has been defined under the provisions of I.D. Act. Since the

matter has been decided on merits, it is not necessary to go into this question now. The petitioner has already availed all due benefits under the Regulations of 1965, therefore, as discussed above he is not entitled to take benefit of the provisions of the Shop & Commercial Establishment Act, 1958.

8. No other point has been pressed before me.

9. In view of what I have discussed above, I am not inclined to interfere in this writ petition as supervisory jurisdiction cannot be invoked even to rectify the error.

10. Accordingly, the writ petition has no force and the same is hereby dismissed.