
(1992) 02 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 771 of 1981

Kesrilal Lalchand and Another

APPELLANT

Vs

Authority u/Shops Act and Others

RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1994) 1 RLW 350 : (1993) 3 WLC 441 : (1992) WLN 15

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.C. Kochhar, J.—The facts giving rise to this writ petition filed by the petitioners under Articles 226 & 227 of the Constitution of India and the application under Order 22 Rule 4 of the CPC (the Code), moved during the pendency of this writ petition, are as under:

2. Late Shri Khem Singh (hereinafter to be referred as the "employee") had been working with the petitioners at their Bharatpur branch at a monthly salary of Rs. 250/-. He was in the employment of the petitioners since 1947. The employee filed an application u/s 28-A of the Rajasthan Shops & Commercial Establishments Act, 1958 (the Act) stating that the petitioners had terminated his services on 17-3-1980 without any cause and without giving him any notice or compensation and in violation of legal provisions. The application was contested by the petitioners on the ground that the employee himself had tendered his resignation and that his services had not been terminated by them. In order to support his case, the employee appeared in the witness-box as his own witness and one Gangaram was examined by the petitioners as the only witness to rebut the evidence produced by the employee. In his statement, the employee denied having resigned and also denied his signatures on the letter of resignation stated to have been submitted by him and, which, according to the petitioners, was accepted by Gangaram at the spot in presence of five persons,

who had attested the same. After comparing the admitted signatures of the employee with the signatures on the resignation letter and after going through the evidence produced by the parties, the learned Authority came to the conclusion that the resignation letter was not a genuine one and that the petitioners had illegally terminated the services of the employee. In the result, the learned Authority directed the petitioners to pay to the employee a sum of Rs. 4750/- as the compensation including the pay for notice period, the loss of salary of 16 months and the compensation for wrongful termination of the services of the employee. Feeling aggrieved, the petitioners have approached this Court by filing this writ petition.

3. During the pendency of the writ petition, the employee, who had been impleaded as respondent No. 2, died and an application dated 17-3-1986 was moved by the petitioners under Order 22 Rule 4 of the Code stating that the employee had died on 20-12-1985 leaving behind six persons mentioned in para 1 of the application as the legal representatives and praying that they be substituted as the respondents in place of the employee. No reply to the said application had been filed on behalf of the legal representatives, who are being represented by Shri Y.C. Sharma, Advocate.

4. I have heard the learned Counsel for the parties and have also perused the record of the case.

5. The fact that the employee died on 20-12-1985 and the application in question was moved within time have not been disputed before me and, in fact, the application has not been opposed and I find no reason why it should not be allowed. Consequently, the application is allowed and it is ordered that six persons mentioned in para 1 of the said application be brought on record as the respondents No. 2/1 to 2/6. The application stands disposed of accordingly.

6. The first point raised by the learned Counsel for the petitioners is that the learned Authority came to a wrong conclusion that the employee had not himself resigned. As noted above, this finding of fact has been recorded by the learned Authority after going through the evidence produced by the parties and also after comparing the admitted signatures of the employee with the disputed signatures on the resignation letter produced on record as A-1 by the petitioners. The said finding of fact is based on the evidence and cannot be said to be erroneous and there is no question to be same being perverse. It is, therefore, binding on this Court and cannot be disturbed in the writ jurisdiction.

7. It has next been contended that although the employee had prayed that he be ordered to be reinstated, the learned Authority had given him compensation and that the compensation not having been asked for the learned Authority had no jurisdiction to award the same. Sub-section (4) of Section 28-A of the Act deals with the powers of the learned Authority and reads as under:

(4). While passing an order under Sub-section 131, the prescribed authority shall have power to give relief to the employee by way of re-instatement or by

awarding money compensation of by both.

8. Bare reading of the above said provision shows that an Authority under the Act is empowered to give relief to an employee by way of re-instatement or by awarding money compensation or by both. Even if the money compensation had not been asked for by the employee, the Authority was within its power to grant the same to the employee specially when the Authority had not thought it proper to order re-instatement of the employee. This discretion of the Authority cannot be said to be illegal and calls for no interference by this Court. The argument that the learned Authority had no jurisdiction to grant compensation in the cases where re-instatement has been asked for by an employee is without any substance and I have no hesitation in rejecting it.

9. No other point has been raised before me.

10. I am of the view that this writ petition is meritless and, consequently, I dismiss it with costs, which is assessed at Rs. 1000/-.

11. Before parting with this case, it may be recorded that on an application having been moved by the petitioners, this Court, vide order dated 11-5-1981, had directed that the amount in question should be deposited by the petitioners within one month from the date of the order but the said amount would not be paid to the employee without further orders of the Court. Shri Sharma, who appeals for the legal representatives of the employee, states that he does not know whether in fact the amount was deposited by the petitioners. If the amount has already been deposited by the petitioners, the respondents No. 2/1 to 2/6 will be at liberty to withdraw the same at any time hereafter, but, if the petitioners had failed to deposit the same and it has been retained by them, the petitioners will also pay interest at the rate of 12% per annum on the amount in question from the date of the order passed by the learned Authority till the amount is paid by them to the respondents No. 2/1 to 2/6. The writ petition stands disposed of accordingly.