
(2002) 07 RAJ CK 0121
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2853 of 1992

Lal Singh

APPELLANT

Vs

The Authority under Shops and Commercial Establishments
Act and Another

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 28A, 28A(1), 28A(3)

Citation : (2002) 95 FLR 898 : (2003) 3 RLW 1829 : (2002) 4 WLN 671

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

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

Judgement

Sunil Kumar Garg, J.

1.This writ petition under Articles 226 & 227 of the Constitution of India has been filed by the petitioner on 11.5.1992 against the (SIC) with the prayer that by an appropriate writ, order or direction, the judgment dated 28.11.1991 (Annex.8) passed by the No. 1-Authority under the Rajasthan Shops and Commercial Establishments Act, 1958, Sri Ganganagar be quashed and set aside.

2. It arises in the following circumstances:

The respondent No. 2 Tilak Raj filed a claim petition u/s 28-A of the Rajasthan Shops and Commercial Establishment Act, 1958 (hereinafter referred to as "the Act of 1958") before the respondent No. 1 Authority under Shops and Commercial Establishment Act, 1958, Sri Ganganagar (for short "the Authority") on 8.5.1989 stating inter alia that the respondent No. 2 had been functioning as Manager in the New Light talkies, Raisingh Nagar District Sri Ganganagar and he was being paid salary of Rs.1075/- per month since 15.4.1979 and the services of the respondent No. 2 were terminated by the petitioner, who was owner of that Talkies, without any written order or notice of one month or payment of one

month salary in lieu thereof. A copy of the claim petition presented by the respondent No. 2 before the respondent No. 1-Authority is marked as Annex. 1.

The petitioner appeared before the respondent No. 1 -Authority and submitted his reply, which is marked as Annex.2 to the writ petition and the allegations made by the respondent No. 2 in his claim petition (Annex.1) were denied and it was submitted by the petitioner that he was not the owner of the New Light Talkies, Raisinghnagar and the petitioner had not given appointment to the respondent No. 2 and there were 20 partners of the New Light Talkies and, therefore, the claim petition against the petitioner alone was not maintainable. It was further submitted by the petitioner that since the respondent No. 2 was busy in his own work, therefore, he had voluntarily left the services as Manager of the New Light Talkies, Raisinghnagar.

Before the respondent No. 1-Authority, three witnesses were examined on behalf of the respondent No. 2 and in defence, the petitioner-Lal Singh himself appeared as DW1 before the respondent No. 1 Authority and one more person, namely, Balram, Accountant was also produced as DW2. It was stated by the petitioner in his statement recorded as DW1 that the respondent No. 2 had voluntarily left the service after settlement of the accounts and in that settlement, the respondent No. 2 demanded Rs. 4000/- and that amount was paid to the respondent No. 2 in two equal instalments of Rs. 2000/- for which receipts Ex.D/1 to Ex.D/3 were produced.

After considering the evidence of both the parties, the respondent No. 1 Authority under the Rajasthan Shops & Commercial Establishment act, 1958, Sri Ganganagar through judgment dated 28.11.1991 (Annex.8) allowed the claim petition of the respondent No. 2 and ordered reinstatement of the respondent No. 2 with back wages holding inter alia that the removal of the respondent No. 2 from service was improper and illegal, as he was removed from service without giving one month's prior notice or paying him one month's wages in lieu of such notice, as required under the provisions of Section 28-A(1) of the Act of 1958.

Aggrieved from the said judgment dated 28.11.1991 (Annex.8) passed by the respondent No. 1 Authority, this writ petition has been filed by the petitioner.

3. In this writ petition, the following submissions have been made by the learned counsel appearing for the petitioner:-

(1) That since in New Light Talkies of Raisinghnagar, there were 20 partners, therefore, claim petition only against the petitioner was not maintainable.

(2) That the respondent No. 1-Authority completely failed to take into account that Rs. 4000/- were paid to the respondent No. 2 as compensation and this should be taken as a compliance of Section 28-A(1) of the Act of 1958.

(3) That the respondent No. 2 was not removed from service, but actually he had voluntarily left the service.

Thus, the impugned judgment of the respondent No. 1 Authority dated 28.11.1991 (Annex.8) is without jurisdiction as all the above three points were not considered by the respondent No. 1 Authority.

4. On the other hand, the learned counsel appearing for the respondent No. 2 supported the impugned judgment dated 28.11.1991 (Annex.8) passed by the respondent No. 1 Authority. He has also raised a preliminary objection that the present writ petition is not maintainable because it was not filed on behalf of the firm.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent No. 2 and perused the impugned judgment dated 28.11.1991 (Annex.8) passed by the respondent No. 1 Authority.

6. The respondent No. 1 Authority in the impugned judgment Annex. 8 dated 28.11.1991 came to the following conclusions:-

(1) That from the evidence on record, it is established that the respondent No. 2 was working as Supervisor in the Establishment of the petitioner.

(2) That the petitioner has admitted in his statement recorded as DW1 that the respondent No. 2 was given employment in the year 1980-81 and that fact was also corroborated by DW2 Balram, Cashier.

(3) That the main issue was whether the respondent No. 2 was removed from service or whether he himself left the services of the petitioner and the respondent no. 1 -Authority examined the evidence of the parties on that issue and thereafter, the respondent No. 1 Authority came to the conclusion that the respondent No. 2 did not leave the service of the petitioner voluntarily, but he was removed from service without complying with the provisions of Section 28-A(1) of the Act of 1958 as no prior notice of one month or one month's wages in lieu of such notice was given to the respondent No. 2 before his removal from service and thus, his removal from service was improper and illegal.

Thus, after giving the above findings, the respondent No. 1 Authority ordered reinstatement of the respondent No. 2 with back wages under the provisions of Section 28-A(3) of the Act of 1958.

7. In exercise of its powers under Article 227 of the Constitution of India, this Court has very limited scope of interference as per the law laid down in Mohd. Yunus v. Mohd. Mustaqim and Ors.(1), wherein it has been held that even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution and the power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot, assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal etc. has resulted in grave injustice.

8. It is well settled that power under Article 227 of the Constitution of India is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them.

9. The jurisdiction of High Court under Article 227 of the Constitution of India is not appellate but supervisory and, therefore, it cannot interfere with the findings of fact recorded by the Court below unless there is no evidence to support the finding or the finding is totally perverse.

10. The High Court in writ jurisdiction does not interfere with the findings of fact unless they are found to be based either on no evidence or that the findings are wholly perverse and/or legally untenable.

11. Thus, the findings of fact recorded by the fact finding authority duly constituted for the purpose should be taken to have become final and should not be disturbed unless they are found to be perverse and based on no material or evidence.

12. In the present case, from perusing the impugned judgment of the respondent No. 1-Authority dated 28.11.1991 (Annex.8), it does not appear that the findings of the respondent No. 1 -Authority are perverse and based on no evidence or material, but on the contrary, it appears that the findings of the respondent No. 1 Authority are based on correct appreciation of evidence on record and thus, they do not call for any interference by this Court in exercise of power under Article 227 of the Constitution of India.

13. So far as the argument that the respondent No. 2 was given compensation of Rs. 4000/- and thus, this aspect should be taken as compliance of Section 28-A(1) of the Act of 1958 is concerned, no doubt there is evidence that the respondent No. 2 was paid Rs. 4000/- as compensation through receipts Ex.D/1 to Ex.D/3, but that aspect cannot be considered in this light, as compliance of Section 28-A(1) of the Act of 1958 should have been made before removal of the respondent No. 2 from service. Therefore, the receipts Ex.D/1 to Ex.D/3 would not be helpful to the petitioner.

14. So far as the preliminary objection of the learned counsel for the respondent No. 2 that the present writ petition is not maintainable because it was not filed on behalf of the firm is concerned, it carries no weight as the respondent No. 2 had also filed his claim petition before the respondent No. 1 Authority only against the present petitioner.

15. Similarly, so far as the objection of the learned counsel for the petitioner that the impugned judgment should have not been passed against the petitioner alone as he was only one of the partners of the firm, is concerned, it also carries no weight on the same reasoning as the argument of the learned counsel for the respondent No. 2 has been dealt with. Furthermore, from perusing the statement of the petitioner recorded as DW1, it appears that he was full incharge

of the Talkies and that is why, he has given statement authoritatively and denied the allegations of the respondent No. 2.

16. For the reasons stated above, no interference is called for with the impugned judgment of the respondent No. 1-Authority dt. 28.11.1991 (Annex.8) in exercise of writ jurisdiction and the necessary consequence of upholding the judgment of the respondent No. 1-Authority dt.28.11.1991 (Annex.8) is reinstatement of the respondent No. 2.

17. The next question that arises for consideration is that in a case where services of an employee have been terminated illegally long back especially in such institution like cinema, whether such employee can be compensated through compensation in place of reinstatement or not and for that, the following authorities of the Hon"ble Supreme Court made referred to:-

- (1) Hindustan Steel Ltd., Rourkela v. A.K. Roy and Ors. (2).
- (2) Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors. (3).
- (3) Sant Raj and Anr. v. O.P. Singhla and Anr. (4).
- (4) Chandu Lal v. The Management of PAN American World Airways (5).
- (5) O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. (6).
- (6) Gujarat State Road Transport Corporation and Anr. v. Mulu Amra (7).
- (7) Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and Ors, (8)
- (8) Ratan Singh v. Union of India and Anr. (9)
- (9) Sain Steel Products v. Naipal Singh and Ors. (10)
- (10) S.P. Borkar and Ors, v. N.T.C. (S.M.) Ltd. and Ors. (11)

18. The salient features of the above authorities of the Hon"ble Supreme Court may be summarised in the following manner:-

(1) That ordinarily relief of reinstatement should be granted consequent upon the finding that the termination of service of the employee was bad and illegal. However, in exceptional circumstances, compensation can be awarded in lieu of reinstatement.

(2) That where the discharge or dismissal of a workman was not legal or justified, the relief which would ordinarily follow would be reinstatement. However, the Labour Court/Tribunal has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make the reinstatement inexpedient or improper.

(3) That instead of granting the relief of reinstatement, compensation can be

granted. (4) That though it was obligatory on the part of the Court to direct reinstatement when the termination was found to be void and illegal, but where long period has elapsed since termination, compensation in lieu of reinstatement and back wages would be justified. However, reinstatement would be the rule and compensation in lieu thereof is exception.

(5) That in a case where there is long lapse of time between the termination and the Labour court award, grant of lump- sum compensation in lieu of reinstatement, is proper.

(6) That though the termination of the services of the workman was in flagrant violation of the Statutory provisions, but for granting the relief, the court may, looking to the facts arid circumstances, of the case, devise a new formula and grant compensation in lieu of rein statement and back wages.

19. Thus, in view of the above, the court has competence to award compensation in lieu of reinstatement if the facts and circumstances of a particular case permit to do so.

20. In Raveendra Nath Kamot v. Presiding Officer, Labour Court, Ernakulam (12), the Kerala High Court held that relief of reinstatement need not be granted automatically in all the cases. The Labour Court must consider all the pros and cons and must mould the relief according to the facts and circumstances of the case.

21. In Rajwanat Singh Rewat v. The District Food and Supplies Controller, Ferozepur and Ors. (13) and Gidderbaha Cooperative Marketing-cum-Processing Society Ltd. v. Presiding Officer, Labour Court and Anr. (14), the Punjab and Haryana High Court has awarded compensation in lieu of reinstatement in view of the peculiar facts and circumstances of those cases.

22. Looking to the entire facts and circumstances of the present case and the fact that the respondent No. 2 is not in service since 23.4.1989 and more than 13 years have elapsed now and furthermore, the respondent No. 2 must have been serving anywhere or must have been earning, it would not be proper now to order reinstatement of the respondent No. 2, who was employee of Cinema, a private concern, and if compensation in lieu of reinstatement is granted to the respondent No. 2, it would meet the ends of justice. Looking to the fact that the respondent No. 2 was getting salary of Rs. 1075/- p.m. at the time of his removal from service, if the lump-sum compensation of Rs. 25,000/- (Rs. Twenty Five Thousand only) is granted to the respondent No. 2, it would meet, the ends of justice.

23. Accordingly, this writ petition is disposed of with the following order:-

That the impugned judgment of the respondent No. 1-Authority under Rajasthan Shops & Commercial Establishment Act, 1958, Sri Ganganagar dated 28.11.1991 (Annex.8) holding removal of the respondent No. 2 from service to be improper and illegal is upheld. However, instead of ordering reinstatement, the respondent

No. 2 is granted compensation of Rs. 25,000/- (Rs. Twenty Five Thousand only) in lieu of reinstatement and the petitioner is granted three months" time from today for making payment of compensation to the respondent No. 2 and to that extent, the impugned judgment of the respondent No. 2 Authority dated 28.11.1991 (Annex.8) is modified accordingly.