
(2005) 12 RAJ CK 0029

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 521 of 2001

Nand Kishore Sharma

APPELLANT

Vs

Judge, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 33A

Citation : (2006) 2 LLJ 704 : (2006) 1 RLW 467 : (2006) 1 WLC 637

Hon'ble Judges : Shiv Kumar Sharma, J; Harbans Lal, J

Bench : Division Bench

Advocate : Babu Lal Gupta, for the Appellant; Manish Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Common questions that arise for our consideration in the instant appeals are as under:

(i) Whether the termination of the appellants (for short "workman") by the respondent (for short "Corporation") was the termination simplicitor?

(ii) Whether the workmen were terminated from the service on the ground of misconduct?

(iii) Whether the applications filed by the workmen before the Industrial Tribunal Jaipur u/s 33A of the Industrial Disputes Act, 1947 (for short, the "Act") were maintainable?

2. Learned Tribunal rejected the applications of workmen filed u/s 33A and held that the termination of the workmen was simplicitor. Since the workmen were not removed on the ground of misconduct, the Corporation was not under obligation to conduct the inquiry therefore applications of the workmen were not maintainable.

3. The workmen assailed the award by filing the writ petitions but the learned

Single Judge did not find any fault in the awards and dismissed the writ petitions. Hence these appeals.

4. It is urged by learned Counsel for the workmen that the orders by which the services of the workmen were terminated though innocuous apparently were, in fact, punitive in nature. The workmen, it is contended, could not have been removed from service without holding a regular inquiry. It is further canvassed that the Tribunal and the learned Single Judge though had jurisdiction to go behind the order to find out whether it was an order of termination simplicitor or it was an order passed by way of punishment. They did not properly appreciate the orders. Reliance is placed on V.P. Ahuja Vs. State of Punjab and Others, , Jarnail Singh v. State of Punjab 1986(2) SLR (SC) 278 Nar Singh Pal Vs. Union of India and Others, , Madhav Parsad v. Rule S.R.T.C. 1989(1) RLR 562 and AIR 2000 1706 (SC) V.P. Ahuja Vs. State of Punjab and Others, , Jarnail Singh v. State of Punjab 1986(2) SLR (SC) 278 Nar Singh Pal Vs. Union of India and Others, , Madhav Parsad v. Rule S.R.T.C. 1989(1) RLR 562 and AIR 2000 1706 (SC) .

5. Learned Counsel for the Corporation on the contrary contended that the workmen were temporary employees and therefore their services could be terminated at any time. Since the workmen were not removed on the ground of misconduct it was not necessary to initiate enquiry.

6. Having analysed the material on record we notice that the workmen had not put in services for more than 240 days as such the workmen being daily wagers did not have any right to hold the post. The workmen in the instant matters were not found fit to retain in the service. Undoubtedly the Corporation in the reply had cited the incidents of checking and found the workmen carrying passengers without tickets but these incidents were not the foundation for the termination of the workmen. It may however be termed as motive to find out whether the work of the workmen was satisfactory and they were fit to be retained in service. In Chandra Prakash Shahi v. State of U.P. (supra) their Lordships of the Supreme Court indicated that "Motive" is the moving power which impels action for a definite result or to put it differently "motive" is that which incites or stimulates a person to do an act. An order terminating services of an employee is an act done by the employer. What is that factor which impelled the employer to take this decision? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law."

7. Having unveiled the impugned termination orders we find that they are the orders of termination simplicitor and the services of the workmen were not terminated on the ground of misconduct. In our opinion the application of the workmen u/s 33A of the Act were rightly rejected by the Tribunal and the learned Single Judge has not committed any error in dismissing the writ petition of the workmen.

8. Consequently, we find no merit in the appeals and the same stand dismissed without any order as to costs.