

(2000) 07 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1340 of 1987

Pyar Chand Kesari Mal Pvt. Ltd. and Another

APPELLANT

Vs

Prescribed Authority under the Rajasthan Shops and
Commercial Estt. Act and Another

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2000) 3 WLN 684

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed against the judgment and order of the Prescribed Authority under the Rajasthan Shops and Commercial Establishments Act, 1958 (hereinafter called "the Act") dated 27.2.1987 passed in Case No. 1/86 (Shops Act).

2. The facts and circumstances giving rise to this case are that respondent No. 2 Man Singh was in the employment of the petitioner at Chittorgarh as Chowkidar and a theft took place between 1.12.1984 and 3.12.1984, in which silver coins worth Rs. 42,229.32 were stolen. An F.I.R. was lodged. Initially the brother-in-law of respondent No. 2 was arrested in connection with the theft and on further investigation it was found that respondent No. 2 and his wife were also involved and they were also arrested. After investigating the case, the police file challan u/s 457/380 of the Indian Penal Code against all the three accused and the trial is still pending before the Chief Judicial Magistrate, Chittorgarh. Some of the stolen property was recovered on the information given by respondent No. 2 and the other stolen properties were recovered on the informations given by other co-accused. One Man Mohan Bansal, Advocate, was appointed as the Enquiry Officer as respondent NQ. 2 had worked for more than six months with the petitioners and after holding the inquiry, he submitted the report by recording the finding that respondent No. 2 had committed the misconduct. A show cause notice was

issued to the workman alongwith the copy of inquiry report. He submitted his reply to the said show cause notice and after considering the same petitioner held that he was guilty of grave misconduct and his services were terminated vide order dated 21.7.1986 (Annx. 13). Being aggrieved and dissatisfied, workman filed a complaint before the Prescribed Authority, respondent No. 1. Petitioners filed reply thereto. Before the Authority, the workman examined himself as PW 1 and one more witness Subarti Khan as PW-2. Present petitioners examined Babu Lal, Hanuman Prasad and Mool Chand, S.H.O. and filed large number of documents relating to the criminal case before the said Authority, including the documents revealing information given by the workman leading to the recovery of the stolen property. The learned Authority held that one Hanuman Prasad the power of attorney holder had issued the charge sheet to the workman and he himself deposed before the Enquiry Officer and issued the order of termination therefore, the entire inquiry stood vitiated as the Disciplinary Authority cannot examine himself as a witness. It further held that as per the provisions of Section 28-A of the Act, if a workman had complete six months' service, he could not be removed without holding a proper inquiry and as the inquiry stood vitiated being violative of the principles of natural justice, the termination was bad and pendency of criminal case would not come to the rescue of the employer. The Prescribed Authority further directed the reinstatement of the workman on some other post with all the back wages. Hence this writ petition.

3. Basically two question have been raised by the learned Counsel for the parties: firstly, whether in a case of loss of confidence, it is necessary to hold the inquiry for removal of the workman; and secondly, whether the Prescribed Authority could have adjudicated on the issue of misconduct?

4. It has fairly been conceded by Mr. Shishodia, learned Counsel for the petitioners that so far as the domestic inquiry was concerned, it stood vitiated as it was in violation of the principles of natural justice.

5. So far as first issue is concerned. In Chandu Lal Vs. Management of Pan American World Airways Inc., , the workman was charged with assisting the persons in smuggling as the operation of the area was of confidence and once the Custom Authority lost or doubted the same, operational hazards were apprehended as their air-crafts as also Pilots were liable to be detained by the Custom Authorities and in such a case it was pleaded by the employer that in case of loss of confidence, the inquiry cannot be held to be a condition precedent for termination of the services of the workman. The Apex Court repelled the said submission observing as under-

Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave upto the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter, this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the

Management that of termination for loss of confidence does not amount to a stigma has to be repelled.... If the termination in the instant case is held to be grounded upon the conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment.... Therefore, the order of termination is vitiated in law and cannot be sustained.

6. The Court further relied upon large number of Its earlier judgments and held that in a case of loss of confidence, awarding compensation instead of reinstatement may be an appropriate relief.

7. In Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, the Hon"ble Supreme Court referred to and relied upon its judgment in Chandu Lal (supra) and held that inquiry was a condition precedent for termination; however, if the domestic inquiry was not held at all or not properly held, the issue could have been adjudicated upon before the appropriate Tribunal under the Industrial Disputes Act. The Hon"ble Court further reiterated that in a case of loss of confidence, compensation rather than reinstatement may be an appropriate relief.

8. In Sudhir Vishnu Panvalkar Vs. Bank of India, the Apex Court held that in a case of loss of confidence, services of the employee can be terminated without holding an inquiry. The Court observed as under-

From the material placed on record before us, it is quite clear that the appellant was involved in misappropriation of society's funds. The proceedings initiated u/s 88 of the Act went upto the Maharashtra Co-operative Tribunal and after contest by the parties, the Tribunal held the appellant guilty of certain charges involving moral turpitude relating to misappropriation of society's funds.... It is in these circumstances we are of the view that these documents should be relied upon by the bank to justify the order of termination on the ground of loss of confidence. On perusal of the material produced before us, we are of the opinion that the order of termination passed by the bank does not suffer from any vice....

9. The case of Sudhir Vishnu Panvalkar (supra) is clearly distinguishable as there had been a proper adjudication of facts before the Tribunal which held the workman guilty of misappropriation. So far as the instant case is concerned, there is no proper adjudication as domestic inquiry stood vitiated and the criminal case is still pending against the workman. Therefore, I am of the candid view that even in case of loss of confidence, holding the domestic inquiry is a condition precedent and in the instant case as the inquiry stood vitiated for want of complying with the principles of natural justice, the services of the workman had been terminated without complying with the requirement of law.

10. This leads us to the second issue: whether the issue of misconduct could have been adjudicated upon by the Prescribed Authority under the Act as the evidence was led before it or could have been led. This issue was considered by a Division Bench of this Court in Indian Tourism Development Corporation Ltd. v.

The Authority appointed under the Rajasthan Shops and Commercial Establishments Act 1987 (II) R.L.R. 387. The Division Bench distinguished the defined misconduct and not-defined misconduct under the Act and the Rules framed thereunder, compared the provisions of the Act alongwith the provisions of the Industrial Disputes Act, 1947 and held that there was a basic difference between the provisions of these Acts. If the services of an employee were terminated by employer on the ground of defined misconduct, which falls under Rule 24-A of the Rajasthan Shops and Commercial Establishments Rules after holding domestic inquiry, the Authority under the Act, if holds that the inquiry was not fair, the said Authority was not competent to permit the employer to adduce evidence in support of allegations of misconduct or to direct employer to conduct de novo inquiry for the reason that the proviso to the Section 28-A would not be attracted in case of no inquiry or defective inquiry and the action of the Management in dispensing with the service of the employee would be null and void.

11. Section 28-A provides for notice of dismissal or discharge by the employer to an employee who had been in service for more than six months except for a reasonable cause and after giving such employee atleast one month's proper notice or on paying him one month's wages in lieu of such notice. The proviso reads as under-

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 the inquiry held for the purpose in the prescribed manner.

12. Rule 24-A of the Rules framed under the Act contains the list of "defined misconduct" and Clause (d) thereof includes the theft. Clause (2) of the said Rules reads as under-

No order of dismissal or discharge on the ground of misconduct shall be made except after an inquiry, in which employee concern has been informed in writing of the misconduct alleged against him and is given a reasonable opportunity of being heard in respect of that misconduct.

13. The Court explained the distinction between the provisions of the Act and the Industrial Disputes Act holding that the Authority is required to give its own finding on the evidence adduced by the parties independent of the finding given in domestic inquiry under the Industrial Disputes Act. Thus," even if domestic inquiry was conducted by the employer defectively, the Tribunal has a right to record its own finding under the Industrial Disputes Act. But same is not permissible under the Act. The Court held that where the services were terminated on the ground of misconduct, which falls under Rule 24-A, after holding the domestic inquiry which was not fair or valid, the termination was bad and the proviso to Rule 28-A was not attracted and the Authority was not competent to record its own finding.

14. The judgment in Indian Tourism Development Corporation Ltd. (supra) was reconsidered by the Division Bench in Jewellers Association v. The Presiding Officer appointed u/s 28-A of the Rajasthan Shops & Commercial Establishments Act 1988 (II) R.L.R. 353, wherein the Court observed as under:

A CATSCANING of Section 28-A would disclose that as far as the misconducts read in Rule 24-A are concerned, the services of an employee could have been dispensed with if a misconduct, as defined in the Rules, is proved in the domestic inquiry and for which the Authority is not empowered to examine whether dispensation of service was reasonable and justified or not. It was this object that the law requires strict compliance of proviso and the Rules made for that purpose. Therefore, in case the services are terminated on the ground of definite misconduct, it is only the proviso that is applicable and not the main Sub-section (1) of Section 28-A. Sub-Section (1) of Section 28 is applicable when the services are terminated on the ground of reasonable cause which maybe misconduct other than the misconducts defined under the Rules and the Authority is to examine whether such a misconduct would give a reasonable cause to the employer to terminate his services.

15. Thus, in view of the above, it can be inferred that in case of non-defined misconduct the Authority under the Act can hold the inquiry or ask the parties to lead evidence but not in case of a defined misconduct.

16. Now, coming to the relief, as the Hon"ble Supreme Court has consistently held that in case of loss of confidence, reinstatement cannot be a proper relief and the retrenched workman may be awarded compensations, the order of the Prescribed Authority is modified to the extent that instead of reinstatement, the workman shall be entitled for compensation to the tune of Rs. 20,000/- (Rupees twenty thousand only). No order as to cost.

17. The petition is disposed of accordingly. There shall be no order as to costs.