
(2001) 11 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1291 of 1993

Rajasthan Chamber of Commerce and Industry

APPELLANT

Vs

K.S. Ramji and Others

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 28A

Citation : (2003) 1 RLW 482

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : U.N. Bhandari and L.L. Jain, for the Appellant; G.L. Pareek, for the Respondent

Judgement

Madan, J.—The petitioner Rajasthan Chamber of Commerce and Industry (for short "RCCP") which is a company incorporated under the Companies Act, 1956, has moved this Court by way of the present writ petition challenging the order dated 11.1.1984 of the Prescribed Authority constituted under the Rajasthan Shops and Commercial Establishments Act, 1958 (for short "respondent No. 2") on the ground inter alia that respondent No. 1 Shri K.S. Ramji (since deceased) was engaged by the petitioner as Public Relations Officer (PRO) and he was worked as such for some time i.e. from 1974 to 14th July, 1978 when the said post was abolished.

2. It has been contended that it had become necessary to abolish the post of PRO in accordance with the recommendations and resolution of the Finance Sub Committee held on 12th July, 1978. Thereafter on 15th July, 1978, a complaint was filed by respondent No. 1 u/s 28A of the Rajasthan Shops and Commercial Establishments Act, 1958, by which the impugned order passed by the petitioner challenging his termination from the post of PRO by the Prescribed Authority.

3. As per the petitioner's case, abolition of the post had become necessary on account of financial stringency and for which a resolution had also been drawn up by the Finance Sub Committee on the basis of the recommendations dated 12th

July, 1978 as aforesaid. It is also the petitioner's case that with a view to save the petitioner-Organisation from financial stringency, a decision had been taken to abolish the said post and the decision was conveyed to respondent No. 1, who had challenged the same by way of a complaint before the Authority. The proceeding before the Authority were duly contested by the petitioner. It was contended inter-alia that the petitioner does not fall within the purview of the Act of 1958 but the said finding did not find favour with the Prescribed Authority. It repelled the petitioner's contention that the post of PRO falls within the purview of the Act of 1958.

4. Thereafter issues were framed and parties' evidence were recorded. One of the objections, which were raised is regarding maintainability of the complaint on the ground that it has not been filed within the prescribed period of limitation and it was time barred, hence the said complaint deserves to be dismissed. On this issue, the learned Authority held that since the complaint having been filed after the expiry of period of limitation, no plausible or reasonable explanation has been furnished on the delay in filing the complaint, which did not deserve to be condoned. This fact is evident from the order of the Prescribed Authority dated 11.1.84.

5. Aggrieved by the above order, respondent No. 1 earlier came to this court by another writ petition and the learned Single Judge vide Judgment dated 22nd October, 1992 remanded the matter after quashing the impugned order of the Authority dated 11.1.1984 with a direction to decide the complaint on merits within a period of three months.

6. Therefore the learned Prescribed Authority heard the parties on merit and allowed the petitioner's complaint on 11.1.93.

7. Aggrieved by the said order dated 11.1.93, the present writ petitions were filed, which are now being decided finally by this order.

8. It is pertinent to mention that during the pendency of the writ petition, Shri K.S. Ramji (respondent No. 1) died survived by his widow Smt. Shashi Prabha and son and daughter namely; Kailash Khatri and Sharmila Khatri as legal heirs of the deceased. The application for substitution of the legal heirs was also allowed by this Court's order dated 19.11.1998. It is also significant to mention that it has become settled law that if on account of financial stringencies or on account of some reasonable cause the Authority had decided to abolish the post of PRO, which in its opinion "has become redundant, then the Courts would not ordinarily direct for creation of a new post only with a view to accommodate the person whose post has been abolished. However, if due to some exceptional circumstances, this course has been adopted towards an employee, the principle of natural justice demands that the dues as admissible should be paid to the legal heirs of the concerned employee who is respondent No. 1 duly represented by them. This contention of the learned counsel for the respondents is controverted by the learned counsel for the petitioner on the ground that

respondent No. 1 was not a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 (for short "the I.D. Act") as the said respondent was working in a supervisory/managerial capacity and hence nature of duties which he was performing are not attracted by the definition of "workman" as defined u/s 2(s) of the ID Act.

9. It is solely on this ground that the learned counsel for the petitioner has assailed the impugned order of the Prescribed Authority notwithstanding the fact that the nature and duties which were being discharged by the respondent No. 1 though continued even after abolition of the post would not make any difference since such an approach of the Prescribed Authority is based on incorrect assumption of facts and misreading of evidence and therefore, the impugned order deserves to be quashed. The impugned order has also been assailed on the ground that the learned Authority had misconstrued the meaning of the term "Appointing Authority". As a matter of fact, the same Authority which took a decision to appoint respondent No. 1, decided to terminate the services to which order was only required to be conveyed under the signatures of any office bearer, and hence on illegality can be said to have been committed and therefore also, the impugned order deserves to be quashed and set aside, it has also been contended that respondent No. 1 has also invoked the provisions of the I.D. Act by filing an application before the Conciliation Officer but the said -application was not pressed for the reason that he was not a workman and the petitioner Company was not an industry. In this context the petitioner has specifically contended in one of the grounds in support of the petition that the Prescribed Authority had also misdirected itself as an industry within the ambit of the Act for the purpose of granting relief to respondent No. 1 and in this view of the matter also, the impugned order of the Authority does not deserve to be sustained.

10. Be that as it may, the salient feature of the matter which deserves to be noted by this Court is that though respondent No. 1 could not be treated as a workman within the ambit of Section 2(s) of the Act, nevertheless, the nature of the duties assigned to him were as that of a supervisory and managerial position on which the respondent was working. During the course of hearing, it has not been disputed that the respondent was drawing the salary of Rs. 500/- per month and other allowances at the time of termination of his services consequent upon abolition of the post. In view of this aspect of the matter, the Prescribed Authority has obviously failed to take note of while directing reinstatement of the respondent's services to the petitioner organisation.

11. During the course of hearing, it has also emerged that the respondent No. 1 had taken a specific plea that his services could not be dispensed merely because there was a resolution of the Managing Committee to abolish the post and since the Managing Committee of the petitioner Organisation had not taken any decision in accordance with the law, his services could not be terminated. The other argument advanced on behalf of the petitioner was that the services of the respondent had been terminated without offering him an alternate employment

and even if it is assumed that the post of PRO was really to be retrenched as consequence of which complaint was lodged against him which compelled him to leave the job, the impugned action of the petitioner could not be sustained in the eyes of law.

12. Heard learned counsel for the parties at length and perused the impugned order as also the relevant documents on the record.

13. It is an admitted case of parties that the respondent was in services of the petitioner for the period from 1974 to 14th July 1978 as referred to above, and served in the managerial/supervisory capacity during the aforesaid period. It is also the admitted case that consequent to abolition of post of respondent No. 1, no other similar post has been created thereafter in the petitioners' organisation by employing an other candidate. Moreover, the termination of his services was on account of financial stringency on the recommendations made by the Finance-Sub-Committee. All these facts were fully known to the respondent and one month's salary in lieu of notice was also paid to him prior to termination of his services.

14. Learned counsel for the petitioner has also contended that the RCCI is neither a shop nor a commercial establishment and, therefore, the provisions of Rajasthan Shops and Commercial Establishments Act are not attracted.

15. It is pertinent to mention that the emoluments, which were drawn by respondent No. 1 prior to termination of his services by the petitioner organization were Rs. 500/- per month consolidated and he was about 60 years of age, keeping this aspect in view, though the Prescribed Authority did not recommend his reinstatement in services of the petitioner organization but having regard to the fact that since the respondent had fought a legal battle for a period of atleast 14 years, which resulted in mental, physical and financial harassment to the respondent, and since his services were terminated by the petitioner-organization with effect from 15th July, 1978 and as on the said date he had rendered only four years' of service to the petitioner organisation besides having fought a legal battle for over 14 years, he should be paid by way of compensation lump sum amount of Rs. 43,500/- and which he was directed to be paid with effect from 11.1.1993 i.e. Prescribed Authority had passed the order in compliance with this Court's order dated 17.8.93. Though the learned Single Judge of this Court had directed that the respondent No. 1 may withdraw the aforesaid amount subject to furnishing Bank Guarantee but as the said order had caused great hardship to him, this Court had modified its earlier order dt. 18.5.1993 by directing that since respondent No. 1 had been out of employment for quite some time hence it was not possible for him to furnish bank guarantee as the bank was demanding liquid cash for giving the guarantee for repayment of the amount. Accordingly request was considered reasonable and the earlier order dated 18th May, 1993 was modified by directing that the petitioner RCCI shall deposit the above amount due to respondent No. 1 with any of the scheduled bank and it would be ear-marked for payment to the respondent. The amount

was directed to be deposited by way of FDR in the joint name of Rajasthan Chamber of Commerce and the respondent No. 1 late K.S. Ramji. Ultimately the payment was directed to be made to the respondent in whose favour the writ petition is decided. Interest, which may accrue on the fixed deposit shall be directed to be paid to respondent No. 1 before 15th day of each succeeding month subject to the respondent No. 1 furnishing an undertaking to this Court that he shall refund the amount of interest he draws, in case the writ petition is allowed. The amount was further directed to be deposited within 30 days w.e.f. 17.8.93.

16. I am informed by the learned counsel for the petitioner that the above amount was duly deposited in compliance with the order of this Court with the State Bank of India in the name of RCC & Industry on 28.8.93 vide FDR No. 815864. The amount is lying in deposit since then. It has not been disputed that the interest accrued on the principal amount has been withdrawn regularly from the bank during his life time.

17. From the perusal of the record, it is revealed that on 4.12.1998 this Court had directed disbursement of the interest amount, which had accrued on the principal amount of Rs. 43,5007- ,which has been lying in deposit with the State Bank of India Branch at Jaipur.

18. Similar view was taken by the Apex Court in H.R. Adyanthaya v. Sandoz (India) Ltd. (1). In the said matter, the Apex Court held as under: -

"The position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz. manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition."

19. Apart from the fact, on merits as well the principles of natural justice and equity also demand that since the matter has now been finally and amicably settled between the parties, the amount of Rs. 43,500/- lying with the concerned State Bank of India branch at Jaipur be disbursed to the widow of deceased towards the dues as admissible to her husband as ex-gratia payment against one time settlement.

20. It is accordingly directed that Shashi Prabha widow of deceased respondent No. 1 be paid the above amount within a period of four weeks from today. However, the respondent or his legal heirs shall not agitate or press for any claim before any forum of court of law since this order has been passed in full and final settlement of the dues as admissible to the legal representatives and no court shall entertain any such claim, if preferred by any of the legal representatives in this regard.

21. With the above directions, both the above writ petitions stand disposed of accordingly with no order as to costs.