
(1987) 05 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Special Appeal No. 833 of 1986

Rajasthan State Electricity Board and Another

APPELLANT

Vs

Judge, Labour Court and Another

RESPONDENT

Date of Decision : 18-05-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 25

Citation : (1987) 2 WLN 346

Hon'ble Judges : Shyam Sunder Byas, J;Navin Chandra Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shyam Sunder Byas, J.—This special appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment of a learned Single Judge of this Court dated February 24, 1986, by which the Award of the Labour Court, Jodhpur dated March 19, 1985 was up-held and the appellants' writ petition against it was dismissed.

2. Briefly recapitulated, the material facts are that the respondent R.D. Joshi was employed as an Upper Division Clerk since 1978 in the Office of the Executive Engineer, Rajasthan State Electricity Board (in brief the R.S.E.B.), Pali. He was put under suspension on March 25, 1980 by the Superintending Engineer, R.S.E.B. Jodhpur on account of certain serious irregularities and misconduct. The Management decided to initiate a regular domestic inquiry against him. R.D. Joshi thereafter remained absent. On February 16, 1981, the Superintending Engineer, R.S.E.B., Jodhpur, by his order Annexure-6, terminated the services of R.D. Joshi. Thereafter R.D. Joshi raised an industrial dispute and the State Government made the following reference for adjudication to the Labour Court, Jodhpur:

Whether the termination of the services of Shri R.D. Joshi by the Superintending Engineer, R.S.E.B., Jodhpur Circle, by his order dated February 16, 1981 is

proper and valid? If not so, to what relief is the workman (R.D. Joshi) entitled?

The learned Judge of the Labour Court, by his award Annexure-13 dated March 19, 1985, held that the termination of the services of R.D. Joshi was improper and invalid. The order Annexure-6 dated February 16, 1981) terminating the workman's services, was set-aside and he was reinstated with back wages, allowances and all other consequential benefits. The R.S.E.B. (in short "the Board") challenged the Award by filing a writ petition in this Court. The learned Single Judge, after hearing both the parties, dismissed the writ and up-held the Award of the Labour Court. The Board has, now, come-up in special appeal.

3. We have heard Mr. O.S. Shishodia, learned Counsel for the appellants and Mr. M.R. Singhvi, learned Counsel for the respondent R.D. Joshi. At the request of the learned Counsel for the parties, the case was heard for final disposal at the admission stage.

4. Mr. Shishodia raised the following three contentions before us in challenging the judgment of the learned Single Judge:

(1) Regulation 21 of the R.S.E.B. Employees Service Regulations, 1964 was wrongly held as invalid and ultra-vires of Article 14 of the Constitution. According to Regulation 21 of the Regulations, 1964, if an incumbent absents himself for more than eight consecutive days without leave, he shall be deemed to have left the services of the Board without notice, thereby terminating his contract of service. If the case of an incumbent falls within the four corners of Regulation 21, it cannot be deemed that he was retrenched. Retrenchment is not applicable to an incumbent whose services automatically stand terminated under Regulation 21;

(2) Order Annexure-6 (Order Annexure-5 is also a copy of it) was passed on the ground of misconduct of the incumbents by wilfully remaining absent from duty for more than eight days, it also amounted to misconduct on the incumbent's part. The Board wanted to prove the charge and requested the Labour Court to permit it to lead evidence in proof of the charge. This request was turned down wrongly by the Labour Court and the learned Single Judge left the point untouched and undiscussed; and

(3) the Award to reinstate the employee with back wages, allowances and benefits is wrong. R.D. Joshi was under suspension right from March 25, 1980 and continued to be under suspension when his services were terminated on February 16, 1981. In case the impugned order Annexure 6, terminating his services, is found invalid and improper, the position existing on February 16, 1981 will revive. The result would be that what he was getting on February 16, 1981 as subsistence allowance should alone be paid to him. He was not entitled to get full back wages, allowances and other benefits.

5. So far the first two contentions are concerned, we need not detain ourselves for long in view of the judgment rendered by a Division Bench of this Court in

Hindustan Zinc Ltd. v. ITI Employees Union 1981 WLN (UC) 39. We have gone through the aforesaid judgment and we are in full agreement with it.

6. In Hindustan Zinc's case (*supra*), there was a Clause 12(f)(i) in the Standing Order of the Company analogous and parallel to Regulation 21 of the Regulations, 1964 of the R.S E.B. The learned Judges held that if the services of the incumbent is terminated on account of his continuous absence for more than eight calendar days under Clause 12(f)(i) of the Standing Orders, it would still amount to retrenchment and if the provisions of Section 25(f) of the Industrial Disputes Act, 1947 are not complied with, the termination of the service would be bad and ineffective. A request was also made in Hindustan Zinc's case that the continuous absence of an incumbent for a continuous period of more than eight days amounts to misconduct and, therefore, the services of the incumbent were terminated by way of punishment and as such opportunity to prove the misconduct should be afforded. The request and contention were turned down. It was observed that the company could not be allowed to turn round and try to support the order on the ground that the termination was by way of punishment. In the instant case, the impugned order Annexure 6, terminating the incumbent's service, was on account of his continuous absence for more than eight calendar days. The learned Judge of the Labour Court, therefore, rightly disallowed the prayer of the Board to lead evidence to prove the charge of misconduct resting on the absence of the incumbent.

7. We are then left with the third contention of Mr. Shishodia. It was strenuously urged by him that when the impugned order Annexure-6, terminating the incumbent's services, is found bad and invalid, the position existing on February 16, 1981 would spring up. The incumbent R.D. Joshi was put under suspension on March 25, 1980 and when the order Annexure 6 was passed on February 16, 1981, he was under suspension. In case Annexure 6 goes, the position existing on February 16, 1981 would revive and the incumbent would be deemed to be under suspension. As such, the incumbent R.D. Joshi was entitled to only the subsistence allowances, which he was getting due to his suspension on February 16, 1981. He is not entitled to back wages, allowances & other benefits as directed by the Labour Court and up-held by the learned Single Judge. It was argued that when Annexure-6 was found bad and inoperative, the termination of the services of R.D. Joshi was *ab initio* void and the position, which existed when Annexure 6 was passed, would revive. Reliance in support of the contention was placed on Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others,

8. Combating these contentions, it was argued by Mr. Singhvi that the suspension of the incumbent came to an end when his services were terminated on February 16, 1981 by Annexure-6. The suspension stands merged in the order of termination of services. Unless there are rules to the effect to revive the suspension, the suspension does not get automatically revived simply because the order of termination of services Annexure-6 is set-aside. Reliance in support of the contention was placed on Jaiwant Rao Vs. State of Rajasthan, and Om

Prakash Gupta Vs. The State of Uttar Pradesh, . We have bestowed out thoughtful consideration to the respective submissions.

9 In Baldeoraj's case (supra), relied upon by Mr. Shishodia, the matter in controversy was entirely different. It was held that when an official is suspended, no work is taken from him, but he does not cease to be in service. When he is dismissed, the link with the services is snapped and naturally the order of suspension merges in dismissal. Nothing remains to be done about his suspension. In that case, the order of reinstatement was set-aside by a higher Court. The result was that when the reinstatement was set-aside, the order of suspension, which had merged into the order of termination, stood revived in view of the Service Rules. Here, that is not the position. The Award of the reinstatement of R.D. Joshi, passed by the Labour Court, is final and it has been upheld by the learned Single Judge. No rules were brought to our notice by Mr. Shishodia that even if when the termination is set-aside by the Court and the Board wants to continue the disciplinary action against the incumbent, the incumbent will be deemed to be under suspension. In absence of such rules, we are unable to accept the contention of Mr. Shishodia.

10. In Om Prakash Gupta's case (supra), their Lordships of Supreme Court observed:

When an order of suspension is made against a Government servant pending an inquiry and as the result of inquiry an order of dismissal by way of penalty has been passed, the order of suspension lapses with that order and the subsequent declaration by a Civil Court that the order of dismissal was illegal cannot revive the order of suspension which did not exist.

O.P. Gupta was put under suspension and the order of his dismissal from the services was passed on November 25, 1944. It was taken that the order of suspension of his services ceased to exist on November 25, 1944 and he was entitled to recover arrears of salary from November 26, 1944 to December 31, 1947 when his suit challenging his dismissal from service, was decreed. In Jaiwant Rao's case (supra) the aforesaid view of the Supreme Court was followed by a learned Single Judge of this Court and it was held that when an employee is suspended and is later on discharged from service, the order of his suspension stands merged in the order of discharge.

11. The resultant position, therefore, according to us, is that if the incumbent is put under suspension and later on he is discharged from services, the order of suspension lapses, ceases to exist and merges into the order of discharge. If subsequently the order of discharge is set-aside, the order of suspension is not automatically revived unless there are rules to that effect. The order of suspension does not get the life back if ultimately the order of discharge is set-aside.

12. Here in the instant case, R.D. Joshi was first put under suspension and later on his services were terminated. The termination of his services was found

invalid and was therefore, set-aside by the Labour Court. The order of his suspension lapses and ceases to exist as soon as his services were put to an end by the R.S.E.B. by its order Annexure-6. The setting-aside of the termination of the incumbent's services on the ground that Annexure-6 was not valid, does not result in revival of the suspension order. We find no infirmity or flaw in the impugned judgment of the learned Single Judge.

13. The appeal is consequently dismissed, but with no order as to costs.