
(2005) 10 SC CK 0015

In the Supreme Court Of India

Case No : Civil Appeal No's. 3428, 3429-31 and 6584 of 2003

Rajasthan State Road Transport Corporation and Another

APPELLANT

Vs

Khadarmal

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Citation : (2007) 115 FLR 282 : (2006) SCC(L&S) 56

Hon'ble Judges : S. N. Variava, J;P. P. Naolekar, J;P. K. Balasubramanyan, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

S.N. Variava, P.K. Balasubramanyan and P.P. Naolekar, JJ.—In all these ease some of the questions for consideration is whether a Civil Court have jurisdiction or whether the termination of service of a probationer was required to be challenged by raising a dispute under the Industrial Disputes Act.

This question is now squarely covered by the decisions of this Court in Rajasthan State Road Transport Corporation v. Krishna Kant 1995 (71) FLR 211 (SC) , well as in Rajasthan State Road Transport Corporation and Ors. v. Zakir Hussain 2005 (107) FLR 106 (SC). It has been held that the Civil Court would have no jurisdiction. As these judgments are binding on us, we also hold that in all these matters the Civil Court had no jurisdiction to adjudicate.

2. It is however submitted, based on the following observations in the first Rajasthan State Road Transport Corporation 1995 (71) FLR 211 (SC) : 1995 (2) LLN 271, , case (vide supra) in para. 36, at page 285:

Applying the above principles, we must hold that the suits filed by the respondents in these appeals were not maintainable in law. Even so, the question is whether we should set aside the decrees passed in their favour by the Civil Courts. So far as Civil Appeal No. 3100 of 1991 is concerned, this Court had, while granting leave (in SLP (C) No. 194 of 1991) ordered on 29 January, 1991 that in so far as respondent is concerned, he (appellants" Counsel) states that he

will abide by the decree. Application for stay is rejected. Therefore, there is no question of setting aside the decree concerned in this appeal. However, so far as the other appeals are concerned, the position is slightly different. In Civil Appeal No. 4948 of 1991 and in Civil Appeals Nos. 5386, 5387 of 1995 arising out of S.L.Ps. (C) Nos. 10902 of 1992, 13152 and 10263 of 1993, not only is there no such condition but this Court had granted stay as prayed for by the appellant-Corporation. In two other matters, viz. in Civil Appeal No. 9314 of 1994 and Civil Appeal No. 5389 of 1995 arising out of SLP (C) No. 14169 of 1993 the Only order is to issue notice. Having regard to the facts and circumstances of these matters, we modify the decrees in these matters (except the decree concerned in Civil Appeal No. 3100 of 1991) by reducing the back-wages to half. The decrees in all other respects are left undisturbed. These orders are made in view of the fact that the position of law was not clear until now and it cannot be said that the respondents had not acted bona fide in instituting, the suits. Appeals disposed of accordingly.

3. It is submitted that all the suits in these matters were filed at a time when the position of law was not clear, It is submitted that therefore even in these cases the Court should not interfere with the decrees but may direct that there shall be no payment of back-wages.

4. On behalf of the appellants reliance is placed on the second Rajasthan State Road Transport Corporation 2005 (107) FLR 106 (SC), case (vide supra), and it is pointed out that the Court had, after considering the earlier judgment, concluded that the reinstatement cannot now be maintained and directed that the respondents shall not be allowed to continue in service any further. The Court has however held that the back-wages which may have been paid are not to be recovered back but clarified that the respondents will not be entitled to any further emoluments or service benefits except the amount paid to them as back-wages.

5. In our view, as the Civil Court had no jurisdiction, the decrees which were passed have no force of law. They are accordingly set aside. In our view, there can be no direction to reinstate or to continue reinstatement. However, on the facts of these cases we also direct that if any back-wages have been paid, they shall not be recovered but clarify that the respondents will not be entitled to any further emoluments or service benefits.

6. The appeals stand disposed of accordingly. There will be no order as to costs.

7. Before we part, we clarify that in the event of the respondents or any of them deeming it fit and proper to raise a dispute, the period actually spent in litigation, i.e., from the date of the filing of the suit till the date of this judgment, will be excluded for the purposes of considering the delay in filing the dispute.