
(2015) 09 RAJ CK 0073

In the Rajasthan High Court

Case No : SB Civil Second Appeal No. 396 of 1996

Rajasthan State Road Transport Corporation and Others

APPELLANT

Vs

Narain Singh

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 14

Citation : (2016) 148 FLR 186 : (2015) 4 LLJ 344

Hon'ble Judges : Prakash Gupta, J

Bench : Single Bench

Advocate : Hemant Sharma, for the Appellant; B.L. Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prakash Gupta, J—The instant Civil Second Appeal under Section 100 of the Code of Civil Procedure has been filed by the defendant appellants against impugned judgment and decree dated 22.2.1996 passed by learned Additional District Judge No. 4, Jaipur City, Jaipur in Civil Regular Appeal No. 152 whereby the appeal filed by the defendant appellants against the judgment and decree dated 25.4.1991 passed by the Addl. Munsif and Judicial Magistrate No. 2, Jaipur City was dismissed.

2. Briefly stated, the facts giving rise to the present appeal are that plaintiff-respondent had filed a civil suit for declaration against the defendant appellants in the court of Addl. Munsif and Judicial Magistrate No. 2, Jaipur City alleging therein that he was appointed to the post of Conductor on permanent basis and was performing his duties diligently and honestly. However, the defendants removed him from service vide order dated 31.10.1983. The departmental appeal filed by him was also dismissed by the appellate authority vide order dated 9.7.1985. The plaintiff respondent prayed for declaration of both the orders illegal and void ab-initio as the allegations levelled against him were

wrong, false and baseless and the same be quashed and set aside as before issuance of the charge-sheet neither any show cause notice was issued to him which was mandatory nor the copies of the required documents i.e. BCR, Waybill and tickets were supplied to him due to which he could not submit a proper reply and defend himself. During the course of enquiry neither the statements of the witnesses were recorded in his presence nor he was given an opportunity to cross examine the witnesses. He was also not provided opportunity to produce his evidence and the entire enquiry was against the provisions of Section 35 of the Standing Orders and also the principle of natural justice. Neither the report of the enquiry was provided to him nor he was made acquainted with the same. He was also not heard on the point of punishment/penalty and the order of his dismissal does not come within the definition of "speaking order". It was mentioned that the appellate authority also did not provide proper opportunity to defend himself and opportunity of hearing. Hence, the plaintiff respondent prayed for a mandatory decree declaring the order of dismissal and the order of the appellate authority as illegal, void ab-initio and against the principles of natural justice and that he is entitled to the entire benefits for which he was entitled had he been in service.

3. Defendant appellants submitted their written statement and disputed the averments made by the plaintiff-respondent in his plaint regarding his appointment to the permanent post of Conductor and his working sincerely and honestly. Admitting the fact that the plaintiff was dismissed from service vide order dated 31.10.1983, they denied the fact that the appeal of the plaintiff respondent was decided on 9.7.1985. It was submitted that on receiving complaint against the plaintiff respondent, explanation regarding allegations was sought from him. He was supplied with all the required documents. Enquiry officer was appointed as per law and during the course of enquiry, full opportunity to defend himself and hearing was provided to him. No signature of the plaintiff was obtained on blank papers. He never prayed for time to obtain any document. On completion of enquiry, result of the same was made known to the plaintiff and a copy of the enquiry report was also supplied to him. He was also provided full opportunity of hearing on the quantum of punishment and after hearing him the order of punishment was passed. In additional pleas it was mentioned that the court has no jurisdiction to entertain the civil suit and the suit is barred by limitation and the suit had been filed after a long delay without any cause of action. Hence, it was prayed that the suit of the plaintiff-respondent be dismissed with costs.

4. On the basis of pleadings of the parties, the trial court framed the following issues:-

5. To prove his case, the plaintiff respondent examined himself as PW.1. From the side of the defendant appellants, Suresh Kumar was examined as DW.4.

6. The trial court after recording evidence of the parties and hearing both the sides, by the impugned judgment and decree dated 25.4.1991 decreed the suit

of the plaintiff-respondent holding that the order No. 129 dated 31.10.1983 dismissing the plaintiff respondent from service is illegal and void ab initio being violative of principles of natural justice and he is entitled to remain in service with monetary benefits w.e.f. 20.5.1988, i.e. the date of filing the suit.

7. Feeling aggrieved by the judgment and decree of the trial court, the defendant appellants preferred regular civil appeal No. 152/1991 before the lower appellate court whereas being aggrieved by the judgment and decree of the trial court not awarding the monetary benefits for the intervening period 31.8.1983 to 20.5.1988 the plaintiff respondent preferred Civil Regular Appeal No. 145/1991.

8. The lower appellate court vide impugned judgment and decree dated 22.2.1996 dismissed both the appeals.

9. Hence, this second appeal by the defendant appellants.

10. This Court vide order dated 3.3.2006 has admitted the appeal on the following substantial question of law:-

"Whether, in the matters of termination, service matters which are covered by the provisions of Industrial Disputes Act, the Civil Court has jurisdiction to hear such matters?"

11. I have heard the learned counsel for the parties and perused the material on record minutely and carefully.

12. It is submitted by the learned counsel for the appellant that the suit filed by the respondent-plaintiff was triable only by the Labour Court/Industrial Tribunal and Civil Court had no jurisdiction to try the suit. The learned trial Court misconstrued the judgment cited by the respondent-plaintiff. He submitted that learned first appellate Court has also misconstrued the judgment delivered by the Apex Court in the case of Krishan Kant and recorded a perverse finding that this judgment does not apply at the appellate stage and therefore, the Civil Court has jurisdiction to hear the matters relating to termination of workmen. It is also submitted that both the Courts below have failed to appreciate the principle of "no work no pay" and declared that the respondent-plaintiff are entitled to consequential, including monetary benefits from 20/05/1988 whereas, it is undisputed that plaintiff-respondent never worked after 31/10/1983.

13. On the other hand, the learned counsel for the plaintiff-respondent supported the judgments of both the Courts below. It is submitted by him that respondent-plaintiff filed a suit for declaration of his termination from service as illegal and void ab initio and has assailed the termination order on the ground of violation of principles of natural justice. In view of this, the Civil Courts have jurisdiction to try the suit. He further submitted that when it was proved that the plaintiff-respondent was wrongfully and illegally terminated from the service, denial of back wages would indirectly amount to punishing the employee. In view of this, both the Courts below have rightly declared the plaintiff-respondent entitled to consequential benefits including the monetary benefits from the date of filing of

the suit.

14. Reliance has been placed by the learned counsel for the appellant on Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, (2009) 121 FLR 603 : (2009) 2 JT 423 : (2009) 3 LLJ 177 : (2009) 2 SCALE 428 : (2009) 4 SCC 299 : (2009) 1 SCC(L&S) 439 : (2009) 2 SCR 161 and S.B. Civil Second Appeal No. 296/2000, RSRTC, Jaipur & Ors. Versus Mahavir Prasad Sharma decided on 15/01/2014.

15. I have considered the rival submissions made by the counsel for the parties.

16. It was pleaded in the plaint by the plaintiff that before issuing charge sheet, his explanation was not taken. In this way, the employer contravened provision of Section 35 of the standing order. Copies of required documents i.e. BCR, Way-bill and tickets were not supplied to him. During the course of inquiry, the statements of witness were not recorded in his presence. He was also not given opportunity to cross examine the witnesses. He was not provided with the copy of inquiry report. He was not heard on the issue of penalty. The order of dismissal is non speaking order. Even the appellate authority did not provide him a proper opportunity of hearing. Hence the principal of natural justice and equality have been violated.

17. It is revealed from the aforesaid that the plaintiff-respondent has challenged the termination order mainly on the ground of violation of equality and principle of natural justice. In this regard the Hon''ble Apex Court in R.S.R.T.C. and Anr. v. Bal Mukund Bairwa (supra) has observed as under: -

"28. In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. (supra) shall prevail."

18. In S.B. Civil Second Appeal No. 296/2000 RSRTC, Jaipur & Ors. Versus Mahavir Prasad Sharma decided on 15/01/2014 by the Coordinate Bench of this Court while relying on the aforesaid judgment held that where termination order was challenged on the ground of violation of equality and principle of natural justice, Civil Courts have jurisdiction to try the suit. This judgment has been upheld by the Hon''ble Apex Court in SLP No. (s). 10788/2014 RSRTc and Ors. Versus Mahavir Prasad Sharma decided on 21/07/2014.

19. In view of the above discussion, I am of the opinion that the Civil Courts have jurisdiction to try the suit filed by the respondent-plaintiff and the substantial question framed by this Court is answered accordingly.

20. So far as back wages are concerned, both the Courts below have awarded back wages to plaintiff- respondent from the date of filing of the suit. In my considered view, where, it is found that the termination was wrongful and illegal, denial of back wages would indirectly amount to punishing the employee. On this issue, there is a concurrent finding of fact of both the Courts below. Hence, no question of law much less substantial question of law has arisen for consideration by this court.

In view of the above discussion, the appeal is devoid of merits and hence, is dismissed accordingly.