

(2018) 03 RAJ CK 0189

In the Rajasthan High Court

Case No : Civil Second Appeal No. 235 of 1995

**Rajasthan State Road Transport Corporation @APPELLANT@Hash Shri
Dhuri Lal**

Date of Decision : 20-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 9, 100

Citation : (2018) 03 RAJ CK 0189

Hon'ble Judges : DINESH MEHTA, J

Bench : Single Bench

Advocate : Vivek Shrimali, Sandeep Soni

Final Decision : Allowed

Judgement

The present second appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant "Rajasthan State Road Transport

Corporation (hereinafter referred to as "the Corporation") opposing the judgment and decree dated 12.12.1994, passed by learned Additional

Civil Judge (Sr. Div.) No.3, Udaipur (hereinafter referred to as "Appellate Court"), whereby he had affirmed the judgment and decree dated

22.01.1990 passed by learned Munsif & Judicial Magistrate, First Class, Udaipur City (South) (hereinafter referred to as "Trial Court").

The present second appeal had been admitted by this Court on 05.04.1996 for the adjudication of following substantial question of law:-

^ ^ ¼ ½ vk;k mPpre U;k;ky; dk fu.kZ;] tks ,-vkbZ-vkj- 1990] i`""B 255 ij izdkfâ?kr gqv kS] ds ifjis{; esa fookfnr voj U;k;ky;ksa ds fu.kZ; muds

{ks=kf/kdkj ds ckj gksus ds dkj.k vikLr gksus ;ksX; gS **

Shorn of unwarranted details, the facts, in a nutshell, apropos for the present appeal and within the precincts of the question formulated by this Court

are; that the respondent "plaintiff, appointed as a permanent Conductor with

the Corporation w.e.f. 21.12.1979, was found indulged in permitting the passengers to travel without tickets on four occasions, viz. 31.05.1981; 06.02.1981; 09.03.1981; & 11.03.1981. A domestic enquiry was held against the respondent after serving separate charge-sheets for the above referred misconduct.

The enquiry Officer appointed by the Corporation found the charges to be proved against the appellant and forwarded its report to the disciplinary authority, who vide its order dated 24.04.1982 inflicted the punishment of removal from service.

The respondent " Workman instead of resorting to the statutory remedy available to him, under the Standing Order of the Corporation or

approaching the appropriate Tribunal under the provisions of the Industrial Disputes Act, approached the Civil Court by way of instituting a suit.

The appellant - Corporation had questioned the jurisdiction of Civil Court, by taking specific plea in this regard in their written statement, for which,

a separate issue in the form of issue No.3 had been framed by the Trial Court, which reads thus:-

^3- vk;k okn vifjiDo gS rFkk bl U;k;ky; dks bl okn dh lquokbZ ds vf/kdkj izkIr ugha gSAÂ Â Â ----- izfroknh**

The aforesaid issue came to be decided by the Trial Court in favour of the plaintiff and the objection of jurisdiction came to be repelled. It will not be

out of context to quote the finding recorded by the Trial Court in relation to issue No.3, which runs as under:-

^eSus fo}ku vf/koDrkvksa ds rdksZa dks /;ku esa j[krs gq, mDr fu.kZ; dk ckjhdh ls v/;;u fd;k gSA ;g lgh gS fd bl fu.kZ; esa jktLFkku jkT; iFk ifjogu

fuxe ds gh deZpkjh ds ,d ekeysa esa ekuuh; jktLFkku mPp U;k;ky; us ekuuh; loksZPp U;k;ky; ds fu.kZ;ksa dk foLr`r foospu djrs gq, ;g ekuk gS fd

nhokuh U;k;ky; dks orZeku izdkj ds fooknksa dks lquus dk {ks=kf/kdkj gSA ekuuh; mPp U;k;ky; us mDr fu.kZ; esa xgu foospu fd;k gS vkSj mijksDr

urhts ij igÂiqp ik;h gS ,slh ifjLFkfr esa bl fcUnw ckcr vksj foLr`r foospu djus dk vkSfpR; ugha le>rk gWWa vkSj ;g ekurk gWÂi fd mijksDr of.kZr

fu.kZ; esa izfrikfnr fl)kUr ds vuqlkj orZeku okn dks lquus dk {ks=kf/kdkj bl U;k;ky; dks izkIr gSA vr% ;g fcUnq mijksDr izdkj ls izfroknhx.k ds fo:)

fuf.kZr dh tkrh gSA**

While holding the suit to be maintainable, the Trial Court found the order of

removal to be against the principles of natural justice and decreed the suit vide its judgment and decree dated 22.01.1990.

Feeling aggrieved with the said judgment and decree dated 22.01.1990, the appellant " Corporation preferred an appeal, which came to be dismissed by the Appellate Court, vide its order dated 12.12.1994. The question of jurisdiction raised by the appellant " Corporation about the competence of Civil Court to decide the lis before it, has been negated and the judgment and decree passed by the Trial Court has been affirmed.

Calling in question, the judgment and decree passed by the Trial Court and the First Appellate Court, the appellant Corporation has approached this Court questioning the jurisdiction of Civil Court to decide the lis before them.Â This Court had framed the above quoted substantial question of law to be adjudicated.

Mr. Vivek Shrimali, learned counsel appearing for the appellants, assailing the judgments of the Courts below submitted that Section 9 of the Code of

Civil Procedure oust the jurisdiction of Civil Court, if the same has been excluded by an enactment. He submitted that though there is no specific

exclusion of the jurisdiction of the Civil Court in the Standing Order of the Corporation, but since the remedy of appeal has been provided in the

Standing Order and a separate forum has been provided for deciding the dispute between an employee and the employer by the Industrial Disputes

Act, 1947, the jurisdiction of Civil Court is impliedly barred. He submitted that in absence of a finding that the dispute in question cannot be decided by

the Appellate Authority or the Tribunal, the Civil Courts were not justified in decreeing the suit.

Mr. Shrimali, learned counsel invited attention of this Court towards a judgment of Honâ??ble the Supreme CourtÂ rendered in case of

â??R.S.R.T.C. & Ors. Vs. Deen Dayal Sharmaâ? reported in (2010) 6 SCC 697 and urged that exactly in identical circumstances, in the case of

appellantÂ - Corporation itself, Honâ??ble the Apex Court has held that the Civil Court does not have jurisdiction to pronounce upon the validity of

the order of disciplinary authority or propriety of the departmental enquiry and the right of an employee can be enforced only by raising an Industrial

Disputes Act.

It will not be out of place to reproduce the relevant part of the aforesaid

judgment of Honâ??ble the Supreme Court, which reads thus:-

â??In the instant case, the respondent who hardly contemplated under the Standing Orders, ought to have been held before issuing the order of

dismissal and in absence thereof such order was liable to be quashed. Such right, if available, could have been enforced by the respondent only by

raising an industrial dispute and not in the civil suit. In the circumstances, it has to be held that civil court had no jurisdiction to entertain and try the suit

filed by the respondent.â??

Mr.Â Sandeep Soni, learned counsel appearing for the respondent contended that in a case, where the principles of natural justice have not been

followed, the Civil Court has the jurisdiction. He asserted that the Courts below have rightly assumed the jurisdiction to pronounce upon the validity of

punishment order challenged by the plaintiff, in wake of the specific pleading of the plaintiff that while passing the impugned order of removal, copy of

enquiry report had not been supplied to him.

In relation to the question of jurisdiction, Mr. Soni, invited attention of this Court towards the judgment datedÂ 04.11.2016 passed by this Court in

case of â??R.S.R.T.C & Ors. Vs. Gagan Kumar Jain & Ors.â? reported in 2017(1) WLC (Raj.) UC 584Â and submitted that in light of the

judgment aforesaid, the Civil Court does have the jurisdiction. He pointed out that in the said judgment, this Court has considered and dealt with the

judgment of the Apex Court, so heavily relied upon by Mr. Vivek Shrimali. In light of the judgment of this Court, in case of Gagan Kumar Jain (supra)

he argued that in case of violation of principles of natural justice, the jurisdiction of Civil Court can be invoked.

Mr. Shrimali, learned counsel for the appellant joining the arguments in rejoinder, submitted that on 25.07.2017, the very same Bench at Jaipur had an

occasion of dealing with the identical question; and while considering all the judgments on the subject, including the judgment of this Court rendered in

R.S.R.T.C. Vs. Gagan Kumar Jain & Ors.(supra), the Bench held that in a given case, jurisdiction of Civil Court can be invoked, but however, in case

where the allegation of violation of principles of natural justice is based simply upon the pleadings that the copy of enquiry report was not furnished;

and in case the delinquent after being served with the charge-sheet has participated in the disciplinary proceedings, such delinquent cannot invoke the

jurisdiction of Civil Court.

It will not be out of place to reproduce the relevant part of the judgment of this Court dated 25.07.2017 rendered in case of R.S.R.T.C. Vs. Bhanwar

Lal Guarjar, which has clinchingly decided the issues:-

24. This brings this Court to the other factor which in the opinion of the Trial Court was violation of the principles of natural justice and i.e. the

alleged non supply of copy of the enquiry report. This Court is of the opinion that the conclusion drawn by the Trial Court in this behalf also cannot be

sustained. The reasons are not far fetched. Firstly the observations of the Trial Court are self contrary. At one stage, the Trial Court noticing the

proceeding sheet observed that the delinquent was provided an opportunity to not only lead evidence but also cross-examine the witnesses of the

adversary and ample opportunity was provided to him but it was he who absented himself from the proceeding. It was further observed that there was

no refusal for representation during the proceeding, while at another stage, the Trial Court was of the view that since copy of the enquiry report was

not provided, there was violation of principles of natural justice. Supply of copy to the delinquent is a way to put him to notice about the charges of the

case, he has to meet out. If the delinquent participate in the departmental enquiry, has been provided an opportunity to lead evidence, given the right to

cross-examine the witness produced by the department and most importantly who assails the outcome with full vigor and strength before the Appellate

Authority and after being unsuccessful in such assail cannot raise a blanket objection that he was not provided a copy of the enquiry report.

26. The proceedings demonstrate that he was fully aware of the case, he had to meet and the theory of non supply of copy of the enquiry report was

nothing but farce, invented for the purpose of instituting the suit. Nothing was decided behind the back of the delinquent and no material was

suppressed from the eyes of the delinquent and the delinquent had a fair opportunities to counter and meet the case and was never precluded from

knowing the content and material against him. It is also to be noted that the enquiry report is of 21.06.1982 prior to the cut off date of 20.11.1990

decided by the Hon^{ble} Apex Court in the case of Union of India and Others vs. Mohd. Ramzan Khan (supra). The Apex^Â Court in such case

though held that providing a copy of enquiry report to the delinquent was

obligatory and non-adherence thereto would be violation of principles of natural justice and furnish a ground of challenge, but has made such ruling prospective in its application.â??

Having heard learned counsels for the parties and upon perusal of the pleadings, it is apparent that the basic allegation levelled by the plaintiff in his

suit had been that the Corporation had not provided a copy of enquiry report to him, before passing the order of punishment. It has not been the case

of the plaintiff that he had not been served with the charge-sheet or his right to defend his case during the disciplinary proceedings has been infringed

by flouting the principles of natural justice.

According to plaintiffâ??s own case, he had filed his reply and participated in the enquiry. As such, following the judgment of Honâ??ble the

Supreme Court and this Court rendered in case of R.S.R.T.C. Vs. Bhanwar Lal Guarjar (supra), this Court is of the considered opinion that in the

facts of the present case and for the allegations levelled in the plaint, the Civil Court had no jurisdiction to try the suit.

The judgment of Honâ??ble Supreme Court reported in AIR 1990 Supreme Court 255 is also to the same effect. In light of the said judgment, the

orders passed by the Courts below cannot be sustained.

As a necessary corollary of the discussion above, the question framed by this Court, is answered in affirmative and it is held that the impugned orders

passed by the Courts below were beyond their jurisdiction and are liable to be set-aside.

Hence, the present appeal is allowed. Order dated 12.12.1994 passed by learned Additional Civil Judge (Sr. Div.) No.3, Udaipur so also the order and

dated 22.01.1990, passed by learned Munsif & Judicial Magistrate, First Class City (South), Udaipur, subject matter of the present appeal are quashed

and set-aside.

No order as to costs.