
(2005) 04 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Special Appeal No. 814 of 1993

Rajendra Kumar Soni

APPELLANT

Vs

Authority Appointed and Others

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Factories Act, 1948 — Section 2(1)

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 2(5)

Citation : (2006) 1 RLW 787 : (2006) 1 WLC 734

Hon'ble Judges : J.R. Goyal, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : Neeraj Bhatt, for the Appellant; O.K. Rana, for the Respondent

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—This appeal has been preferred against the judgment and order of the learned Single Judge passed on 17.9.1993 in S.B.C. Writ Petition No.2031/1993 whereby the learned Single Judge has been pleased to dismiss the writ " petition upholding the order of the competent authority under the provisions of the Rajasthan Shops & Commercial Establishments Act, 1958 (shortly referred to as the "Act of 1958"). The competent authority under the Act of 1958 had refused to entertain the application filed by the appellant challenging the order of this termination on the ground that the employer of the appellant. M/ s. Anil Steel and Industries Ltd. was registered under the Factories Act, 1948 and, therefore, the provisions of the Rajasthan Shops and Commercial Establishments Act 1958 are not applicable. The competent authority further observed that the petitioner may raise an industrial dispute under the Industrial Disputes Act, 1947. This order was confirmed by the competent authority since a review filed by the appellant against the same was also rejected. As already stated, the appellant/petitioner had filed a writ petition before the learned Single Judge challenging the order of the competent authority but the same was also dismissed, hence, this appeal before us in the Division Bench.

2. The substantial facts of the case in so far as it is relevant for the purpose of deciding this appeal falls within a short compass. The petitioner/appellant had initially been appointed as a Lab Assistant with M/s, Anil Steel and Industries Ltd., Kanakpura, Jaipur who after confirmation was promoted on the post of Assistant Foreman. While discharging his duties as Assistant Foreman, the appellant was dismissed from service on 20th July, 1991. The delinquent employee/appellant herein feeling aggrieved with the order of his termination filed an application before the competent authority under the Provisions of Rajasthan Shops and Commercial Establishments Act, 1958 (hereinafter shortly preferred to as the Act of 1958) but the competent authority was pleased to hold that the appellant's services could not be governed by the Act of 1958 and hence, he had moved the wrong forum for redressal of his grievance.

3. The appellant, therefore, preferred a writ petition before the Single Judge and the learned Single Judge while examining the controversy examined the definition of "worker" u/s 2(1) of the Factories Act, 1948 and was pleased to examine as to who are the persons who would be treated as "worker" and thereafter also examined the provisions of the Shops and Commercial Establishments under the Rajasthan Shops and Commercial Establishments Act, 1958 and after examining several case laws on this point was finally pleased to hold that the appellant/petitioner was an employee of M/s. Anil Steel and Industries Ltd., which would not be governed by the definition of Clause 2(7) of the Act of 1958 which defines as to what constitutes "Commercial Establishments" attached to a factory where the persons are employed in shops and the learned Single Judge was pleased to record that such workmen who are employed in a shop attached to the factory are allowed the benefit provided under the Act 1958 as they have been excluded under the Factories Act of 1948. The definition under the Factories Act 1948 clearly lays down that, the shop attached to a factory is excluded, which makes it clear that the person who are employed in a factory which falls within the purview of the Factories Act 1948 are also excluded there from and hence they can take recourse to the Shops and Commercial Establishments Act 1958. The learned Single Judge further held that the petitioner holding the post of an Assistant Foreman the respondent-Anil Steel and Industries Ltd. would be a workman under the Factories Act and therefore, he cannot move the competent authority under the Shops and Commercial Establishments Act of 1958.

4. The moot question, therefore, which falls for consideration, by this Court lies in a straight jacket, as to whether the appellant who was holding the post of Assistant Foreman in Anil Steel and Industries Ltd. had rightly moved the competent authority under the Rajasthan Shops and Commercial Establishments Act, 1958 in order to challenge the order of his termination.

5. The counsel for the delinquent employee/appellant has taken much pains to address the Court that the appellant had rightly moved the competent authority under the Act of 1958 for challenging the order of his termination and for this

purpose he had relied upon the authority of the Supreme Court delivered in the case of National Council for Cement and Building Materials v. State of Haryana and Ors. (1996(2) SLR 482) as also on the case of National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, . According to his contention, even a workman engaged in the shop attached to a factory is entitled to challenge the order of his termination under the Rajasthan Shops and Commercial Establishments Act, 1958.

6. Having heard learned Counsel for the parties, on this question, we have noticed that while the counsel for the appellant may be correct in contending as a broad proposition that an employee or a shop attached to a factory may move the Commercial Establishment Act, 1958 for challenging his termination, he is totally missing that such workman has to be excluded from the purview of the definition of the Factories Act clearly on account of the fact that he is an employee of the shop-owner who has set up a shop in the factory and was not engaged by the authority who has control over the factory. Conversely, if the employee is governed by the Factories Act, he being an employee of the factory-owner, he cannot move the competent authority under the Shops and Commercial Establishments Act against the action of any authority of factory owner and would have to take recourse to the provision of the Industrial Disputes Act, 1947 provided he is workman within that definition under the Act. Therefore, the decisions, on which the counsel for the petitioner has relied upon would not assist him in any manner, as it is crystal clear that the petitioner is an employee of M/s. Anil Steel and Industries Ltd. which is clearly governed by the Factories Act, 1948, whose workman would be governed by the provisions of the Industrial Disputes Act.

7. Learned Counsel for the appellant and the respondents have not agreed with each other as to whether M/s. Anil Steel and Industries Ltd. is registered under the Shops and Commercial Establishments Act or not but even assuming that it has been so registered that alone will not permit their workmen to move under the Shops and Commercial Establishments Act, if such workmen are not those employees who are clearly excluded under the definition of employee u/s 2(5) of the Shops and Commercial Establishments Act, 1958. The definition of employee given out in the Shops and Commercial Establishment Act, 1958 for facility of reference is quoted herein as follows:-

(5) "employee" means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice but does not include a member of the employer's family; it also includes any clerical or other staff of a factory or industrial establishment who falls outside the purview of the Factories Act, 1948.

8. A perusal of this provision clearly indicates that only those persons can be governed under the Shops and Commercial Establishment Act of 1958 who are outside the purview of the Factories Act, 1948.

9. The appellant admitted was an Assistant Foreman and was engaged in the Industry which was governed by the provisions of the Factories Act, 1948 and on the basis of the definition of "employee" given out in Section 2(5) of the Act of 1958, would be outside the purview of Shops and Commercial Establishment Act of 1958. It is thus patently clear that the respondent-Anil Steel and Industries which was admittedly registered under the Factories Act, would be governed under the Factories Act of 1948 and the appellant who was engaged as a Foreman in the Industry and was not, in any way, connected with the duties related to the activities of a shop which might have been attached to the respondent-Anil Steel and Industries Ltd. cannot be allowed to challenge his termination under the Shops and Commercial Establishment Act 1958. Therefore, the conclusion drawn by the learned Single Judge that the petitioner/appellant would not be governed under the Act of 1958 does not suffer from any infirmity or legal blemish so as to interfere with the same.

10. We, therefore, concur with the view of the learned Single Judge that the competent Authority under the Shops and Commercial Establishment Act 1958 had no jurisdiction to entertain the application of the petitioner challenging his termination. Once it is held that the appellant had wrongly moved the competent authority under the Shops and Commercial Establishment Act 1958 for challenging his termination which has been the view of the learned Single Judge also, we have no reason to enter further as to whether the petitioner is a workman or not, as it was necessary to examine this aspect only to the extent that the Industry where the appellant was working was governed by the Factories Act and therefore, its employee also would be governed by that Act. The question considered by the learned Single Judge in the impugned judgment as to whether an employee engaged in a Factory or an industry in a managerial capacity would be covered under the Industrial Disputes Act, 1948 or not, is left open to be decided before the appropriate forum which the appellant might choose to move, as this question strictly speaking was not required to be gone into by the learned Single Judge and in fact it has been gone into incidentally. The focal point, as already stated, was only to the extent as to whether the petitioner appellant whose services had been terminated from the post of Assistant Foreman as he was engaged in the factory had rightly moved the competent authority under the Rajasthan Shops and Commercial Establishments Act, 1958 or not and that question having been decided against him, the appeal is fit to be dismissed which is hereby dismissed with no order as to costs.