
(2008) 01 RAJ CK 0048
In the Rajasthan High Court

Rajendra Prasad

APPELLANT

Vs

Judge, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 02-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 33

Citation : (2008) 117 FLR 720 : (2008) 3 LLJ 184

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—This writ petition has been presented seeking to quash the orders dated August 30, 2003, July 7, 2004 and October 6, 2004 and to direct the respondent No. 1 to provide a chance to the petitioner-workman to lead evidence.

2. The petitioner-workman is the employee of the respondent No. 2. His services came to be terminated vide order dated June 5, 1991. The petitioner-workman raised an industrial dispute. An application u/s 33(2)(b) of the Industrial Disputes Act, 1947 was presented by the respondent No. 2 before the respondent No. 1 for approval of the termination order. The petitioner (respondent therein) was notified. The respondent No. 1, Industrial Tribunal, Jaipur (hereinafter referred as "the Tribunal") directed the respondent No. 2 to lead his evidence which was led. Thereafter the petitioner-workman was directed to lead his evidence on April 23, 2003. He was provided another chance to lead evidence on July 30, 2003 but he could not produce his evidence. The petitioner-workman's evidence was closed on August 30, 2003.

3. The petitioner-workman filed an application for opening his evidence on September 18, 2003 supported by his affidavit for recalling the order dated August 30, 2003. The Tribunal vide order dated July 7, 2004 rejected the second application on the ground that similar type of application stood rejected

previously on August 30, 2003. The petitioner-workman filed another application on September 2, 2004 for recalling the order of rejection of the applications and for leading evidence which stood also rejected vide order dated October 6, 2004.

4. The respondents have filed the reply stating therein that the petitioner-workman was provided ample opportunity by the Tribunal to lead evidence. The petitioner did not avail of the opportunity and coined an excuse of his illness. His evidence has rightly been closed. The application filed for leading evidence and recalling of the order dated August 30, 2003 was not supported by an affidavit and the Presiding Officer was right in rejecting the application and subsequent applications also.

5. The petitioner shown his cause, of illness for non-production of the witnesses on August 21, 2003. This application was rejected vide order dated August 30, 2003 and simultaneously the evidence of the petitioner, was closed.

6. Heard learned Counsel for the parties and perused the record.

7. Perusal of the record shows that the evidence of the RSRTC was closed on March 20, 2003 and the petitioner was directed to record statements of his witnesses on April 23, 2003. On that day, the Presiding Officer was on half day leave and no effective hearing took place. The file was fixed for June 11, 2003, and on that day also, the Presiding Officer was on leave. The last opportunity provided to the petitioner for leading evidence was on July 30, 2003. On that day the file was fixed for August 21, 2003. On August 21, 2003, the petitioner could not lead his evidence due to his illness and this fact was brought to the notice of the Presiding Officer of the Tribunal by filing an application to that effect through his counsel. The file was again fixed for evidence of the petitioner on August 30, 2003. On that day, the evidence could not be produced by the petitioner and his application filed on August 21, 2003 was dismissed and the evidence closed. The petitioner filed an application for recalling of the order dated August 30, 2003, seeking permission also to lead evidence. The Presiding Officer of the Tribunal rejected the application on the ground that his earlier application has been rejected vide order dated August 30, 2003. The earlier application, which was rejected, was not for recalling the order dated August 30, 2003 but seeking adjournment to lead evidence on that particular day and the Tribunal without deciding the application fixed the file for August 30, 2003 and on that day, the application was rejected and the evidence was closed. The rejection of the second application by the Tribunal on the ground that his first application has been rejected is illegal. First application and the second application has no nexus in between. The first application was for seeking opportunity to lead evidence on the adjourned date whereas the second application was for recalling the order dated August 30, 2003 whereby the evidence was closed.

8. I find that second application could have been considered being properly filed in law and could not be dismissed observing that the first application stood dismissed. Though, the record reveals that the petitioner has not been able to

produce evidence and the Tribunal after providing the opportunities has closed the evidence but it appears that the petitioner should have been provided another opportunity for producing his evidence before the Tribunal by considering his second application, which could not have been rejected on the ground of dismissal of the first application. Learned Counsel for the respondent has also submitted that in case the petitioner is provided another opportunity, he would have no objection. In the interest of justice also I feel that the petitioner should be provided an opportunity to lead his evidence.

9. For the aforesaid reasons, the writ petition is allowed. The petitioner shall produce his witnesses for recording their statements before the Presiding Officer of the Tribunal on January 30, 2008. Registry is directed to ensure that this order reaches to the concerned Presiding Officer. No order as to costs.