
(2019) 11 RAJ CK 0077
In the Rajasthan High Court
Case No : Civil Writ Petition No. 16773 Of 2019

Rajendra Singh

APPELLANT

Vs

Managing Director And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 11 RAJ CK 0077

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Ankul Gupta

Final Decision : Dismissed

Judgement

The instant writ petition has been filed by the petitioner challenging the impugned award dt. 19th October, 2015, passed by the Labour Court No. 1, Jaipur, whereby the termination order of the petitioner dt. 18th September, 1998, has been found to be validly passed.

Counsel for the petitioner submitted that the petitioner was regularly selected Conductor in the Corporation with effect from 28th November, 1988 and was given two charge-sheets dt. 3rd December, 1990 and 4th August, 1987. Counsel submitted that the petitioner was given opportunity to file reply to the first charge- sheet and the petitioner was denied the opportunity to file reply to the second charge-sheet. The Enquiry Officer was appointed and after conducting enquiry, the punishment order dt. 18th September, 1988, was passed in arbitrary and illegal manner.

Counsel submitted that the findings recorded in respect of misconduct of the petitioner was absolutely perverse and in violation of principle of natural justice. Counsel submitted that the petitioner had also filed appeal against the termination order dt. 18th September, 1988 and the appeal was also dismissed

by the Appellate Authority by order dt. 27th December, 2004.

Counsel submitted that the State Government had made a reference to the Labour Court vide order dt. 22nd January, 2007 and the Labour Court was to decide the validity of the order dt. 18th September, 1998, terminating the services of the petitioner.

Counsel submitted that the charge from absence of duty was not proved against the petitioner as enquiry was declared unfair by the Labour Court and later on opportunity was granted to the employer to lead evidence to prove charges.

Counsel submitted that the evidence, which was produced by the petitioner clearly proved that the medical certificates furnished by him were genuine in nature and further such certificates were not controverted by the employer by leading any evidence in rebuttal.

Counsel further submitted that the Labour Court has also not considered the important fact of various certificates, furnished by the petitioner showing his accident, which did not permit him to join the job and further such evidence has altogether being ignored by the Labour Court, only on the ground of conjunctures and surmises.

Counsel further submitted that the Labour Court while considering the scope of Section 11-A of the Industrial Disputes Act, 1947 has denied the relief to the petitioner, as petitioner is said to have exercised the jurisdiction of the Labour Court after 18 years from the date of termination of his service. Counsel submitted that age of the petitioner to be more than 50 years was also not relevant consideration for substituting the punishment, as the petitioner was regularly recruited Driver working in the Corporation, initially on daily wage basis in 1987 and later was regularized in 1988.

Counsel for the petitioner has placed reliance on the judgments passed by the Apex Court in the case of Chhel Singh Vs. MGB Gramin Bank, Pali and Ors. reported in (2014) 13 SCC 166 and further in the case of Krushnakant B. Parmar Vs. Union of India reported in (2012) 3 SCC 178. Counsel on the strength of the said judgments submitted that absence from the duty or unauthorized absence is different than willful absence.

Counsel submitted that if the circumstances were prevalent for compelling the petitioner not to attend the duty, the impression of willful absence has wrongly been drawn by the employer as well as by the Labour Court while considering the termination order dt. 18th September, 1998. Counsel further argued that the petitioner had approached the Appellate Authority by filing Departmental Appeal and further the reference was made by the State Government to the Labour Court in the year 2007 itself and as such relief could not have been denied to the petitioner on the ground of delay being caused in pursuing the remedy.

I have heard the submissions made by counsel for the petitioner and perused the material available on record.

This Court finds that the Labour Court had passed the award on 19th October, 2015 and the present writ petition has been preferred on 24th September, 2019. This Court is conscious of the fact that the limitation has not been prescribed under Article 226 & 227 of the Constitution of India, however, filing of the writ petition by the petitioner after a delay of more than 4 years is relevant consideration for this Court to exercise writ jurisdiction.

This Court finds that if the petitioner was feeling aggrieved against the award dt. 19th October, 2015, he ought to have filed the petition within a reasonable time. The filing of writ petition after a delay of 4 years suffers from laches and delay and as such this Court will not like to entertain the petition which is filed after a delay of 4 years from the date of award.

Counsel for the petitioner, at this juncture, submits that petitioner in fact has suffered disability in his both legs and as such he was prevented from filing the petition, this Court finds that said fact has not been mentioned in the writ petition and as such this Court cannot come to the rescue of the petitioner by permitting him to file the petition at such a belated stage.

This Court finds that the Labour Court while passing the award has taken into account the various documents, which were placed on record by way of evidence. The Labour Court has observed that the petitioner, who was said to be injured restrained himself from joining the duty, however, he did not produce any evidence to the effect that he had suffered injuries on account of accident by falling from the motorcycle. The Labour Court also recorded a finding that the petitioner failed to produce any certificate of Alopathy Doctor, the prescription prescribed by any Doctor and any other medical treatment, which was done for adjudging the reason of not reporting on duty.

This Court also finds that the Labour Court has recorded a finding that the petitioner was absent since 25th May, 1997 till the date of termination of his services. The long absence of the petitioner from service and filing of appeal by the petitioner in the year 2004 against termination order of 1998, has not been explained by him.

This Court finds that the Labour Court after considering the entire evidence of termination of his services, has come to the conclusion that the charges against the petitioner in respect of remaining absent from duty, in willful manner, was duly proved and as such this Court is not inclined to interfere in the order passed by the Court below.

Accordingly, the present writ petition stands dismissed.