
(1982) 01 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Second Appeal No. 361/71

Ram Swaroop

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-01-1982

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1982) WLN 509 : (1982) WLN 162

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—This is a Civil Second Appeal of an unsuccessful plaintiff, who has been non-suited by the two courts below.

2. The plaintiff was a civil servant who was appointed as Assistant Store Keeper in the Department of Food & Civil Supplies at Gangapur on 5.5.58 and then promoted as Store Keeper in March, 1959. While working as Store Keeper he was suspended from service on 25.8.53 and was prosecuted for criminal breach of trust. The trial resulted in an acquittal.

3. The order of acquittal which was read over by the learned Government Advocate before this Court clearly mentions that the appellant should be paid his salary of the period of suspension.

4. A charge sheet was given to the petitioner on 23.9.58 and various charges of falsification of accounts, disregard of account instructions, and gross negligence were framed. The departmental proceedings were continuing and a report was submitted by the Enquiry Officer in which recommendation was made for stoppage of two grade increments on account of the fact that he was found to be negligent. However, the departmental authority passed the order that since the post of Storekeeper has been abolished and there is no existing post, the plaintiff appellant should be reinstated first and then his services be terminated by notice u/s 23-Article of the Rajasthan Service Rules. The relevant letter dated 11.12.59,

which has been reproduced in the judgment of the trial court, is reproduced again for ready reference:

Copy of Ex. "K." Letter dated 11th December, 1959 No. D. IV/2272/59/F. IE (108) FD/G/58.

Finance (G) Department From Shri Ramsingh I.A.S., Addl. Finance Secretary To The Account Officer, Incharge, Civil Supplies, Rajasthan, Jaipur Dated Jaipur, the 26th November, 1959 Subject:- Theft of Government grain at Sawaimadhopur during 1953--Departmental Inquiry against Shri Ram Swaroop, Ex-Store-Keeper Civil Supplies Department. Ref:- Your letter No. 7017/F dated 26.6.59

I am directed to state that though Shri Raswaroop Store-Keeper, Civil Supplies, Sawai-Madhopur was acquitted by the Sub Divisional Magistrate, Sawaimadhopur of the particular charges against him, the departmental proceedings instituted against him in respect of certain other charges were continued. As a result of these proceedings, he was not found free from blame by the Enquiry Officer as the irregularities committed by him in the accounts had facilitated mis-appropriation of Govt. Grain.

In view of this position, Government are pleased to order that Shri Ramswaroop may be re-instated with immediate effect but may be allowed only two thirds of his pay (with usual dearness allowance admissible under Rules) for the suspension period, the subsistence allowance and dearness allowance, if any already drawn by him being adjusted against this pay, and dearness allowance.

Since the post of Stoor Keeper was abolished in the process of winding up of the Civil Supplies Deptt. and Shri Ramswaroop was only a temporary Government Servant, he be served with one month's notice of discharge under Rule 23 Article of the R.S.R. with effect from the date of his reinstatement. His service may be terminated on the expiry of the notice.

I am further directed to convey sanction of the Governor to the extension of the post of Store Keeper till the expiry of the one month's notice.

The expenditure is chargeable to the head "47 Misc. J. Civil Supplies Department."

sd/

Ramsingh Addl. Finance Secretary.

5. The above letter is slightly confusing, because after holding that the Enquiry Officer found him responsible for committing such irregularities in the accounts which resulted in facilitating misappropriation of the Government grain in the next line the order says, "In view of this position of the Government is pleased to order that Ramswaroop be reinstated with immediate effect". The latter portion of the letter is not consistent with the earlier portion, because if he was found guilty of some irregularities, then the first question to be considered was as to

what punishment has been proposed to be imposed and whether it has been imposed or not.

6. Mr. Khan in order to remove the above confusion pointed out that the Enquiry Officer recommended punishment of stoppage of two grade increments, but the same was not accepted by the disciplinary authority, who was of the opinion that in view of the abolition of the post the employee can not be retained in service any more.

7. In pursuance of this order, another order was passed on 11.12.59 by which reinstatement was made and a notice of one month for termination of his services by 25.12.59 was given. This order is also reproduced for ready reference:

Office of the Collector, Sawaimadhopur.

No. 3831/Supply Dated 11th December, 1959 To Shri Ram Swaroop, Ex-store Keeper, Civil Supplies, Sawaimadhopur. ORDER

In compliance with the Finance (4) Department endroement D. IV/2972/59/FIS/(108) FD/G)58, Shri Ramswaroop Ex-Store Keeper of Civil Supplies Deptt. Sawaimadhopur, is hereby reinstated from the date of order i.e., 26.11.59.

In pursuance of the same order he is further given a notice of one month from the date of his reinstatement i.e. 26.11.59 that his services will not be required by this office after the expiry of the notice period 25.12.59.

Sd/

Collector,

Sawaimadhopur.

8. Aggrieved by the above, the plaintiff filed the suit and interalia alleged that he was not allowed reasonable opportunity in the Departmental Enquiry conducted against him and the procedure followed was against the principles of natural justice and law. The lower courts have come to the conclusion that full and adequate opportunity was given to the employee.

9. The controversy before the lower courts as well as this court is whether the removal of the petitioner by one month's notice under rule 23 Article of the R.S.R. was valid; and, whether the forfeiture of 1/3rd pay of suspension period was valid.

10. So far as forfeiture of pay is concerned, it may be straight-away mentioned that in view of the fact that a judicial order was passed by a criminal court mentioning that the accused-plaintiff would be entitled to his salary, no jurisdiction was left in the Government authorities to forfeit 1/3rd of the pay of suspension period. Though, this order of the criminal court has not been placed on record, but it is not in dispute and is admitted and was read over by the Government Advocate in this Court during the arguments The order of the

criminal court regarding payment of salary was a judicial order and in the face of the order the departmental authorities) were not entitled to forfeit 1/3rd pay, as has been done in this case by virtue of letter dated 11.12.59, extracted above.

11. Even otherwise, I am of the opinion that after the recommendation of the Enquiry Officer when the Government was not prepared to take any further proceedings under disciplinary jurisdiction, and virtually dropped the departmental proceedings, there was no occasion to forfeit 1/3rd pay. It is true that under rule 54 R.S.R. the disciplinary authority is authorised to pass an order about the pay of the suspension period.

12. I am of the opinion that once the disciplinary authority decided not to impose any punishment in view of the abolition of the post and not to act on the report of the Enquiry officer, it was not permissible to pass any order under rule 54(3) R.S.R. The disciplinary Authority had two options in the matter; (1) to take departmental or Disciplinary proceedings to us logical conclusion by furnishing the civil servant for the omissions & commissions held to have been proved by the Enquiry Officer; and (2) to drop the proceedings of departmental enquiry and not to act upon the recommendations of the Enquiry Officer.

13. In the latter case, once the disciplinary authority decides to drop the proceedings for whatever reason it may be, then it cannot give effect to the finding of the Enquiry Officer against the Civil Servant for the purpose of forfeiture of the pay under Sub-rule (3).

14. In this view of the matter, I am of the opinion that on the second count also, the forfeiture of the pay to the extent of 1/3rd during suspension period of the plaintiff was illegal and the suit of the plaintiff deserves to be decreed to that extent. The findings of two courts below on this specific point are, therefore, reversed, and it is ordered that the defendant respondent would pay to the plaintiff the entire amount of 1/3rd of the pay of suspension period which has not been paid so far, and which has been illegally forfeited. In other words, the plaintiff is entitled to the entire pay of the suspension period, and since 2/3rd pay has already been paid, 1/3rd of the pay would now be paid by the defendant-respondent.

15. Now remains the important question regarding validity of termination of service. It is not in dispute that the post of Store-Keeper was abolished in the Department of Food and Civil Supplies, which itself was a temporary department. It is true that the abolition took place in 1955. The appellant was suspended on 25.8.53. He was acquitted on 9.4.57. Charge sheet was given to him on 23.8.59. His services were terminated on 11.12.59. As a consequence of the abolition there was no post, but as would be obvious from the impugned order, the Governor had to create a post for that small period. In these circumstances, this Court cannot compel the State to create a post for a civil servant where there is none. All that can be enquired into & scrutinised by this Court is, whether the abolition was not done colourably to get rid of a civil servant. This

is not precisely a case where any finding can be given that in order to get rid of the plaintiff, the Government abolished the post, because the post was abolished in 1955 and the termination was done in 1959. These facts are speaking and patent, I am convinced that the finding of the two courts below that the removal of the petitioner was not mala fide and that it was on account of abolition of the post suffers from no infirmity of law warranting interference in this appeal. I am further convinced that though the motive of the defendant may be any, but the termination under rule 23 Article of R.S.R. was not based on the foundation of misconduct I am further convinced that there has been no violation of Article 311 of the Constitution, because the Government was within its rights to terminate the services of the appellant plaintiff who was a temporary employee and who had no right over the post which again never existed on the relevant date.

21. In view of the above, it is not necessary to discuss in detail the principles laid down in the above cases referred to by the learned Counsel for the parties.

22. In view of the above discussion, I am of the opinion that while the plaintiff succeeds so far as his prayer for grant of 1/3rd salary is concerned, he fails on the principal point that he is entitled to reinstatement and to get the order of termination quashed.

23. Mr. Kuhad also made a subsidiary argument about pension. According to him, the notification dated 25.6.55 contemplates that pension can (sic) be permitted to those civil servants who have completed 10 years service. A reading of this notification clearly shows that it was meant for permanent employees. If the Government wants to give benefit of pension to temporary employees, it can do so by amendment of the rules and making provision for the same I am convinced that the plaintiff who was a temporary employee was not entitled to pension.

24. The result is that this appeal succeeds partly only. The judgments of both the courts below are upheld to the extent that the impugned order by which the services of the plaintiff were terminated is valid and need not be quashed by this Court. However, that part of the order by which 1/3rd of salary of the plaintiff has been forfeited for the suspension period is quashed, and it is decreed that the plaintiff would be entitled to get the amount of 1/3rd salary also for entire period of suspension from the defendant.

25. It is further ordered that in view of the facts & circumstances of the case, the costs would be easy in all the three courts.