

(2002) 01 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Revision Petition No. 827 of 2001

R.S.R.T.C. and Others

APPELLANT

Vs

Hardan Singh

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (2003) 1 RLW 134 : (2002) 5 WLC 384 : (2002) 5 WLN 167

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Mahendra Goyal, for the Appellant; B.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Keshote, J.—Heard learned counsel for the parties, perused the impugned order of the Additional District Judge No. 9, Jaipur City, Jaipur.

2. The facts of the case are that the plaintiff non-petitioner filed a suit for declaration and permanent injunction against the defendant petitioners in the court of Additional Civil Judge (Jr. Div.) No.2, Jaipur city, Jaipur. The plaintiff respondent served with a charge-sheet dated 2.10.1993 and misconduct alleged against him was that he deposited deficit tickets worth Rs. 35,4556/- causing financial loss to the Corporation. He has stated that in the enquiry conducted, the charge levelled against the plaintiff respondent was not found proved. The defendant petitioner No.2 in its order dated 13.7.1998 ordered for recovery of Rs. 35,556/- from the salary of the plaintiff respondent. In the suit this order has been challenged and an application under Order 39 Rule 1 and 2 r/w Section 115 CPC was filed by the plaintiff respondent along with the suit. In this application prayer was made that no recovery is to be effected from the salary of the amount above-stated in pursuance of the order dated 13.7.1998. This application was contested by the defendant petitioners and ultimately the trial court has not considered it to be a fit case to grant temporary injunction in favour of the plaintiff respondents. This order was carried by the defendant petitioner in

appeal. The appellate court vide its order dated 28.3.2001 issued temporary injunction against the defendant petitioner. The first appellate court has not considered that unless the plaintiff respondent establishes to its satisfaction that he has a prima facie case in his favour, the temporary injunction could not have been granted. Learned trial court has not considered this important aspect that it cannot be said to be a case where if temporary injunction is not granted, it will result in causing irreparable loss and injury to the plaintiff respondent which cannot be compensated in terms of money. It is a money matter. It is a case where deficit tickets were deposited by the plaintiff. If it is correct, then certainly it will result in causing financial loss to the Corporation. If any loss is caused to the Corporation because of negligence on the part of the employee, the Corporation was within its competence, jurisdiction and perfectly legal and justified to ask the negligent employee to make good of the same. That what precisely has been done by the court below. It is being money matter, otherwise also no indulgence should be granted reason is very obvious. If ultimately plaintiff succeeds in the suit, whatever amount is to be recovered from his salary, is to be refunded by the Corporation to him. That way if the matter is looked into, by no stretch of imagination it cannot be said that non grant of temporary injunction is causing injury to him. Even if it is taken that a prima facie case is made out in favour of the plaintiff respondent, still it is not a case where temporary injunction is to be granted in his favour. The order of the first appellate court is perverse. It is the public money which has to be recovered by the Corporation. If ultimately the court is satisfied that it is not recoverable from the employee concerned, it can grant relief to him, but at this stage by this interlocutory order final relief cannot be granted. Time and again their Lordships of Supreme Court have deprecated this approach of the courts to grant final relief at interim stage.

3. As it is not a case where non grant of temporary injunction will result in causing any irreparable injury or loss to the plaintiff respondent, the learned first appellate court has committed serious illegality in exercise of its jurisdiction to grant temporary injunction in favour of the defendant respondent. In case this order is allowed to stand, it will occasion failure of justice to the Corporation as this amount is public money and the public money cannot be retained by the employee for indefinite period i.e. so long the suit remains pending. Contrary to it on success in the suit by the plaintiff respondent, he will get all the benefits. The court below has committed serious illegality in exercise of its jurisdiction. In case the impugned order is allowed to stand, it will occasion failure of justice, to the petitioner.

4. The revision petition succeeds and same is allowed. The order of the first appellate court dt. 28.3.2001 is quashed and set aside. However, it is made clear that if the plaintiff respondent succeeds in the suit the Corporation will refund back to him the amount recovered from his salary with interest as ordered by the court. The plaintiff respondent is directed to pay cost of revision petition to the plaintiff Corporation.