

(2005) 12 RAJ CK 0054
In the Rajasthan High Court
Case No : Civil Second Appeal No. 610 of 1998

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

APPELLANT

Vs

Khub Chand

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Industrial Disputes Act, 1947 — Section 17, 17(1), 2
Rajasthan State Road Transport Workers and Workshop Employees Standing Orders,
1965 — Section 35

Citation : (2006) 1 RLW 462 : (2006) 1 WLC 419

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Virendra Lodha, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Having heard the submissions and on scanning the material on record I am satisfied that no substantial question of law arises in the instant matter.

2. Contextual fact depict that the plaintiff respondent (for short "plaintiff") instituted civil suit with the averments that he was appointed in Rajasthan State Road Transport Corporation (for short, "RSRTC") on the post of Conductor on probation in January 1980. When he was on duty on November 1, 1980 on the route of Shahpura Kawat his vehicle was checked and five passengers were found without tickets. After holding the inquiry the services of the plaintiff were terminated vide order dated June 23, 1984. The departmental appeal also was dismissed vide order dated February 5, 1985. During inquiry the opportunity of cross-examining the witnesses was not afforded to the plaintiff as such the inquiry was not held properly and the provisions of Section 35 of Rajasthan State Road Transport Workers & Workshop Employees Standing Orders 1965 (for short, "Standing Orders") were not complied with. A prayer, therefore, was made for

quashing the order of termination. Defendants appellants submitted written statement stating therein that the plaintiff was not appointed against permanent post and in compliance of the Standing Orders the inquiry was held. There is no provision to supply the copy of inquiry report and show cause notice to the employee. Since the services of plaintiff were governed by the Standing Orders, therefore, the plaintiff was not entitled to the relief sought for. As many as four issues were framed by learned Additional Munsif No. 3, Jaipur City, which have been incorporated in the impugned judgment. Learned Munsif vide judgment and decree dated March 23, 1990 decreed the suit. Defendant appellants preferred first appeal against the judgment and decree, but the appeal was also dismissed vide judgment and decree dated August 11, 1998. Against the said concurrent finding arrived at by both the courts below, that the defendant appellants have preferred the instant second appeal.

3. Mr. Virendra Lodha, learned Counsel for the appellants canvassed that the civil Court had no jurisdiction to entertain the suit instituted by the plaintiff. Although the issue framed in this regard was decided against the appellants, however, I again permitted to raise this submission in the instant second appeal.

4. It is contended by Mr. Lodha that the service of plaintiff is governed by Section 9 of Standing Orders, therefore, the civil suit instituted by him was not maintainable. Reliance is placed on Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, and R.S.R.T.C. v. Zakir Hussain JT 2005(7) 512.

5. Three judge bench of Hon'ble Supreme Court in the The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, after elaborate discussion held as under:

(2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) if the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

6. Ratio indicated in the Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke (supra) was again considered in Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, and held as under:

The Industrial Disputes Act is enacted by the Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the

workmen does not get caught in the labyrinth of Civil Courts which the workmen can ill-afford. The procedure followed by Civil courts are too lengthy and consequently, is not an efficacious forum for resolving Industrial Disputes speedily. The power of Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum. The legality of order of termination passed by the employer will be an industrial dispute within the meaning of Section 2(k) and u/s 17 of the Industrial Disputes Act, every Award of Labour Court, Industrial Disputes Act, Industrial Tribunal or National Tribunal is required to be published by the appropriate Government within a period of thirty days from the date of its receipt and such Award published under Sub-section (1) of Section 17 is held to be final.

7. In *R.S.R.T.C. v. Zakir Hussain* (supra) Two Judge Bench of Hon''ble Supreme Court considered the object of Industrial Disputes Act and observed in para 30 thus:

30 Learned Counsel for the respondent placing strong reliance on the judgment in *R.S.R.T.C. v. Krishna Kant and Ors.* (supra) submitted that since the decree has been passed by the trial Court on 28.7.1989 and the appeal filed by the Corporation was dismissed on 27.9.1989 which was pending prior to the judgment reported in *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , the respondent is right in approaching the civil court. This contention has no force. This Court has very explicitly summarised the principles flowing from the discussion in the judgment in para 35 and applying the above the principles this Court has categorically held that the suits filed by the employees in those appeals were not maintainable in law. But, however, granted certain reliefs by reducing the back wages etc. etc. in the peculiar facts and circumstances of the case. Therefore, in our opinion, the above judgment will not be of any assistance or aid to the claim of the respondent.

8. In the instant case undeniably the suit was filed in the year 1987 when the ratio indicated in *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke* (supra) was in force. Therefore, I hold that in view of the ratio indicated in *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke* (supra) the suit instituted by the plaintiff was maintainable and now after 18 years it cannot be held that in view of the subsequent judgments of the Hon''ble Supreme Court the suit was incompetent.

9. In *Subran and Others Vs. State of Kerala*, their Lordship of Supreme Court indicated that in second appeal concurrent finding of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers u/s 100 CPC.

10. For these reasons, the second appeal being devoid of merit stands dismissed without any order as to costs.