

(2006) 07 SC CK 0068

In the Supreme Court Of India

Case No : Civil Appeal No. 4670 of 2004

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

APPELLANT

Vs

Ramdhara Indoliya

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2006) 4 AWC 3355 Supp : (2006) 110 FLR 775 : (2006) 4 JCR 45 : (2006) 3 LLJ 154 : (2006) 4 MLJ 1249 : (2006) 3 PLJR 383 : (2006) 7 SCALE 121 : (2006) 6 SCC 287 : (2006) SCC(L&S) 1316 : (2006) 3 SCR 448 Supp : (2007) 1 SLJ 263

Hon'ble Judges : Lokeshwar Singh Pantaa Panta, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : Sushil Kumar Jain, H.D. Thanvi and Sarad Singhania, for the Appellant;

Final Decision : Allowed

Judgement

AR. Lakshmanan, J.—Although respondent is served, nobody appears for the respondent. This appeal is directed against the final judgment dated 3rd September 2002 of the High Court of Rajasthan, Jaipur Bench, in S.B. Civil Second Appeal No. 138 of 1997.

2. We have heard Mr. S.K. Jain, learned Counsel for the appellants. The respondent was appointed as a Conductor on daily wages by the Corporation. His services were terminated as the same were not required by the Corporation. The High Court, without considering the fact that the respondent being daily wager has no substantive right to hold the post, however, has committed serious error in dismissing the second appeal filed by the Corporation and affirming the judgment and decree passed by the Appellate Court and also of the Trial Court. In our view, the High Court has committed a grave error in not considering the fact that the respondent being workman and a dispute being an industrial dispute, Civil Court has no jurisdiction and try the suit for reinstatement. Trial

Court which passed the decree has got no pecuniary jurisdiction and, therefore, the decree passed by the Trial Court is without jurisdiction. The above submission made by Mr. S.K. Jain merit acceptance. In fact, in the written statement filed by the appellant Corporation, the question of jurisdiction has been specifically raised. The Court has also framed an issue in regard to the jurisdiction and hearing by the Civil Court. However, the said issue has not been rightly considered and properly answered.

3. The case on hand is covered by a very recent decision of this Court reported in Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, (decided by Mrs. Justice Ruma Pal and Dr. Justice AR. Lakshmanan). The said appeal was filed by the very same Road Transport Corporation, against its workman, who was appointed as Conductor on probation and his services were terminated by the Corporation, which was challenged by the workman. The very same workman had approached the Civil Court and obtained a decree, which was affirmed by the Appellate Court and also by the High Court, against which Civil Appeal No. 5176 of 2005 was filed by the Rajasthan State Road Transport Corporation in this Court. This Court, after hearing the counsel appearing for the respective parties, held that the only remedy available to the workman was by way of reference under the industrial Disputes Act and not by way of a suit. This Court also held that the workman in that case was also not entitled to the protection under Article 311(2) of the Constitution of India. This Court also held that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of the Court. This Court also held that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner. The respondent in that case has failed to approach the remedies provided under the Industrial Disputes Act.

4. In the instant case also, the respondent who is also similarly placed as in the other case covered by the Industrial Disputes Act, has failed to approach the Industrial Court, but approached the Civil Court, which on the facts and circumstances of the case had no jurisdiction to entertain and try the suit. Therefore, this judgment (supra) rendered by this Court squarely applies to the facts and circumstances of this case. In our view, the respondent is not entitled for any payment by way of salary or other wages. He is also not entitled for any reinstatement or back wages. However, if the respondent has already been paid some amount the same amount may not be recovered from him. We make it dear that the respondent shall not be entitled to continue in service any further and he shall not be entitled for any wages except to already paid to him. The respondent shall be discharged forthwith.

5. The Appeal is accordingly allowed. There shall be no orders as to costs.