
(2014) 02 RAJ CK 0162
In the Rajasthan High Court
Case No : C.W.P. No. 3585 of 1998

RSRTC

APPELLANT

Vs

Bhagirath Sharma

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b), 33A

Citation : (2014) 2 LLJ 395

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Mukesh Kumar Verma, Advocate for the Appellant; Babu Lal Gupta, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Veerendra Singh Siradhana, J.—The petitioner/Corporation, in the instant writ petition, has challenged the legality, validity and correctness of the award dated 31st July, 1997; passed by the Industrial Tribunal on an application u/s 33(2)(b) seeking approval of the order of dismissal of the respondent/workman (Bhagirath Sharma), dated 21st April, 1993. Briefly, the essential material facts necessary for appreciation of the controversy raised in the writ application are: that the respondent while discharging his duties on Bus No. 2017 on Ratlam-Udaipur route, on the inspection of the Bus, was found carrying 25 passengers without ticket from where he had already collected an amount of Rs. 316.50 (Rs. Three hundred sixteen and paise fifty) on account of fare but did not issue the tickets. On a departmental inquiry, after a detailed discussion of the evidence and materials available on record, returned a finding of "not guilty" in favour of the employee/workman.

2. The disciplinary authority disagreed with the conclusion arrived at by the Enquiry Officer in the enquiry report for the reason that the incident as stated to be of 19th of June, 1995, is not correct for the reason that in fact the inspection/checking was conducted on 20th June, 1991 and the Enquiry Officer was not

correct in recording a finding of "not guilty" only for the reason that the charge-sheet was served for an incident dated 19th of June, 1991. In fact the incident occurred on 20th June, 1995 and this fact could be verified from the "way bills". Moreover, the delinquent employee while submitting his reply to the charge-sheet, himself treated the incident to have occurred on 20th June, 1991. Therefore, having regard to the nature of mis-conduct and the materials available on record, the Disciplinary Authority, found the employee "guilty" of the charge and passed an order of "dismissal" dated 21st April, 1993, which was submitted before the Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act, 1947 (herein after referred to as "the Act, 1947" for short) seeking approval. The learned Industrial Tribunal, taking into consideration the facts and materials available on record, and after hearing the representatives of the parties, declined to grant approval to the order dated 21st April, 1993; terminating the services of the delinquent employee.

3. I have heard the learned counsel for the parties and have carefully considered the facts materials available on record and also carefully examined the impugned award dated 31st July, 1997.

4. In response to the notice of the writ application, counter affidavit has been filed on behalf of the respondent/workman pleading that no inspection/checking of the Bus on 19th June, 1991 to be false.

5. A bare perusal of the charge-sheet would reveal that the charge specifically mentioned the date of incident as 19th May, 1991. The learned counsel for the respondent supporting the impugned award dated 31st July, 1997 and referring to the enquiry report (Annexure R/2) emphasized that the enquiry officer on the basis of documentary evidence as well as in view of the statements of the witnesses deposed in defence, rightly returned the concluded that the charge against the workman was not proved and, therefore, committed no error in recording the finding and arriving at the conclusion that the charges were not proved at all.

6. Moreover, the learned Industrial Tribunal after a detailed scrutiny of materials available on record has rightly declined the application for approval of termination of the services of the respondent vide order dated 21st April, 1993.

7. There is no error apparent or illegality in the award impugned before this Court and hence, no interference is called for under the supervisory jurisdiction. Hence, the writ application merits rejection being devoid of any merit.

8. In the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , the Constitution Bench of the Hon'ble Supreme Court restating the duty of the authority while disposing of the application for approval of the order of discharge or dismissal observed thus:

Where an application is made u/s 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has

to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint u/s 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

9. The learned Industrial Tribunal after having considered the rival submissions and the materials present on record has declined the application of the petitioner-Corporation seeking approval for dismissal of the services of the respondent/workman. From a scrutiny of the enquiry report available on record, the Enquiry Officer after having considered the materials available on record and the statements of the witnesses returned a finding of "not guilty" qua the respondent/workman.

10. On the basis of the finding recorded by the Enquiry Officer and the conclusions arrived at by the learned Industrial Tribunal, it is not possible for this Court while exercising supervisory to accept the contentions raised on behalf of

the petitioner-Corporation to the effect that the findings are unsustainable in law in absence of any ground of non-application of mind, malafide, perverse arbitrary or if there is non-compliance of statutory duty by statutory authority.

11. No doubt it may be possible to take a different view, but surely it is not possible to give a finding that the conclusion of the Industrial Tribunal is either perverse or not based on evidence.

12. I have given my anxious consideration to the submissions made on behalf of the parties. In view of the peculiar facts and circumstances of the case at hand, I find no reason to interfere with the impugned award dated 31st July, 1997 in supervisory jurisdiction except that the respondent/workman shall not be entitled to any wages in the period intervening i.e. from the date of order of termination till the date of reinstatement.

13. In the result, the impugned award dated 31st July, 1997 is modified to the extent that the respondent/workman will not be entitled to any wages for the intervening period w.e.f. 21st April, 1993 till his reinstatement. If the respondent-workman has not been reinstated till date, the petitioner shall reinstate him within a period of two months from the date of receipt of certified copy of this order.

14. The writ petition is thus, partly allowed with the modification in the impugned award dated 31st July, 1997 as indicated above. In view of the final adjudication of the writ application, the stay application stands closed. No costs.