

(1987) 01 RAJ CK 0053
In the Rajasthan High Court

Sehkari Upbhokta Wholesale Bhandar Ltd.	APPELLANT
Vs	
Pannalal Bordia and Another	RESPONDENT

Date of Decision : 14-01-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1988) 2 LLJ 123 : (1987) 2 WLN 11

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

Bench : Single Bench

Judgement

K.S. Lodha, J.—Non-petitioner No. 1, Pannalal, was employed as a salesman on temporary basis on 4th September, 1979, on daily wages of Rs. 10 and was posted at the Ghee Selling Booth, No. 2, vide order annexure 1. It appears that some shortage in the stock of "Ghee" was found and a notice was given to non-petitioner No. 1 on 29th September, 1980, for depositing the amount of Rs. 6,813 on account of that shortage along with 15% interest. Later, however, the petitioner, Sehkarī Upbhokta Wholesale Bhandar Limited, Bikaner, had to close down the department of purchase and sale of "Ghee" on account of recurring losses and on account of that closure, the services of non-petitioner, Pannalal, were terminated by notice dated 11th December, 1980, on the expiry of a month from the date of service of this notice. Non-petitioner, Pannalal, thereupon, raised an industrial dispute, which was, ultimately, referred to the Labour Court by the State Government. Further notice was issued in the meantime to non-petitioner, Pannalal, on 29th August, 1980, that the amount of Rs. 6,813 due against him on account of shortage of the stock of "Ghee", was adjusted against the salary due to him for the period 1st January, 1980, to 31st August, 1980, amounting to Rs. 2,179.75 and the balance of Rs. 4,633.25 remained outstanding against him.

2. On the reference being made by the State Government to the Labour Court, non-petitioner No. 1 Pannalal, filed his claim for declaring the termination of his services as invalid and for his reinstatement and recovery of back wages and a

declaration for his services to continue. The petitioner filed a reply to the claim denying the same. On enquiry, the Labour Court came to the conclusion that the termination order dated 12th January, 1981, was invalid and non-petitioner, Pannalal, be reinstated on the post on which he was working prior to his termination. It also awarded back wages from 12th January, 1981, till reinstatement at the rate of Rs. 10 per day. It is against this order of the Labour Court, a copy of which has been filed as annexure 10, that the petitioner has approached this Court.

3. According to the petitioner, the order is wrong and illegal and is void. It is contended that the termination was valid as the department of purchase and sale of "Ghee" had been closed and such termination does not amount to retrenchment, It is further alleged that since non-petitioner No. 1 was responsible for the loss of stock of "Ghee" worth Rs. 6,813, he had forfeited the confidence of the employer and, therefore, he was not entitled to reinstatement or recovery of back wages. It is also contended that another notice had been served on the non-petitioner terminating his services with effect from 31st August, 1981, and in lieu of one month's notice, he had been paid one month's salary and also compensation. In view of this latter valid order of termination of service, the first order, which was void, automatically comes to an end and, now the non-petitioner cannot claim any relief either u/s 25F or the reinstatement and back wages. This plea had, of course, not been raised in the original writ petition itself, but has been taken by filing additional affidavit along with the copy of the notice dated 29th August, 1981. Learned Counsel for the non-petitioner, on the other hand, has urged that the learned Labour Court has rightly found the termination of the services of non-petitioner No. 1 to be invalid and they correctly directed his reinstatement and payment of back wages. To the latter argument, referred to above, it was urged that when the services of non-petitioner No. 1 had already been terminated by the earlier order dated 11th December, 1980 with effect from 10th January, 1981, there was no occasion for the second order dated 29th August, 1981 being issued unless non-petitioner No. 1 had first been reinstated and, therefore, this second notice or order is of no avail to the petitioner. It has also been contended that non-petitioner No. 1 was not at all responsible for the loss of any part of the stock of "Ghee" and that the cost of the "Ghee" could not have been recovered from him.

4 In view of the submissions made before me at the time of arguments, two questions arise for consideration before this Court: (1) Whether the termination of the petitioner's services is valid? and (2) Whether he is entitled to reinstatement and back wages?

5. So far as the first question is concerned, it may at once be stated that the learned Labour Court has rightly come to the conclusion that the notice dated 11th December, 1980 terminating non-petitioner No. 1's services with effect from 10th January, 1981 was invalid, has now not been challenged before me and what is contended by learned Counsel for the petitioner is that the notice or

order has already been superseded and a fresh order of termination has been passed, vide order dated 29th August, 1981 by which, the services of the petitioner have been terminated with effect from 31st August, 1981 and in lieu of one month's notice, he has already been paid one month's salary and also compensation and, therefore, the learned Labour Court before whom the fact of second order dated 29th August, 1981 had been raised, failed to take into consideration the same and declared the termination invalid on the basis of the earlier notice. I do not find any force in this contention. As a matter of fact, the learned Labour Court has taken into consideration the second order dated 29th August, 1981 and has found it to be ineffective in face of the earlier order and that finding appears to be correct. The earlier order dated 11th December, 1980 was admittedly invalid and at the cost of repetition, it may be stated that its invalidity has not been disputed before me by learned Counsel for the petitioner. When once the services of non-petitioner No. 1 had already been terminated by a notice dated 11th December, 1980 the second termination cannot be contemplated unless the first is set aside and non-petitioner No. 1 is reinstated. It is not in dispute before me that no such order of reinstatement had ever been passed before the second order dated 29th August, 1981 had been passed. It is, however, urged by learned Counsel for the petitioner that when the first order dated 11th December, 1980 was admittedly void, it has to be ignored for all purposes and it should be deemed that the services of non-petitioner No. 1 had never been terminated till the second order dated 29th August, 1981 was passed and, therefore, the only effective order is the order dated 29th August, 1981. I am unable to accept this contention, because if that is done, the petitioner will be allowed to take advantage of its own wrong and that is not the policy of law. The services of non-petitioner No. 1 had, as a matter of fact, been terminated with effect from 10th January, 1981 and he had been out of job from that date. He was not allowed to work under the petitioner after 10th January, 1981. That being so, the valuable right under the Industrial Disputes Act had accrued to non-petitioner No. 1 and that right could not have been taken away by the petitioner by issuing another order dated 28th August, 1981. It is true that the salary for the period between 10th January, 1981 to 28th August, 1981 had been offered to be paid to non-petitioner No. 1 while the order dated 29th August, 1981 was being passed. That was a mere adjustment out of the amount said to be due against non-petitioner No. 1, on account of the loss of stock of "Ghee". The petitioner could not have, thus, deducted the amount and, therefore, it does not amount to real payment. In any case, even if it be deemed that the petitioner had offered this amount of salary to non-petitioner No. 1, it does not amount to reinstatement, as the non-petitioner was really neither reinstated nor allowed to work under the petitioner and, therefore, the order 11th December, 1980 cannot be said to have been validly revoked by order dated 29th August, 1981 and that being so, the conclusion is inevitable that the termination of non-petitioner No. 1's services was invalid, as held by the learned Labour Court.

6. The second question about the reinstatement and arrears of salary can

conveniently be divided into two. So far as the reinstatement is concerned, when the termination of the services has been found to be invalid, the reinstatement must follow as a matter of course and back wages may also normally be allowed unless there are good or valid reasons for taking some other course and, therefore in the present circumstances I have to consider whether reinstatement and back wages should be awarded to the non-petitioner No. 1. Learned Counsel for the petitioner has argued that the reinstatement in this case should not be ordered because the department of purchase and sale of "Ghee" has been closed and, therefore, non-petitioner No. 1 cannot now be accommodated by the petitioner in Bhandar. It is urged that non-petitioner No. 1 was engaged as a salesman for "Ghee" booth, and when this department has been closed, the reinstatement is not possible. I am unable to agree with this contention. A perusal of the order of appointment (exhibit 1) goes to show that non-petitioner No. 1 was not appointed as salesman for purchase and sale of "Ghee"; but was appointed only as a salesman in that wholesale Bhandar. He was, of course, posted at Booth No. 2 (Chotinakua), but the appointment and posting are two different things. A careful reading of annexure 1 bears it out that the appointing authority was aware of the distinction between the appointment and posting. In the opening sentence, it has been stated that Panna Lal Bordia is being appointed as a salesman and in the last sentence, it is mentioned that he is posted at Booth No. 2 (Chotinakua). In these circumstances, merely because "Ghee" booth has been closed, it cannot be said that the post on which non-petitioner No. 1 had been appointed has been abolished. The petitioner has not cared to show as to how many posts of salesman are there in the Bhandar and how many salesmen are working. It has been brought on record before the learned Labour Court that a junior salesman, Shri Ashok Kumar, has been retained in service while the petitioner, who is senior to him, has been chucked out. Thus, on the ground of closure of "Ghee" booth, the reinstatement cannot be refused to non-petitioner No. 1 and I am of the opinion that he is entitled to reinstatement.

7. So far as the question of back wages is concerned, as already stated above, they should normally follow as a corollary, but if there are other circumstances justifying the denial of the whole or part of the back wages, then that course may be adopted. In this connection, reference may be made to A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., In that case, their Lordship observed as under (at page 198):

Ordinarily, it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and, therefore, it must, as a necessary corollary, follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. But it was pointed out in this case that the appellant was employed as Factory Manager by M/s. KDR Woollen Mills.... Therefore, the appellant would not be entitled to salary for the period he was employed with M/s. KDR Woollen Mills.

Even for the rest of the period, the conduct of the appellant cannot be said to be entirely in consonance with corporate culture. As a highly placed officer he was bound to strengthen the corporate culture and he should have acted within the spirit of the regulations both for house building advance and conveyance advance, which are devised to help the employees. There has been lapse in totally complying with these regulations by the appellant though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry. Accordingly, having regard to all the aspects of the case, the appellant should be paid 50% of the back wages for the period since his removal from service up to his reinstatement....

In the present case, the question of employment with some other employer during the period of termination has not been raised, but it has been urged that non-petitioner No. 1 was guilty of misconduct and loss of part of the stock of "Ghee" amounting to Rs. 6,813 and, therefore, he should not be awarded back wages. So far as the misconduct as such is concerned, in my opinion, no material has been placed on record to justify such a conclusion. Even disciplinary action against non-petitioner No. 1 has never been taken in this respect, but the fact remains that some part of stock of "Ghee" under the control of non-petitioner No. 1 had disappeared and thereby loss had been caused to the petitioner. As a salesman at the "Ghee" booth, non-petitioner No. 1 was required to exercise such reasonable care and vigilance as could have avoided any monetary loss to the employer. Apparently this was not done. In these circumstances, I am of the opinion that the petitioner should not be allowed more than 50% of the back wages. The award of full back wages by the learned Labour Court, in these circumstances, deserves to be modified.

8. I, therefore, partly allow this writ petition and modify the order of the learned Labour Court dated 30th April, 1985, to the effect that non-petitioner No. 1 shall be entitled to recovery of 50% of the back wages only. In other respects, the order shall stand.

9. In the circumstances of the case, I shall not make any order as to costs.