
(2005) 03 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 376 of 1993

Shri Ram Rayons

APPELLANT

Vs

Judge IT and LC

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 108 FLR 1038 : (2006) 1 LLJ 1149 : (2005) 4 RLW 3031 : (2006) 1 WLC 70

Hon'ble Judges : J.R. Goyal, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : Manoj Kumar Sharma, for the Appellant; Rajiv Bandhu, for the Respondent

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—This appeal has been preferred against the judgment and order dated 9th October, 1992 passed by the learned Single Judge in SBCWP No. 1229/82 by which the termination of the respondent-workman from the services of the appellant-Industry Shri Ram Rayons Ltd. -now known as DCM Shriram Industries Ltd. was set aside and his reinstatement in service was ordered with 50% back wages only which was to be computed on the basis of the last salary drawn by him. Thus, the learned Single Judge had interfered with the award of the Labour Court which although held the dismissal of the workman as legal and justified, was pleased to award 10 months wages by way of compensation considering his long years of service.

2. It appears that the respondent-workman was in the service of the appellant-Organisation as a Fitter after regular selection and while he was in service he remained absent from duty for 7 days on different dates without leave applications which was between August 1975 to February 1976. On previous occasions also, he had remained absent from duty on some days. The appellant-Organisation took a very strict view of 7 days unauthorised absence from duty by

the respondent-workman and therefore, terminated his services after serving a charge sheet on him and after holding enquiry. The respondent-workman assailed the order of his termination before the Labour Court and the Labour Court although upheld the termination of the respondent-workman, granted him 10 months back wages on compassionate ground.

3. The respondent-workman feeling aggrieved with the award of the Labour Court, filed the writ petition before the learned Single Judge bearing SBCWP No. 1229/82 and assailed the award of the Labour Court essentially on two counts. The first ground of challenge to the impugned award was that the order of termination was bad in the eye of law as he had duly submitted the leave application before the competent authorities, but the same were not forwarded by the management in order to create a case against him alleging his unauthorised absence from duty. The second ground of challenge to the order of termination was that even if the absence from duty by the respondent-workman could be considered unjustified, maximum punishment of termination of his services was not commensurate and was disproportionate to the charge alleged against him. The learned Single Judge after due consideration of the case and the counter case of the contesting parties was pleased to hold that the termination of the respondent-workman was bad in the eye of law and therefore ordered his reinstatement awarding 50% back wages only. This Special Appeal has been preferred against this Judgment and Order of the learned Single Judge.

4. The counsel for the appellant-Management Mr. Manoj Sharma has stressed hard to impress upon the Court that once the charge of unauthorised absence from duty was proved, even if it is restricted to a few days, the management was justified in passing the order of termination and in support of his submission he has relied upon a Judgment of the Supreme Court delivered in the case of *Syndicate Bank v. The General Secretary Syndicate Bank Staff Association and Anr.* 2000 LLR, 689 in order to buttress his contention that maximum penalty of termination was justified for authorised absence from duty. He has further urged that once the Labour Court exercised its discretion regarding the punishment to be awarded to him, the learned Single Judge ought not to have exercised his discretion under Articles 226 & 227 of the Constitution for interfering with the award of the Labour Court. In support of his submission he has relied upon a Judgment delivered in the case of *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*,

5. Learned Counsel for the respondent/workman on the contrary has drawn the attention of this Court to the evidence in regard to alleged unauthorised absence of the respondent-workman and has submitted that the respondents-workman on all occasions had submitted leave applications before proceeding to go on leave and 7 days leave within a period of less than one year which is alleged to be unauthorised absence from duty was also supported by leave applications which were not forwarded by the authorities with ulterior motive in order to create a case against the respondent-workman for his termination.

6. Before we proceeded to examine the contesting claim of the parties, we have noticed that the appellant-Management had failed to secure an order of stay before the Division Bench against the judgment and order of the learned Single Judge with the result that the respondent-workman was duly reinstated in service by virtue of the judgment and order of the learned Single Judge and having attained the age of superannuation has also now retired from the service. He has thus already availed the benefit of the judgment and order of the learned Single Judge. In all fairness the management has also acquiesced with the situation and the writ petition could have been dismissed as infructuous obviously because the management having failed to secure an order of stay against the impugned judgment and order of the learned Single Judge, the workman has already served and retired. But the counsel for the appellant-Management has still stressed hard to justify the order of termination of the appellant-Management on the plea that once the finding was recorded against the workman that his absence was unauthorised, there could be no jurisdiction for the learned Single Judge to interfere with the finding of fact recorded by the Labour Court and set aside his dismissal by granting him wages upto 50%. Hence, the writ petition was heard at length and we have examined the judgment and order of the learned Single Judge as also the award of the Labour Court in the light of the judgment and order relied upon by learned Counsel for the appellant in support of his submission. While there can be no quarrel with the proposition that unauthorised absence from duty could be a ground for termination of service, it has to be enforced only if the facts and circumstances justify an order of imposition of maximum penalty. In the case relied upon by the learned Counsel for the appellant which is *Syndicate Bank v. The General Secretary, Syndicate Bank Staff Association and Anr.* (supra) the same was a case of utter defiance at the instance of the employees where they had refused to accept even registered notice alleging their absence from duty and those facts cannot be mechanically applied to a situation which stands altogether on a different footing as in the instant matter. In the instant case the respondent-workman had been submitting leave applications after he was admonished earlier and therefore was quite vigilant in submitting leave applications after he was admonished earlier and therefore was quite vigilant in submitting leave applications, but it is not difficult to draw inference from the evidence on record led by the contesting parties that the appellant-Management was making an over-zealous effort by not forwarding the leave applications of the workman although he had submitted them as it was bent upon to create a case against the respondent-workman for obvious reason. This attitude of the appellant-Management cannot be appreciated for if infact it wanted to get away the employee for any valid reason, it could have initiated an enquiry on correct facts instead of doing away with his services for a flimsy reason based on evidence which are not unblemished. In this scenario of the instant case, the termination order for 7 days absence alleged to be unauthorised when the leave applications had not been forwarded, is certainly not justified in our view as also in view of the learned Single Judge, which we fully endorse.

7. In so far as the question regarding grant of back wages is concerned, the same also requires no interference for once it was held by the learned Single Judge that the charge of unauthorised absence from duty of the workman was not proved beyond reasonable doubt and the order of dismissal was set aside, reinstatement with 50% back wages was clearly justified as the appellant-Management had failed to lead any evidence before the Labour Court to the effect that the respondent-workman was gainfully employed. We thus find no infirmity in the impugned judgment and order of the learned Single Judge.

8. The net result of the entire discussion is that this special appeal is not fit to be entertained and hence, it stands dismissed.