

(2003) 05 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4921 of 2002

State of Rajasthan and Others

APPELLANT

Vs

Shiv Raj Singh and Another

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2004) 2 RLW 1002 : (2003) 3 WLC 738

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vimal Mathur, for the Appellant; R.S. Saluja, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioners against the respondents with a prayer that by an appropriate writ, order or direction the order dtd. 21.3.2002 by which the learned Labour Court (respondent No. 2) ordered exparte proceedings against the petitioners and the order dtd. 1.11.2002 (Annex.4) passed by the learned Labour Court (respondent No. 2) by which the application of the petitioners for setting aside exparte proceedings was dismissed be quashed and set aside.

2. The facts as put forward by the petitioners are as under:

i) That the State Government vide notification dtd. 25.7.2001 made a reference to the respondent No. 2 (Labour Court, Jodhpur) to the effect whether termination of services of respondent No. 1 (Shiv Raj Singh) with effect from 1.6.93 was proper or not.

ii) That on receipt of the reference, a case was registered and notices were issued to the parties.

iii) That on 4.12.2001, Prem Chand, LDC appeared on behalf of the petitioners

and sought time to file reply.

iv) That due to some reasons, on 21.3.2002, none could appear on behalf of the petitioners and thus, *exparte* proceedings were ordered to be initiated against the petitioners.

v) Further case of the petitioners is that on 17.8.2002 (Annex.3), an application (Annex.3) was moved on behalf of petitioners for setting aside order dtd. 21.3.2002 whereby *exparte* proceedings were ordered against the petitioners but the application (Annex.3) filed by the petitioners was dismissed by the learned trial Court through order dtd. 1.11.2002 and the orders dtd. 21.3.2002 and 1.11.2002 have been challenged in this writ petition.

3. In this writ petition, the main ground of the learned counsel for the petitioners is that due to some reasons, the petitioners could not appear on 21.3.2002 and therefore, for securing ends of justice, opportunity should be given to the petitioners to defend the claim of respondent No. 1 (Shiv Raj Singh). Hence, the writ petition should be allowed.

4. Heard and perused the record.

5. I am of the view that a little more sensitive approach is required to be adopted by the Courts in process of dispensation of justice. It is not at all desirable to drive out a party out of Court by way of punishment for whatever reason.

6. I may remind an age old well established principle that every court has inherent power to act *ex debito justitiae* to do real and substantial justice for which it exists. It has always been anxiety of the Court to decide an issue on merit instead of driving out a party from the court for one or the other technical reason.

7. Even if the party was remiss in complying with the directions of the court, the matter could have been restored on payment of cost. Refusal to restore a matter is bound to result in a meritorious matter being thrown out and the cause of justice will be defeated. The Apex Court in *Collector Land Acquisition v. Mst. Katiji and Ors.* (1), has observed, thus :

"It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical ground but it is capable of removing injustice and is expected to do so."

8. Recently the Apex Court in *Rohit Singhal v. Principal* (2), dealing with the question of discipline has observed that efforts must be made to salvage the situation in order to secure ends of justice.

9. In the present case, *exparte* proceedings were ordered against the petitioners on 21.3.2002 and the application (Annex.3) for setting aside the *exparte* proceedings was submitted on 17.8.2002, therefore, it cannot be said that the application was moved with substantial delay and looking to the fact that after *exparte* proceedings were ordered against the petitioners, the matter was not

decided finally, in this view of the matter, an opportunity should be given to the petitioners to defend the claim of the respondent No. 1 (Shiv Raj Singh). Apart from this, in setting aside ex parte orders, no hard and fast rule can be applied and discretion of the Court must be exercised judicially looking to the facts and circumstances of each case. Thus, the order dtd. 21.3.2002 and 1.11.2002 passed by the learned Labour Court cannot be sustained.

10. For the reasons mentioned above, the present writ petition deserves to be allowed and the order dtd. 21.3.2002 and 1.11.2002 passed by the learned Labour Court, Jodhpur (respondent No. 2) deserve to be set aside.

Accordingly, the present writ petition is allowed and the order dtd. 21.3.2002 and order dtd. 1.11.2002 passed by the respondent No. 2 (Labour Court, Jodhpur) are set aside at the cost of Rs. 500/- and the respondent No. 2 (Labour Court, Jodhpur) is directed to proceed further in accordance with law after giving an opportunity of hearing to both the parties. The petitioners are further directed to deposit Rs. 500/- before the date fixed in the Labour Court, Jodhpur (respondent No. 2) and after the amount is deposited by the petitioners, that amount would be given to the respondent No. 1 (Shiv Raj Singh)

Both the parties are directed to appear before respondent No. 2 (Labour Court, Jodhpur) on 27.6.2003.

Cost made easy.