

(1997) 03 PAT CK 0005

In the Patna High Court

Case No : Appeal from Original Decree No. 170 of 1986 (R)

Tata Engineering and Locomotive Company Ltd.

APPELLANT

Vs

Smt Anjali Rani Mitra and Another

RESPONDENT

Date of Decision : 14-03-1997

Acts Referred:

Citation : (1997) 1 PLJR 743

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : V.P. Singh, A.K. Sinha and B.B. Sinha, for the Appellant; S.B. Gadodia, Manjul Prasad and Pankaj Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal has been filed by the Defendant Appellant against the judgment and decree dated 20th Aug., 1986, passed by the 1st. Addl. Subordinate Judge, Jamshedpur, in T.S. No. 51/71 decreeing the suit of the Plaintiff-Respondent claiming damages for his dismissal from service. The aforesaid suit was filed by the Plaintiff for declaration that the dismissal of the Plaintiff from service of the Defendant company was wrongful and illegal and also for damages for such wrongful dismissal.

2. The Plaintiff's case, in brief, was that the Plaintiff was a permanent employee of the Defendant company in the post of Tool Crib Attendant drawing basic salary of Rs. 2117/- in the transport department. The Plaintiff had entered into the service on 22.12.49 and in ordinary course would have retired from service on 22.12.80. On 22.9.67 a chargesheet was handed over to the. Plaintiff under the signature of Major D.A. Marley, the then Transport Superintendent of the Company alleging that on 16.9.67 at 11.15 a.m. the Plaintiff had been caught by the security staff on duty at gate No. 1 with 82 numbers of Hexa Bolts valued at Rs. 45/- while he was attempting to take away the same out of works in jeep No. BRT 9876, a departmental vehicle which was scheduled to go out for the purpose of testing. It was further alleged that the Plaintiff had kept the stolen property

concealed wrapped in his rain coat. The Plaintiff submitted his explanation to the aforesaid charges on 3.10.67 denying therein the charges levelled against him. The Plaintiff's further case was that on 16.9.97 the Plaintiff was on duty at the Tool Crib within the factory premises upto 11.00 a.m. whereafter there was half an hour recess for lunch. The Plaintiff thereafter left on foot for the main gate No. 1 to get his tiffin carrier. The distance of the main gate from the Tool Crib would be about 600 yards. When the Plaintiff had negotiated a distance of about 160 yards-on foot a jeep crossed his way. The chageman namely H.N. Ghosh and Mr. Banwari Das were on the vehicle while Surjit Singh was driving the same. The chageman aforementioned offered a lift to the Plaintiff and he accordingly boarded at the jeep and occupied the rear seat which was vacant. The Plaintiff was carrying nothing when he entered the jeep. On arrival of the jeep at the check post, the checkman on duty made a routine check and found a water proof rolled under the rear seat which was occupied by the Plaintiff. The Plaintiff had no earlier knowledge about the existence of the said water proof nor the same belonged to him. The security guard assumed the water proof to be belonging to the Plaintiff and asked to open the same to which the Plaintiff replied that the same was not his property. The security guard thrust the water proof into the hand of the Plaintiff and on his refusal to hold it pushed it back; some bolts fell on the floor of the jeep from within the rolled of the water proof. The Plaintiff wanted to get down from the jeep but was pushed back by the security guard who also abused him. The Plaintiff was then taken to control room where he was threatened and his signature was taken on a blank piece of paper. It was further pleaded that the Plaintiff was formally suspended from duty with effect from 22.9.67 pending enquiry into the charges submitted against him. The enquiry against the Plaintiff was conducted by one Mr. V.C. Stephen, a labour officer of the Defendant company where the Plaintiff was informed that the evidence of the members of some security staff was also taken. The result of the enquiry was never communicated to the Plaintiff nor copy of the order was forwarded to him. The Plaintiff claimed that even the order of dismissal was never served on him. The Plaintiff then received a letter from the Town Superintendent dated 14.3.68 whereby he was directed to surrender the company's quarters on the ground that he had been dismissed from the service. The Plaintiff alleged that he was not served with any order dismissing him from service. The finding of the enquiry officer was also not given to him, though the same should have been done under the provisions of the standing orders of the company. The statement of the Plaintiff was recorded even before the alleged eye witnesses against him were examined and the Plaintiff had been given no chance to enter into the defence for adducing evidence in rebuttal. The Plaintiff therefore challenged the order of dismissal as illegal and wrongful and further claimed that he was entitled to compensation for the wrongful dismissal to the extent of Rs. 69,432/-.

3. The suit was contested by the Defendant-company by filing written statement. The Defendant specifically pleaded that the suit was not maintainable and the civil court has no jurisdiction to try the suit. It is stated that the enquiry was

conducted and the Plaintiff was duly informed that the evidence of some members of the security was taken. The Plaintiff was himself present at the time of enquiry and he cross-examined the witnesses himself. It was further stated that the result of the enquiry and the copy of the order of the dismissal was forwarded to the Plaintiff. The Defendant further stated that the order of dismissal and the finding of the enquiry officer was duly served on the Plaintiff and the enquiry was held in the manner provided under the standing orders. The Defendant therefore refuted the allegations by stating that the order of dismissal was perfectly legal and in accordance with the principle of natural justice.

4. The trial court on the basis of the pleadings of the parties framed the following issues:

1. Is the suit as framed maintainable?
2. Is the suit barred by law of limitation?.
3. Has this Court jurisdiction to try this suit?
4. Has the Plaintiff any cause of action for this suit?
5. Whether the Plaintiff was wrongly dismissed by the Defendant, if so, whether he is entitled to the damages claimed by him in the plaint?
6. To what other relief or reliefs, if any, is the Plaintiff entitled?

5. The learned court below decided all the issues in favour of the Plaintiff and held that the dismissal of the Appellant from service was wrongful and illegal and therefore he was entitled to compensation for the wrongful dismissal. The learned court below accordingly decreed the suit.

6. Mr. Vijay Pratap Singh, learned Counsel appearing for the Defendant-Appellant, assailed the judgment and decree of the court below as being illegal and contrary to the facts evident on the record. The learned Counsel firstly submitted that the suit itself was not maintainable and the learned court below has committed serious illegality in entertaining the suit inasmuch as the civil court had no jurisdiction to decide the validity of the domestic enquiry. The learned Counsel also submitted that the finding of the learned court below on the question of validity of the domestic enquiry is perverse in law and is illegal inasmuch as the entire finding is based on the ground that the documents have not been produced by the Defendant. The learned Counsel lastly submitted that the quantum of damages arrived at by the court below is without any basis and against the principle of law with regard to awarding damages.

6. On the other hand Munjul Pd., learned Counsel appearing for the Plaintiff-Respondent, heavily relied upon the two decisions of the Supreme Court reported in the cases of Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co., and Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, and submitted that civil court has jurisdiction to decide the question as to whether the order of dismissal was in accordance with law. The

learned Counsel further submitted that the question of jurisdiction was decided at the very first instance by the learned court below in terms of the order dated 10.1.86 and the order having not been challenged by the Appellant before this Court either by filing the appeal or revision the same could not be agitated at the appellate stage.

7. First of all, I will take up the issue as to whether the civil court has jurisdiction to decide whether the order of dismissal from service is illegal or not. As stated above, the trial court decided this issue in terms of its order dated 10.1.1986. The learned court below took the view that the Plaintiff did not seek a relief for a decree of reinstatement in service rather the Plaintiff prayed for the decree for damages for wrongful dismissal from service. The learned court below is therefore of the view that in such circumstances the civil court has jurisdiction to entertain and try the suit. I do not find any illegality in the finding arrived at by the learned court below with regard to the jurisdiction of the court.

8. In *Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co.*, a suit was filed by the Plaintiff against his employer for a declaration that the removal of the Plaintiff from service by the Defendant was illegal and unjustified and for an order of reinstatement of the Plaintiff in his service. In the alternative the Plaintiff made a prayer for the grant of compensation. The suit was contested by the Defendant employer on the ground that the dispute raised by the Plaintiff was in the nature of an industrial dispute and hence the civil court had no jurisdiction to try it. While answering this question, the Apex Court held as under:

3. The Court is obliged to Mr. K. Jayaram for assisting it as *Amicus Curiae* in this case. After having appreciated the entire facts and the circumstances of the case, we are of the opinion that it is not quite correct to say that the suit filed by the Appellant is not maintainable at all in a Civil Court. The correct position of law is that the main reliefs asked for by specific performance of the contract of service and therefore they cannot be granted. There are a number of decisions of this Court to that effect; to wit- (1) *S.B. Dutt Vs. University of Delhi*, ; (2) *S.R. Tewari Vs. District Board Agra and Another*, and *Indian Airlines Corporation v. Sukhdeo Rai* (1971) Supp. SCR 510. Reference may also be made in this connection to the decision of this Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, .

4. But then in the alternative, the Appellant had also prayed for awarding compensation to him. And reading the plaint as a whole, it can legitimately be culled out that he had made out a case, whether it was right on fact or not, that is a different question, that he was wrongfully dismissed from service. This relief could be granted by the Civil Court, if it found that the Plaintiff's case was true. The High Court, in our opinion, is not right in saying that no such case had at all been made out in the plaint. In our opinion, as we have earlier said, reading the plaint as a whole, such case can be spelt out. That being so to this limited extent, the matter could be examined by the Civil Court.

9. In Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, the Apex Court was considering the jurisdiction of the civil court in relation to a dispute between the employer and the employee and laid down the principles of law holding, inter alia, that under certain circumstances the jurisdiction of the civil court cannot be said to be ousted merely because the dispute is an industrial dispute.

10. It is well settled that where the authority exercising power under Special Act has failed to discharge its duty within the four corners of the Act, then the remedy of the civil court cannot be said to be excluded. In M.P. Electricity, Board, Jabalpur v. Vijay Timber Co., the Apex Court followed its earlier judgment in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, where it was held that where the statute gives a finality to the order of special tribunal civil court's jurisdiction must be held to be excluded if there is an adequate remedy to do what the civil courts would normally do in a suit. Such provision however, does not exclude those cases where the provisions of the particular Act have not been complied with or statutory tribunal has not acted with confirmity with the fundamental principles of judicial procedure.

11. In the light of the principles laid down by the Supreme Court, I do not think that the court below has committed any error in holding that the suit was maintainable.

12. The next important issue which arose in the suit was whether the order of dismissal of the Plaintiff from service was wrongful and illegal. While deciding this issue the learned court below took notice of the relevant provisions of certified standing orders for the purpose of deciding as to which act amount to misconduct. There was no dispute that the term misconduct includes theft of company's business or property. When the domestic enquiry is initiated against an employee which resulted in major punishment then the onus always lies with the employer to prove that the enquiry was held according to the rules/or standing orders. From perusal of the various evidences available on the record including the evidence adduced by the parties, I do not find any reason to differ with the findings arrived at by the learned court below on the point that the domestic enquiry was in full compliance and confirmity with the procedure provided with the standing order. I have therefore no option but to hold that the domestic enquiry was not properly conducted and the same is vitiated in law. Consequently the dismissal of the Plaintiff from service was wrongful.

13. However, the trial court was fully conscious of the law and therefore no relief for reinstatement was granted in favour of the Plaintiff. Instead a decree for payment of damages was allowed. Mr. V.P. Singh, learned Counsel appearing for the Appellant, submitted that the extent of damages allowed by the court below is without any basis. I do not find any force in the submission of the learned Counsel. From the schedule appended to the plaint the details of damages have been specifically given and the same was not controverted by the Defendant. Be that as it may, it appears that after the suit was decreed the learned Counsel for

the Appellant satisfied the award by paying the decretal to the original Plaintiff. During the pendency of this appeal, the Plaintiff Respondent died and his widow and daughters were substituted in the array of Respondents. Moreover, the original Plaintiff superannuated even during the pendency of the suit. In the facts and circumstances of case, I am not inclined to go further into the details of the question of exact amount of damages ought to have been awarded to the Plaintiff employee.

14. In the result, there is no merit in this appeal which is accordingly dismissed. There is no order as to cost.