

(2013) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7940 of 2011

Union of India and Others

APPELLANT

Vs

The Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2013) LabIC 4110

Hon'ble Judges : Amitava Roy, C.J.;Vishnu Kumar Mathur, J

Bench : Division Bench

Advocate : Kuldeep Mathur, for the Appellant;

Final Decision : Allowed

Judgement

Amitava Roy, C.J.—The writ jurisdiction of this Court has been sought to be invoked to set at naught the judgment and order dated 17.3.2011 passed by the learned Central Administrative Tribunal, Jodhpur Bench at Jodhpur (for short, hereafter referred to as "the Tribunal") allowing the concerned Original Applications and thereby, amongst others directing the petitioners—herein to treat the periods of the respondent No. 2's suspension with effect from 3.6.1993 to 31.8.1995 and absence from duty due to dismissal from 1.9.1995 to 22.2.2005 to be spent on duty with all consequential benefits. The disciplinary proceedings initiated against the respondent No. 2 vide memo dated 6.12.2007 and inter alia the orders dated 22.1.2008 and 7.2.2008 passed therein were also annulled. The service of notice on the respondent No. 2 though effected and accepted on 24.12.2012, no representation on his behalf has been made. No prayer for adjournment also has been made today.

2. We have heard Mr. Kuldeep Mathur, learned counsel for the petitioners.

3. The facts, briefly stated for the purpose of present adjudication, are that the respondent No. 2 was initially appointed as Sales-man-cum-Clerk in the Air Force Canteen at Jodhpur by the petitioner No. 3 on 30.9.1982. He was placed under suspension on 3.6.1993 and was issued a memorandum of charge asking him to

explain the financial irregularities referred to therein as well as the imputation of manipulation of figures with a deliberate intention to commit fraud in the Unit Run Canteen (for short, hereafter referred to as "the URC"). Eventually, on the conclusion of the departmental enquiry, he was dismissed from service by the order dated 31.8.1995. His departmental appeal having failed, he approached the learned Tribunal with OA No. 103/1996, which was allowed on 12.10.2001 and the penalty of dismissal from service was set aside with a direction to conduct a fresh enquiry by affording full opportunity to him to offer his defence. According to respondent No. 2, inspite of this determination, he was not reinstated in service. Neither he was placed under suspension nor paid any salary or subsistence allowance. However, the enquiry was proceeded against him and on the basis of the enquiry report, penalty of dismissal from service was again imposed on him vide order dated 6.5.2002. His appeal before the departmental authority failed and he again turned to the learned Tribunal with OA No. 251/2003, which was disposed of on 5.10.2004 with the finding that the departmental proceedings were vitiated for non-payment of subsistence allowance and a direction for his reinstatement was also issued. The records disclose that the challenge made by the petitioners before this Court against this decision of the learned Tribunal also failed, whereafter, the respondent No. 2 was reinstated in service as Salesman and not Salesman-cum-Clerk vide order dated 22.2.2005. Pursuant thereto, he joined the post. As inspite of his representation, the periods of his suspension i.e. 3.6.1993 to 31.8.1995 and his absence from 1.9.1995 to 22.2.2005 due to the imposition of penalty of dismissal from service were not construed to be spent on duty, he preferred OA No. 221/2007. The petitioners initiated a fresh departmental enquiry on the same charges and also passed consequential orders to further the same. The respondent No. 2 thus laid challenge to this freshly instituted disciplinary proceedings in OA No. 41/2008 and prayed for the reliefs as outlined hereinabove. The petitioners in the written statement raised a preliminary objection of want of jurisdiction of the learned Tribunal in view of the decision of the Hon"ble Apex Court dated 28.4.2009 (Reported in R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Others, to the effect that the employees of URCs are not Government servants. They also pleaded that as in none of the earlier adjudications, the learned Tribunal had quashed the charges as frivolous and unfounded, a fresh departmental enquiry was valid. The learned Tribunal, however, negated the preliminary objection on the ground that as meanwhile, the determination made in OA No. 251/2003 between the parties had attained finality, the petitioners could not be allowed to take advantage of the subsequent decision rendered in R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Others, . This is moreso, according to it, as at the time of its scrutiny in OA No. 251/2003, the employees of the URCs were reckoned to be Government servants in view of the decision of the Hon"ble Apex Court rendered in Union of India and Others Vs. M. Aslam and Others etc, . The reliefs, as prayed for, were granted following evaluation of the cases of the parties on merits.

4. The only argument advanced by Mr. Mathur is that in view of the decision of the Hon''ble Apex Court in R.R. Pillai (supra) rendered on 28.4.2009 holding that the employees of URCs are not Government servants, the issues raised before the learned Tribunal were clearly beyond the ken of its adjudication and on that count alone, the impugned judgment and order is non est in law. According to the learned counsel, as apparently on the date of the determination made by the learned Tribunal, the pronouncement made in R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Others, was in force, the Learned Tribunal could by no means have ignored this decision and decided the issues on merits on the purported reasoning that its earlier adjudication in OA No. 251/2003 had attained finality.

5. We have analyzed the pleaded facts and the argument advanced. We have perused as well the judgment of the Hon''ble Apex Court in R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Others, , which in unambiguous terms proclaims that the employees of Unit Run Canteens (URCs) are not Government servants. In that view of the matter, in our opinion, the issues raised before the learned Tribunal in the two Original Applications decided by the impugned judgment and order stood excluded from the domain of its jurisdiction for adjudication. This is notwithstanding the fact that the related issues had been adjudicated upon by the learned Tribunal in the earlier rounds of litigation between the parties in view of the proposition laid down in Union of India and Others Vs. M. Aslam and Others etc, to the contrary acknowledging the employees of the URCs to be Government servants. Noticeably, the decision in R.R. Pillai (supra) is by a Larger Bench and has been rendered in a reference made to it, principally to examine the correctness of the view expressed in Union of India & Ors. v. Mohd. Aslam and Ors. (supra). In this premise, therefore, the decision rendered in R.R. Pillai (supra) on 28.4.2009 is of decisive significance qua the issue as to whether the employees of the Unit Run Canteens (URCs) are Government servants or not. We are thus of the unhesitant opinion that the reasoning cited by the learned Tribunal to steer clear of the binding decision of the Hon''ble Supreme Court in R.R. Pillai (supra) is wholly untenable. Consequently, its decision on the issues raised in the two OAs on merits is also non est in law. As a corollary, the impugned judgment and order is null and void. The petitions are thus, allowed. We, however, make it clear that this determination notwithstanding as the same has not been made on merits, it would be open for the respondent No. 2 herein to avail his other remedies available in law. A copy of this order be placed in both the files.