

CASE NO.:
Appeal (civil) 3951 of 2002

PETITIONER:
State of Haryana and Ors.

RESPONDENT:
Bikar Singh

DATE OF JUDGMENT: 22/03/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
JUDGMENT

ORDER

Pursuant to our order dated 22.02.2005, Mr. Joginder Singh, General Manager, Haryana Roadways Sirsa Depot, Sirsa, Haryana has filed a detailed affidavit explaining the circumstances and tendered an unqualified apology for any omission or commission said to have been committed by the contemnor. We have gone through the affidavit and apology tendered by the contemnor which is accepted. The suo motu contempt initiated against the contemnor is discharged.

This appeal is filed by the State of Haryana against the order of the High Court of Punjab and Haryana.

We have heard the parties.

In view of the order that we propose to pass, it may not be necessary to recite all facts leading to the filing of the present appeal. The respondent herein was working as Conductor in the Haryana Roadways, Sirsa Depot. He was dismissed from service by order dated 25.8.94 by the General Manager of the Haryana Roadways. The order of dismissal is preceded by an enquiry in which the charge was found established against him. The charge against the respondent was that while he was working as Conductor in the Haryana Roadways Depot, he collected Rs. 200/- from the passenger but did not issue ticket and thereby embezzled Rs. 200/-. Apart from that, it is also in evidence on record that the respondent prior to the dismissal of his service, was placed under suspension on several occasions and his annual increments were stopped. Aggrieved by the order of dismissal, he preferred an appeal before the Additional Transport Commissioner which was dismissed on 29.6.1995. Aggrieved thereby, the respondent filed civil suit, namely, suit No. 1361/95 before the Civil Judge, Sr. Division, Sirsa inter alia seeking a decree of declaration that the respondent may be deemed to be in service and the orders dated 25.8.1994 and 28.6.1995 to be declared as null and void. The Trial Court framed as many as 7 issues. One of the important issue framed was issue No. 6, whether the Civil Court has got jurisdiction to try the present suit. We are dismay to note that no finding has been recorded on this issue by the Trial Court. The Trial Court, however, proceeded to examine the case on merits, without determining the jurisdiction of the court. It is now well established principle of law that a decree without the jurisdiction is a nullity. Unfortunately, all the courts below including the High Court has failed to notice this important question of law.

We repeatedly made query from the learned counsel for the respondent as to whether the finding has been recorded by the Trial Court regarding the jurisdiction of the Civil Court. We received no answer.

We have gone through the entire judgment of the trial court and there is no finding to that effect. In fact, the Trial Court has considered all the 7 issues together and the finding is recorded as under:-

Issue No. 2 to 7.

"Onus to prove all these issues was upon the defendants. But there is no sufficient evidence led by the defendants to prove these issues and in the lack of sufficient evidence, all these issues are decided against the defendants."

Learned counsel for the respondent relied upon the judgment of this Court rendered in Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant and Ors., [1995] 5 SCC 75 where this Court in paragraph 35 (2) has held:

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

Class 2 of paragraph 35, in fact, is completely against the case of the respondent herein.

In a recent judgment of this Court in the case of Rajasthan State Road Transport Corpn. and Ors. v. Zakir Hussain, [2005] 7 SCC 447 in which my brother Dr. Justice AR. Lakshmanan was party, this Court after considering the various judgments including the judgment referred above, has come to the conclusion that the Civil Court has no jurisdiction to entertain such suit.

In the view that this Court has been taking consistently, the Civil Court has no jurisdiction to entertain such suit and any decree passed by the Civil Court without jurisdiction, is a nullity. The High Court has failed to notice the position of law enunciated by this Court in catena of decisions.

We may, at this stage, point out that this Court suspended the order of the High Court on 4.2.2004. Despite suspending of the order of the High Court, the respondent herein was allowed to continue to work on the plea that interim order passed by this Court on 4.2.2004 was not received by the concerned Department. Consequently, the respondent, herein was allowed to work till 14.12.2005. Since the respondent was allowed to work and he has been paid salary for the period he has rendered service, we are of the view that so much of the salary paid to the respondent for the work he has rendered, will not be recovered.

In the premises aforesaid this appeal is allowed. The order of the Civil Court and the High Court are hereby quashed and are set aside. The parties are asked to bear their own costs.