

CASE NO.:
Appeal (civil) 4032 of 2001

PETITIONER:
Rajasthan State Road Transport Corporation and Anr.

RESPONDENT:
Tilla Ram

DATE OF JUDGMENT: 25/08/2004

BENCH:
ARIJIT PASAYAT & D.M. DHARMADHIKARI

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Rajasthan State Road Transport Corporation (hereinafter referred to as 'Corporation') calls in question legality of the judgment rendered by learned Single Judge of the Rajasthan High Court dismissing the second appeal filed by the Corporation.

Background facts necessary for disposal of the appeal in a nutshell are as follows:

The respondent (hereinafter referred to as the 'employee') filed a civil suit in the Court of the learned Additional Civil Judge, Senior Division and Judicial Magistrate III, Jaipur City, Jaipur. Suit was for declaration that the order of termination dated 18.3.1986 passed by the Corporation is illegal. According to him he was appointed as a Conductor on permanent basis and on erroneous impression that he was carrying passengers without tickets, his services were terminated. He was not departmentally proceeded against and no inquiry was conducted, and, therefore, the order of termination was illegal and arbitrary. It was further pleaded that the principle of "last come first go" was not followed in his case. The Corporation took the stand that the employee was appointed on daily wage basis. He was not appointed on permanent basis. There was no necessity for departmental proceedings or enquiry since he was engaged on a daily wage basis, and the engagement was discontinued. In any event there was no stigma attached. The Trial Court after consideration of the materials brought on record came to hold that the employee was appointed on daily wage basis. There was no question of departmental inquiry in case of daily wager. The employee had not produced any appointment order to substantiate his plea that he was engaged on permanent basis. There was no inquiry held and, therefore, the question whether the inquiry was proper or not did not arise for consideration. The Trial Court did not think it necessary to decide the question of jurisdiction to entertain the suit. The suit was dismissed. The employee preferred an appeal before the First Additional District Judge No.V, Jaipur City who by the judgment dated 23.3.1999 reversed the conclusions of the Trial Court and held that the order of termination was illegal and violative of principles of natural justice and employee was entitled to be in the service of the Corporation and he was entitled to the monetary and financial consequential benefits.

The Corporation preferred an appeal before the Rajasthan High Court and the learned Single Judge as noted above dismissed the second appeal.

In support of the appeal Mr. Sushil Kumar Jain, learned counsel submitted that the approach of the High Court is clearly erroneous. It recorded findings which are contrary to the materials on record. The High Court proceeded on the basis as if the Trial Court held that the inquiry against the plaintiff was not in accordance with the principles of natural justice and that the procedure of holding enquiry was grossly violative. The High Court and the Appellate Court had held that the inquiry was not in accordance with the principles of natural justice. After referring to the conclusions of the First Appellate Court, the High Court felt that decision given on merits is based on facts.

None appeared on behalf of respondents in spite of service of notice.

We find that while the Trial Court had analysed the factual position in law in great detail and had arrived at the right conclusions, the First Appellate Court did not consider the matter in the proper perspective. Some of its conclusions are clearly untenable. For example on the basic question as to the validity of the action taken by the Corporation, the First Appellate Court observed as follows:

"10. The contention of the learned advocate for respondent is that the plaintiff was a daily wage worker and was on a temporary post and that there is no need for holding the departmental enquiry before terminating him. That in support of the contention the learned advocate has produced the following illustrations before me :-

1. 1991 S.C.C. 591 State of Uttar Pradesh versus Kaushal Kishore Shukla.
2. A.I.R. 1994 Supreme Court 2411 State of Uttar Pradesh versus Prem Lata.
3. 1996 (5) S.C.C. 889 K.V. Krishnamani versus Lalit Kala Academy.
4. 1996 (1) S.C.C. 560 Satya Narayan versus High Court of Madhya Pradesh and Ors.
5. R.L.R. 1990 (2) page 268 Shakti Kant Pathak versus Paschmi Dugadh Utpadak Sahkari Sangh Ltd.
6. 1994 (2) W.L.C. (Raj.) 25 Kanwar Singh versus Union of India."

It is to be noted that before the First Appellate Court the Corporation was the respondent. After referring to some judgments referred to by the Corporation, it inappropriately came to the conclusions that the judgment and decree was liable to be appealed and the appeal of the plaintiff was liable to be accepted on the basis of the above mentioned illustrations (reference was made to the judgments noted above).

Unfortunately, it has not been indicated as to how decisions relied upon by the Corporation supported the case of the plaintiff-employee. What was the ratio in those cases and how they were applicable and helpful to the employee's case has also not been indicated. Such unreasoned and palpably wrong conclusions cannot be

supported in law. Unfortunately, the High Court did not consider these aspects. It confused between the conclusions of the Trial Court and the First Appellate Court. Conclusions of the First Appellate Court were treated to be that of the Trial Court. This was certainly a very highly improper way of dealing with the matter.

In view of the above, we remit the matter to the High Court to decide the appeal in accordance with law after giving due opportunities to the parties.

Appeal is allowed in the aforesaid terms with no order as to costs.

JUDIS