

A RAJASTHAN STATE ROAD TRANSPORT CORPN. AND ANR.

v.

TILLA RAM

AUGUST 25, 2004

B [ARIJIT PASAYAT AND D.M. DHARMADHIKARI, JJ.]

*Service Law—Termination Order—Trial Court analysing the factual position in law and upholding the termination order—Appellate Court holding termination order to be illegal and violative of principles of natural justice and setting aside the termination order—High Court upholding the same—Correctness of—Held : First Appellate Court did not consider the matter in proper perspective—It did not indicate as to how decisions relied upon by the employer supported the case of employee—Such unreasoned and palpably wrong conclusions cannot be supported in law—High Court did not consider these aspects and treated conclusions of First Appellate Court as that of trial court which is highly improper way of dealing with the matter—Hence, matter remitted back to High Court.*

**Respondent-employee was appointed as a Conductor with the State Road Transport Corporation. He committed some misconduct and was terminated from service. Respondent filed suit for declaration that termination order was illegal. It was contended that he was appointed on permanent basis but no departmental proceedings nor inquiry was conducted and also principle of ‘last come first go’ was also not followed. Trial Court dismissed the suit holding that the employee was appointed on daily wage basis as such there was no need of departmental inquiry. Respondent filed an appeal. First Appellate Court held the termination order to be illegal and violative of principles of natural justice and set aside the order of trial Court. Appellant-Corporation filed second appeal. Single Judge of High Court dismissed the same. Hence the present appeal.**

**Appellant contended that the approach of High Court is clearly erroneous; that the High Court proceeded on the basis as if trial court held that the inquiry against the respondent was not in accordance with the principles of natural justice and that the procedure of holding enquiry was grossly violative; and that the Appellate Court had held**

that the inquiry was not in accordance with the principles of natural justice and after referring to the conclusions of the First Appellate Court, High Court felt that decision given on merits is based on facts. A

Partly allowing the appeal, the Court B

HELD : 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. It referred to some judgments referred to by the Corporation and decided in favour of the employee but did not indicate 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, High Court did not consider these aspects. It treated the conclusions of the First Appellate Court to be that of the trial court which was certainly a very highly improper way of dealing with the matter. Therefore, the matter is remitted to High Court to decide in accordance with law. [795-C-D; 796-C-E] C D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4032 of 2001.

From the Judgment and Order dated 25.10.1999 of the Rajasthan High Court in S.B. Civil Second Appeal No. 499 of 1999. F

A.P. Dhamija, H.D. Thanvi, Sarad Singhania and Sushil Kr. Jain, for the Appellant

The Judgment of the Court was delivered by G

**ARJIT 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. H

**A** 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 Conductor on permanent basis and on erroneous impression that he was carrying passengers without tickets, his services were terminated. He was not departmentally proceeded agasinst 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 is 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.

**G**

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 **H** 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 conclusion, 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 v. Kaushal Kisore Shukla.*
2. A.I.R. (1994) Supreme Court 2411 *State of Uttar Pradesh v. Prem Lata.*
3. [1996] 5 S.C.C. 889 *K.V. Krishnamani v. Lalit Kala Academy.*
4. [1996] 1 S.C.C. 560 *Satya Narayan v. High Court of Madhya Pradesh and Ors.*
5. R.L.R. (1990) 2 page 268 *Shakti Kant Pathak v.*

A *Paschmi Dugadh Utpadak Sahakari Sangh Ltd.*

6. (1994) 2 W.L.C. Raj. 25 *Kanwar Singh v. Union of India*”

B 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).

C 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 D 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.

E 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.

N.J.

Appeal allowed.