REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4104 of 2007

Rajasthan State TPT Corpn. & Anr. …Appellants

Versus

Bajrang Lal …Respondent

O R D E R

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred by the Rajasthan State Road Transport Corporation (hereinafter referred to as `Corporation') against the judgment and order dated 8.11.2005 passed by the High Court of Judicature for Rajasthan (Jaipur Bench) in S.B. Civil Second Appeal No. 449 of 2003 upholding the judgment and decree dated 28.1.2003 in Civil Regular Appeal No. 119 of 2002 passed by Additional District Judge, Jaipur, by which and whereunder, it has affirmed the judgment and decree dated 30.11.1994 passed by the

Additional Civil Judge (Jr. Div.) No. 2, Jaipur in Civil Suit No. 1346 of 1988.

2. Facts and circumstances giving rise to this appeal are that:

A. The respondent while working as a trainee conductor on daily basis was found carrying certain passengers without tickets and, thus, an enquiry was initiated against him. Two chargesheets dated 11.3.1988 were served upon him. In the first chargesheet, it was alleged that on 24.2.1988 while he was on duty enroute Kota-Rajpura, when his bus was checked, it was found that 10 passengers were traveling without tickets, though he had collected the fare from each of them. In the second chargesheet, it had been alleged that when he was on duty on route Kota-Neemuch, his bus was checked and he was found carrying two passengers traveling on tickets of lesser amount though, he had collected the full fare from them. The respondent submitted separate reply to the said chargesheets which were not found satisfactory. Therefore, the enquiry officer was appointed to enquire into the matter and a regular enquiry ensued. The enquiry officer after conclusion of the enquiry submitted the report holding that charges leveled against the respondent in both the chargesheets stood proved against him.

B. After considering the report, the Disciplinary Authority vide order dated 5.8.1988 passed order of punishment of removal from the service. The respondent filed a Civil Suit on 2.9.1988 challenging the order of removal alleging that he was not supplied with the documents referred to in the chargesheets, nor was given the enquiry report nor other documents. More so, the quantum of punishment was disproportionate to the proved delinquency.

C. The Suit was contested by the appellants denying all the averments made therein. However, on conclusion of the trial, the Suit was decreed vide judgment and decree dated 30.11.1994.

D. Aggrieved, the Corporation filed Civil Regular Appeal No. 119 of 2002, which stood dismissed vide judgment and decree dated 28.1.2003.

E. The Corporation challenged both the aforesaid judgments by filing Regular Second Appeal No. 449 of 2003, which also stood dismissed vide impugned judgment and decree.

Hence, this appeal.

3. Shri S. K. Bhattacharya, learned counsel appearing on behalf of the appellants, has submitted that none of the courts below have examined the case in correct perspective. The stand taken by the

appellants that the Suit itself was not maintainable, as the only remedy available to the respondent was to approach the Labour Court under the Industrial Disputes Act, 1947 (hereinafter referred to as the `Act 1947') has not been properly examined by the courts below. More so, the pleadings in the plaint were vague. The respondent/plaintiff failed to prove any of the allegations made in the plaint, therefore, the courts below have erred in holding that the enquiry stood vitiated due to violation of statutory provisions and principles of natural justice. The enquiry had been conducted strictly in accordance with law, the provisions of Section 35 of the Standing Order have been fully complied with and the respondent was given full opportunity to defend himself. Therefore, the findings of fact recorded by the courts below in this respect are perverse. The respondent was found to have embezzled money of the corporation and the punishment of dismissal cannot be held to be disproportionate to the proved delinquency. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri Anis Ahmed Khan, learned counsel appearing on behalf of the respondent, has opposed the appeal contending that there are concurrent findings of facts recorded by the three courts. The trial court as well as the first appellate court have

recorded the findings of fact that the enquiry had not been conducted in accordance with law and the punishment of dismissal from service was disproportionate to the delinquency proved. Therefore, no interference is called for.

5. We have heard learned counsel for the parties and perused the record.

6. Undoubtedly, the appellant corporation had taken the plea regarding the maintainability of suit on the ground that the respondent being a workman ought to have approached the forum available under the Act 1947 and the civil suit was not maintainable. In order to fortify this submission Shri Bhattacharya has placed reliance on the judgments of this Court in **The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors.,** AIR 1975 SC 2238; **Uttam Das** Chela **Sunder Das v. Shiromani Gurdwara Parbandhak Committee, Amritsar,** AIR 1996 SC 2133; **Rajasthan SRTC & Ors. v. Mohar Singh,** AIR 2008 SC 2553; **Rajasthan SRTC & Anr. v. Bal Mukund Bairwa,** (2009) 4 SCC 299; and **Rajasthan State Road Transport Corporation & Ors., v. Deen**

Dayal Sharma, AIR 2010 SC 2662 and asserted that the judgments of the courts below are without jurisdiction.

7. Be that as it may, before the trial court, the appellants did not press the issue regarding the maintainability of suit even though the issue in this regard had specifically been framed. Thus, we are not inclined in delving into this controversy at all.

8. The relevant part of the plaint reads:

> "That the plaintiff was imposed with the charge sheet no. 1158 dated 11.3.88 that on date 24.2.88 on the route Kota-Rajpura his vehicle was checked and it was found during the course of the inspection that he was carrying 10 passengers without tickets and another Charge sheet no. 1159 dated 11.3.88 was imposed with the statement that on date 27.11.88 the plaintiff was found carrying 2 passengers without tickets during the course of his giving the duty on the route Kota-Neernuch in the capacity of the conductor and he was also caught in the case of the difference in the ticket amount. That if the bus was not checked in time then the plaintiff would have used the entire sum of money he recovered from the passengers found without tickets for his personal use. Whereas as per the terms and conditions of the Corporation the plaintiff is required to issue the tickets to all the passengers and then to get the same entered in the waybill and that then only the vehicle should have been departed. The aforesaid charges were totally wrong and baseless."

9. The appellant/defendant in its written statement basically stated:

> "The Defendants have mentioned in the reply that the plaintiff had been appointed on the post of the conductor on the daily wage basis. The plaintiff is not entitled of receiving the salary of the regular pay scale from the date 7.12.85 because the plaintiff was appointed as a daily wageworker and the salary in accordance with the law was given to the plaintiff.
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> During the course of the inquiry the plaintiff was given full opportunity of defence and of being heard. The copy of the enquiry report was supplied to the plaintiff after the completion of the inquiry and he was also intimated the result of the inquiry. In this way no violation of the principle of natural justice was done as against the plaintiff whereas the provisions of section 35 of the standing orders were fully complied with. The Disciplinary Authority had by fully applying its mind passed the order of termination of the plaintiff. The plaintiff has produced the court fee at his own risk. The Defendant Corporation comes within the definition of the "Industry" and for which it is only the Hon'ble Industrial Tribunal who has got the jurisdiction to hear and decide the case of such nature. The plaintiff is not entitled of receiving the monetary benefits and other consequential benefits from the defendants. Therefore, the suit of the plaintiff be dismissed with costs."

10. After appreciating the material on record, the trial court held:

> "In this way the plaintiff has clearly made the **allegation** in the plaint that in the inquiry the statement of the witnesses were not recorded in front of the plaintiff. He was not given an opportunity to cross-examine the witnesses produced by the defendant corporation and nor he was given an opportunity to defend his case and lead the evidence. That he was not

supplied with the copies of the documents and was not heard on the quantum of the punishment and he deposed the same by way of the affidavit. That in order to contradict the same the defendants have not produced any evidence by way of deposition and nor any other document in support of the same has been produced. **Under these circumstances, there is no reason to disbelieve the evidence of the plaintiff. That since the inquiry which has been initiated against the plaintiff is against the principle of natural justice, under these circumstances, the order of termination which has been passed is also against the law.** Therefore, this suit issue is decided in favour of the plaintiff and against the defendants." (Emphasis added)

11. The aforesaid findings recorded by the trial court is based only on the **allegations** made by the respondent in the plaint and on failure of the Corporation/defendant to rebut the same, though the trial court had proceeded with the case clearly observing that the burden of proving this issue was on the respondent/plaintiff and not on the Corporation/defendant. In such a fact situation, no reasoning whatsoever has been given by the trial court in support of its conclusion. Neither there is any specific pleading as to what document had not been supplied to him which has been relied upon by the enquiry officer or which witness was not permitted to be cross-examined by him. The trial court did not make any reference to

enquiry report or contents thereof. The entire case is based on ipsi dixi.

12. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. (Vide: **M/s. Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors**., AIR 1998 SC 1608; **National Building Construction Corporation v. S. Raghunathan & Ors**., AIR 1998 SC 2779; **Ram Narain Arora v. Asha Rani & Ors**., (1999) 1 SCC 141; **Smt. Chitra Kumari v. Union of India & Ors**., AIR 2001 SC 1237; and **State of U.P. v. Chandra Prakash Pandey**, AIR 2001 SC 1298.)

13. In **M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh**, AIR 2001 SC 1684, this Court observed as under:–

> *"The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."*

(See also: **Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors**., (2003) 1 SCC 18; **Devasahayam (Dead) by L.Rs. v. P. Savithramma & Ors**., (2005) 7 SCC 653; **Sait Nagjee Purushotam**

& Co. Ltd. v. Vimalabai Prabhulal & Ors., (2005) 8 SCC 252, **Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors.**, AIR 2010 SC 2221; **Ritesh Tiwari & Anr. v. State of U.P. & Ors.,** AIR 2010 SC 3823; and **Union of India v. Ibrahim Uddin & Anr**. (2012) 8 SCC 148).

14. Therefore, once the trial court has held that the burden of proof was on the respondent/plaintiff, it could not have come to the aforesaid findings as there is nothing on record to show how the averments/allegations made by the respondent stood proved.

15. Even the First Appellate Court misdirected itself while dealing with the issue as it held:

> " That no evidence was produced by the defendants/appellants. The statement given by the plaintiff is unrebutted. That as per the statement of the plaintiff the statement of the witnesses were not recorded in front of the plaintiff. The plaintiff was not given an opportunity of cross-examining the witnesses produced by the Defendants/Appellants. The plaintiff was not given an opportunity of leading the evidence and defending his case. The copies of the documents were not supplied to the plaintiff. He was also not heard on the quantum of the punishment. In this way the deposition given by the plaintiff are not rebutted and due to the reason of the same been unrebuttable it can be said that no departmental inquiry was initiated as against the plaintiff. Due to the reason of not holding the departmental inquiry the proceeding initiated against the

> plaintiff was not in accordance with the principle of natural justice. The order of termination which has been passed without holding the inquiry cannot be said to be passed in accordance with the law. In this way the finding arrived at by the learned subordinate court in respect of the issue no. 1 is just and proper and there is no need to interfere in the same."

16. The appellate court committed a grave error by declaring the enquiry as non-est. The termination order as a consequence thereof, stood vitiated though there is no reference to any material fact on the basis of which such a conclusion was reached. The finding that copy of the documents was not supplied to the respondent/plaintiff, though there is nothing on record to show that how the documents were relied upon and how they were relevant to the controversy involved, whether those documents had been relied upon by the enquiry officer and how any prejudice had been caused by non-supply of those documents, is therefore without any basis or evidence. When the matter reached the High Court in Second Appeal, the High Court refused to examine the issue at all by merely observing that no substantial question of law was involved and the findings of fact, however erroneous, cannot be disturbed in Second Appeal.

17. With all respect, we do not agree with such a conclusion reached by the High Court, as Second Appeal, in exceptional circumstances, can be entertained on pure questions of fact. There is no prohibition for the High Court to entertain the Second Appeal even on question of fact where factual findings are found to be perverse.

18. In **Ibrahim Uddin** (Supra), this Court held:

> *"65. In Suwalal Chhogalal v. CIT, (1949) 17 ITR 269 (Nag) the Court held as under: (ITR p. 277)*
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> *"... A fact is a fact irrespective of evidence by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient material.*
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> *67. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. [Vide Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604, Prativa Devi v. T.V. Krishnan, (1999) 5 SCC 353, Satya Gupta v. Brijesh Kumar, (1998) 6 SCC 423, Ragavendra Kumar v. Firm Prem Machinery & Co., AIR 2000 SC 534, Molar Mal v. Kay Iron Works (P) Ltd., AIR 2000 SC 1261, Bharatha Matha v. R. Vijaya Renganathan, (2010) 11 SCC 483 and Dinesh Kumar v. Yusuf Ali, (2010 12 SCC 740]*
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> *68. In Jai Singh v. Shakuntala, AIR 2002 SC 1428, this Court held that (SCC p. 638, para 6) it is permissible to interfere even on question of fact but it may be only in*

"very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection".

Similar view has been taken in Kashmir Singh v. Harnam Singh, AIR 2008 SC 1749."

19. As regards the question of disproportionate punishment is concerned, the issue is no more res-integra. In **U.P State Road Transport Corporation v. Suresh Chand Sharma,** (2010) 6 SCC 555, it was held as under:

"22. In Municipal Committee, Bahadurgarh v. Krishnan Behari, AIR 1996 SC 1249 this Court held as under: (SCC p. 715, para 4)

"4. ... In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam, AIR 1975 SC 2025, U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370, Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha, (2000) 7 SCC 517, Karnataka SRTC v. B.S. Hullikatti, AIR 2001 SC 930 and Rajasthan SRTC v. Ghanshyam Sharma, (2002) 10 SCC 330."

20. In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.

21. As a result, the appeal succeeds and is allowed. The judgments of the courts below are set aside and the order of removal from service passed by the Disciplinary Authority is restored. No order as to costs.

…….....J.
(Dr. B.S. CHAUHAN)

…….....J.
(J. CHELAMESWAR)

NEW DELHI
March 14, 2014.