

SUPREME COURT OF INDIA

Rallis India Ltd.

Vs.

G. Lakshmi Kanthan

C.A.No.708 of 1975

(A. Alagiriswami, P. K. Goswami and N. L. Untwalia, JJ.)

03.10.1975

JUDGEMENT

UNTWALIA, J.:-

1. In a simple matter of discharge from service of the respondent by the appellant in this appeal by special leave a lot of confusion cropped up resulting in a chequered history of the case.

2. The respondent was an employee of the appellant company at its Madras office. In 1961 he was working in the Accounts Department but was transferred to the Copying Department on the 24th November, 1961. Respondent wrote several letters to the higher authorities of the company in the years 1962 to 1964 making various allegations of acts of commissions and omissions on the part of the management. One such letter was written on the 4th April, 1964 when the respondent had also become a shareholder of the company by acquiring some shares. It appears some further correspondence ensued between the parties after the writing of the letter dated the 4th April, 1964. Ultimately the authority of the company framed charges against the respondent which were enquired into by Shri V. K. Menon who was appointed as an Enquiry Officer. Eventually the respondent was

discharged from service by order dated the 23rd December, 1965.

3. The respondent filed an appeal under Section 41 (2) of the Madras Shops and Establishments Act, 1947 complaining to the authority under the said Act that he had been discharged from service in violation of the provision of law contained in Section 41 (1). An Additional Commissioner for Workmen's Compensation, Madras dismissed the respondent's appeal by his order dated the 23rd September, 1967. It would appear from this order that the plea of the respondent that he had entered into the correspondence which was the subject-matter of charge in his capacity as a share-holder was noticed by the Additional Commissioner, yet without focussing his attention on this plea he held that the services of the respondent were dispensed with for a reasonable cause within the meaning of Section 41 of the Madras Act.

4. Respondent No. 1 filed Writ Petition No. 937/1968 in the Madras High Court. Kailasam J., allowed the writ petition by his order dated 4-12-1968 and remitted back the matter to the Additional Commissioner. It would appear from his order that a grievance was made before him by the learned counsel of the respondent that the charge which was framed against him was in respect of a letter which he wrote in his capacity as a shareholder and, he, therefore, could not be punished for writing a letter as a shareholder. Argument further was that this matter had been dealt with by the management but the Assistant Commissioner had failed to deal with this aspect of the case. The learned Judge stated in his order –

"The plea of the petitioner is that he wrote that letter in his capacity as a shareholder. If the charge related only to the allegations made by the petitioner, after he became a shareholder, the question that will have to be decided is, whether as an employee he is liable for the allegations which he made as a share-holder. Under what circumstances an employee will be liable for the acts committed by him in a different capacity would also fall for decision."

He allowed the parties to let in evidence after remand regarding the scope of the charge and the liability of respondent as an employee.

5. The company went up in appeal and a Bench of the Madras High Court dismissed it by observing in its order:

"The point, therefore, was whether he could not make those allegations as a shareholder, even though he was an employee."

After remand another Additional Commissioner dealt with the matter and dismissed the appeal again holding:

"I am of the humble opinion that though he was a shareholder of the company, he was still an employee first and foremost and was amenable to the disciplinary jurisdiction of the management."

6. Respondent filed writ petition No. 4173/1970 from the order dated the 30th June, 1970 of the Additional Commissioner. Neither in the writ petition nor before the learned single Judge was a point taken by the respondent that the order of the Additional Commissioner after remand was not in conformity with the order of remit made by the High Court. Ramaprasada Rao, J. dismissed the writ petition by his order dated 5-4-1972 holding that there was no apparent error in the order of the Additional Commissioner. The respondent filed a writ appeal. Before the Bench, an argument was advanced that the scope of the remit order was limited to a finding whether the respondent as an employee could be made liable for the allegations made by him as a shareholder. Thinking that the Additional Commissioner entirely failed to appreciate the limited scope of the remit and that it was not open to him to find out whether the allegations had been made by the respondent as an employee the Bench sent back the case again to the Additional Commissioner. The company has filed this appeal after obtaining special leave of this Court.

7. Learned counsel for the appellant took us through the various orders and documents in this case and submitted that the scope of the earlier remit order was to find out whether the respondent had made the allegations in his capacity as an employee or as a shareholder. Counsel further submitted that Kailasam, J. had allowed further evidence to be adduced only for determination of the said question, otherwise there was no necessity for any evidence, if the scope of the remit order was as thought and held by the Division Bench in the order under appeal. It seems to us that there has been a lot of confusion in this case because of the fact that the letter dated the 4th April 1964 was written by the respondent not in isolation but in continuation of several other letters written earlier when he was not a shareholder but simply an employee of the company. But the main charge in the case seems to be in relation to the correspondence entered into by the respondent when he was a shareholder. He purported to write the letter dated the 4th April, 1964 in his capacity as a shareholder. In such a situation we are not prepared to hold that the view of the High Court that the scope of the earlier order of remand was not to find out whether respondent had written the said letter as an employee but to ascertain whether he was liable to be discharged from service as an employee even though he had written the letter as a shareholder, is wrong. Reading the order of remand passed by Kailasam, J. as upheld by the Division Bench on the earlier occasion one could get the impression as the Additional Commissioner did that the scope of the remand was to find out whether the respondent had written the offending letter in his capacity as an employee. Before the domestic enquiry it had been found that the respondent had made use of papers of the company to which he could have access only as an employee and not as a shareholder. But there was no specific charge in that regard. In the state of such confusion it was not quite certain that the Additional Commissioner made a wrong order after remand. But then the High Court ultimately seems to be right in taking the view that the scope of the remand was a limited one. We think that the remand was for the purpose of finding out whether the respondent had committed any act in his capacity as

an employee that would entail his discharge from service while writing the offending letter as a shareholder of the company. Except clarifying to some extent the second order of remand made by the High Court, we do not feel persuaded to hold that the order is fit to be set aside.

8. In the result the appeal is dismissed subject to the clarification made above. In the circumstances we shall make no order as to costs.

Appeal dismissed.