Kerala Transport Company

Vs

Shah Manilal Mulchand and Others

Civil Appeal No. 132 of 1975

(K. Ramaswamy, N. M. Kasliwal JJ)

12.02.1991

ORDER

1. This appeal by special leave is directed against an order of the Gujarat High Court dated September 26, 1974.

2. A suit was filed by the respondents for possession of the suit premises against the appellant on the ground that the appellant was a licensee. The suit was contested by the appellant. On the pleadings of the parties as many as eight issues were framed by the trial court. Both the parties had led oral as well as documentary evidence in support of their case. The trial court decreed the suit. The appellant aggrieved against the judgment and decree of the trial court filed an appeal before the High Court. The High Court by the impugned order dismissed the appeal by one word "Dismissed."

3. Aggrieved against the aforesaid order of the High Court, the appellant has come in appeal before this Court.

4. We have heard learned counsel for the parties and in our view the High Court was wrong in dismissing the appeal by one word "Dismissed" without going into the merits of the case. It was a matter which was contested by the defendant, many issues were framed and parties had led oral as well as documentary evidence. The defendant had gone in first appeal to the High Court and it was the duty of the High Court to have decided the matter on merits as it was a final court of appeal on facts. It was contended by learned counsel for the respondents that it was not necessary for the High Court to give detailed reasons inasmuch as the High Court had upheld the order of the trail court. Reliance in support of the above contention is placed on Girija Nandini Devi v. Bijendra Narain Choudhury [AIR 1967 SC 1124 : (1967) 1 SCR 93]. On the other hand, learned counsel for the appellant has placed reliance on unreported decision of this Court in Rajan Textiles Mills Pvt. Ltd. v. M/s. Rampratap Udyoggamuha [C.A. No. 1591 of 1974 decided on 21.7.1989].

5. Even if first appellate court affirms the findings of the trial court, it is its duty to record its reasons in brief for doing so. It is all the more necessary in a case where such court is a final court of finding of fact and where the judgment of the trial court based on appreciation of oral and documentary evidence is seriously challenged by a contesting party. In the facts of the present case, we are of the confirmed view that the High Court was totally wrong in dismissing the appeal by one word "Dismissed". The facts of the case in Girija Nandini Devi v. Bijendra Narain Choudhury [AIR 1967 SC 1124 : (1967) 1 SCR 93] are totally distinguishable and in any case this authority even does not support the contention that the regular first appeal could have been dismissed by the High Court by one word "Dismissed."

6. In the result we allow this appeal, set aside the order of the High Court dated September 26, 1974 and remand the appeal to the High Court for fresh disposal according to law. In view of the fact that it is an old matter, the High Court is requested to dispose of the appeal at the earliest. In the facts and circumstances of the case, the parties shall bear their own costs in this Court.

State of U. P. Through Director of Medical and Health Services, Govt. Of Uttar Pradesh, Lucknow and Others

Vs

Sant Lal, Respondent

Civil Appeal No. 589 of 1978

12.04.1990

ORDER

1. The respondent was appointed as a male social worker in a temporary capacity on February 1, 1962, by the Joint Director, Health Services, U.P. Government. His services were later, on February 27, 1976, terminated by the District Magistrate under Rule 3(1) of the U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred to as the 'Rules'). The respondent challenged the termination of service before the U.P. State Services Tribunal on the only ground that the termination of the services by the District Magistrate was unlawful since his appointing authority was the Joint Director, Medical Health Services. On behalf of the appellant-State Government it was pointed out to the Tribunal that on April 30, 1969, the Governor had issued an order to the effect that District Magistrate would be the appointing authority for the post of Health Assistants (which included the post of the respondent), in the Family Planning Department. This contention of the State Government was upheld by the Tribunal. Against the said order, respondent preferred a writ petition in the High Court which set aside the decision of the Tribunal holding that since the Joint Director, Medical Health Services was the authority who had appointed the respondent he alone had the power to terminate his services. This decision of the High Court given on March 1, 1977. Pursuant to this decision, the State Government reinstated the respondent by an order of June 9, 1977 w.e.f. March 1, 1977. The result is that today when this appeal has come up for hearing before us, the respondent has put in service of more than 28 years, and probably he is nearer the age of his superannuation.

2. Mr Prithvi Raj, learned counsel appearing for the State contended that it was necessary that we set at rest the legal controversy, namely, whether in view of the order of the Governor issued on April 30, 1969, it is the District Magistrate who would be the authority to terminate the services of the concerned employees though they were appointed earlier by the Joint Director, Medical Services. Since the respondent has put in a long service of 28 years and more, we feel that even if the point is decided in favour of the State Government, it would be too late to permit the government to terminate his services. No useful purpose will, therefore, be served in going into the exercise of deciding the point. Besides, an occasion to decide the said point may not arise even in future. We, therefore, refrain from expressing any opinion on the point and direct the State Government to continue the respondent in service. We have ho doubt that taking into consideration the long service of the respondent and also taking into consideration the fact, that even when his services were sought to be terminated in February 1976, he had put in no less than 14 years of

service, though according to the State Government, in a temporary capacity, the State Government would now take steps to regularise his services and given him all the benefits including that of promotion to which he is entitled.

3. In the circumstances, the appeal is dismissed with no order as to costs. The civil miscellaneous petitions also stand dismissed in view of the above.

STATE OF U. P. THROUGH DIRECTOR OF MEDICAL AND HEALTH SERVICES, GOVT. OF UTTAR PRADESH, LUCKNOW AND OTHERS, APPELLANTS v. SANT LAL, RESPONDENT.

Civil Appeal No. 589 of 1978, decided on December 4, 1990.

ORDER

1. The respondent was appointed as a male social worker in a temporary capacity on February 1, 1962, by the Joint Director, Health Services, U.P. Government. His services were later, on February 27, 1976, terminated by the District Magistrate under Rule 3(1) of the U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred to as the 'Rules'). The respondent challenged the termination of service before the U.P. State Services Tribunal on the only ground that the termination of the services by the District Magistrate was unlawful since his appointing authority was the Joint Director, Medical Health Services. On behalf of the appellant-State Government it was pointed out to the Tribunal that on April 30, 1969, the Governor had issued an order to the effect that District Magistrate would be the appointing authority for the post of Health Assistants (which included the post of the respondent), in the Family Planning Department. This contention of the State Government was upheld by the Tribunal. Against the said order, respondent preferred a writ petition in the High Court which set aside the decision of the Tribunal holding that since the Joint Director, Medical Health Services was the authority who had appointed the respondent he alone had the power to terminate his services. This decision of the High Court given on March 1, 1977. Pursuant to this decision, the State Government reinstated the respondent by an order of June 9, 1977 w.e.f. March 1, 1977. The result is that today when this appeal has come up for hearing before us, the respondent has put in service of more than 28 years, and probably he is nearer the age of his superannuation.

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