Ajmer Central Co-operative Bank Ltd.

Vs

Prescribed Authority, Under the Rajasthan Shops and Com. Establishment Act

Civil Appeal No. 3032 of 1990

(CJI A.M. Ahmadi, M.M. Punchhi JJ)

05.01.1996

JUDGEMENT

PUNCHHI, J.:-

1.This appeal by special leave against the judgment and order of a Division Bench of the Rajasthan High Court (Jaipur Bench) dated September 21, 1987 in Civil Writ Petition No.2333 of 1987 is a coiled cause, swollen in mass, requiring enough of load-shedding so as to get to the core of the controversy.

2. The appellant bank is an apex body. It is a Central Co-operative Society registered under the Rajasthan Co-operative Societies Act, 1965 operating in the District of Ajmer. There are village level co-operative societies (in short called the "Samitis") and those too are registered under the aforesaid Act. The village level Samitis are members of the appellant bank. They obtain loans from the appellant bank and lend them over to their agriculturist members. The Samitis are headed by Managers who are appointed under the relevant rules framed under the aforesaid Act. Those rules provide the method in which disciplinary action can be taken against the employees of the Samitis, including the Managers.

3. The second respondent, Bhagwan Singh was the Manager of one such Samiti in village Kayad. It appears that there was complaint against him of misuse and embezzlement of funds of the Samiti. Initially, in some instances, he was asked to make good the money of the supposed mis-use or embezzlement. Some payments apparently were agreed to be made by the second respondent. Still there were others in which there arose disputes. The second respondent in the meantime was suspended and charge sheets were served on him. An Enquiry Officer was appointed and an enquiry held. The Enquiry Officer submitted his report. Some of the charges were reported proved against the second respondent. A second notice was given to him to show cause why he be not dismissed from service. On July 1, 1983, order for dismissal of service was passed against the second respondent. According to the appellant it was dispatched to the second respondent the same day vide Registered A.D. but according to the second respondent no such dispatch was made as he was never served with the dismissal order. On July 4, 1983, the second respondent filed a Civil Suit No.422 of 1983 for injunction in the Court of the Munsiff, Ajmer City (East), Ajmer, impleading the appellant as the sole respondent. His main attack in the suit was against the initiation of the enquiry, the manner in which it was conducted and the procedural illegalities with when it was rife. The following relief was claimed in the suit.

> (a) decree for permanent mandatory injunction order restraining the defendant, its officers, agents, employees, etc. from removing, terminating or awarding any kind of

punishment on the plaintiff in pursuance of the enquiry conducted on the basis of charge-sheets dated 10-1-1982 and 22-9-1982.

(b) costs of the suits; and

(c) any other relief which the Hon'ble Judge deems fit in the facts and circumstances of the case.

4. Simultaneous to the filing of suit, an application under Order 39 Rule 1 and 2. C.P.C. was laid before the Trial Court but the same after context was dismissed on 23-11-1984. The second respondent preferred as appeal against the said order before the Court of the District Judge. Ajmer which too was dismissed vide order dated 22-12-1984. Apparently, thereafter, the suit file got stuck up in the appellate Court and its arrival was awaited, whereafter on 12-8-1985, the Trial Court passed the following order (translated):

"The case present. The file has been received. The plaintiff does not want to press the suit. Therefore, the suit is dismissed without any cost. The file is sent to record room.

Sd/-

Munsif and Judicial Magistrate

1st Class, Ajmer City (East)"

5. Beforehand, however, the second respondent on 7-1-1985, while the suit was pending, and having failed to obtained a temporary injunction, moved the Authority under Rajasthan Shops & Establishments Act, 1958 by presenting a complaint under Section 28-A of the Act impleading the appellant as the sole respondent. On service, the first question raised before the Authority was whether the complaint was within time. The Authority considered the matter and came to the view that since the order of termination dated 1-7-1983 had been communicated to the second respondent only on 2-1-1985, when he himself had requested for its service on him, the application before it under Section 28-A of the aforesaid Act was within time and not barred by limitation. This order was passed on 14-8-1986. The main application under Section 28-A was put to trial.

6. Before we go any further, it would be apposite to take stock of Section 28-A of the aforesaid Act which is reproduced hereafter.

"28-A. NOTICE OF DISMISSAL OR DISCHARGE BY EMPLOYER - (1) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence, recorded at an enquiry held for the purpose in the prescribed manner.

(2) Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the

order of dismissal or discharge on one or more of the following grounds, namely :-

(a) that there was no reasonable cause for dispensing with his services ; or

(b) that no notice was served upon him as required by sub-section (1) ; or

(c) that he had not been guilty of any misconduct:

Provided that the prescribed authority may condone delay in filing such a complaint, if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

(3) The prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefor.

(4) While passing an order under sub-section (3) the prescribed authority shall have power to give relief to the employee by way of reinstatement or by awarding money compensation or by both.

(5) The decision of the prescribed authority under this section shall be final and binding both on the employer and the employee".

7. Significantly, by providing this machinery for redressal of grievance, neither the jurisdiction of the Civil Court nor that of the Courts under the Industrial Disputes Act have been barred under any provision of the present Act. The Authority went into the matter unquestioned, as if undertaking a regular trial, elaborately dealing with each and every question of fact and law raised before it, for coming to the conclusion that the dismissal of the second respondent was bad and the charges of embezzlement had not been proved, as also that the conclusion of the Enquiry Officer was perverse, and further that the Enquiry Officer and the management had proceeded with a biased attitude. This order was passed on 18-6-1987 declaring the dismissal as illegal and void. The Authority reinstated the second respondent to his service with all benefits of wage and other allowances from the date of dismissal to the date of reinstatement. For the arrears of wages from 1-7-1983 to the date of reinstatement, in ordered interest at the rate of 12-1/2 per cent on the failure of payment being made within three months.

8. The appellant challenging both the orders dated 14-8-1986 and 18-6-1987 moved the High Court of Rajasthan by means of two writ petitions which were rejected by the common order under appeal.

9. To the challenge of validity of the order dated August 14, 1986, holding the complaint under Section 28-A of the said Act to be within limitation, the High Court took the view that since the Authority had found that the order of July 1, 1983 had not been received by the second respondent till it was communicated to him on January 2, 1985, it involved a question of fact, which it was not inclined to go into. On merits the High Court repelled all the contentions raised before it by the appellant. The contention of the appellant that it was not the employer of the second respondent and its impleadment as a respondent in the proceedings before the Authority made the complaint non maintainable was repelled by the High Court holding that the question as to whether the second respondent was an employee of the appellant was a question of fact, not agitable for the first time in writ proceedings. Moreover, it was noticed and found by the High Court that the charge-sheets on

the basis of which the services of second respondent were terminated, were themselves issued by the appellant. The second contention that the second respondent had a right of appeal against the order of dismissal and in view of the availability of that right complaint under Section 28-A of the Act was not maintainable, the High Court ruled that since this objection had not been raised before the Authority, it could not permit the same being raised before it for the first time. Additionally, the High Court observed that it had not been pointed out any provision which barred the complaint being entertained on the ground that an appeal lay against the discharge or dismissal. Still further, the High Court took the view that Section 28-A(2) of the Act clearly postulated an order of dismissal or discharge being questioned before the Authority by the aggrieved employee, making it incumbent on him to move the Authority within a period of thirty days. But for these contentions, no other contention was raised by the appellant before the High Court. Resultantly, the writ petitions were dismissed summarily.

10. It was urged on behalf of the appellant that the impugned orders of the Authority, both on the question of limitation and on merit, were hit by the principle of res judicata. And to support the argument, attention was invited to the two orders of the Civil Court. Original as also Appellate, whereby the application for the second respondent under Order 39 Rules 1 and 2 C.P.C. were dismissed. Certain precedents on general principles of res judicata were cited but none to say that orders of the kind could be the base for plea of res judicata. They obviously can be of no avail to the appellant. The observations and the decisions made by the Civil Courts. Original as well as Appellate, which might have been favourable to the appellant, in the nature of their jurisdiction were never final and were meant to merge back or subsume in the final result of the suit. No one can be heard to say that the matters therein were "directly and substantially" in issue, which debarred the Authority to determine the controversy between the parties on merit. Additionally its stand, pertinently taken in the written statement, before the Authority was to claim the stay of the proceedings on the premise that in order of time, the suit stood field earlier. Specifically Section 10 of the Civil Procedure Code was invoked to make such claim. No bar of res judicata was pleaded. It is too late in the day now to permit the appellant to be raising such plea and that too without any basis. The contention is thus rejected.

11. There could not have been even a stay of the complaint where the suit stood withdrawn on 12-8-1995, while proceedings before the Authority were pending. The cause for the stay of the suit by then had vanished. That the Authority had jurisdiction to go into the matter is otherwise apparent from the bare reading of S.28-A of the Act above reproduced. No procedural defect on the question of the Authority condoning the delay in entertaining the petition under Section 28-A, could be pointed out from the order in the High Court, when it termed it to be a factual dispute as to when the order of termination of service stood communicated to the second respondent. On the merits of the case no dispute seems to have been raised and the effort now made before us is of no consequence.

12. It was then urged that the second respondent having elected to move the Civil Court, he was debarred from moving the Authority under Section 28-A of the Act. A Full Bench of the Punjab and Haryana High Court in Sukhi Ram v. State of Haryana 1982 Lab IC 1282, was cited to buttress the argument. That case is wholly inapplicable to the facts in hand. That was a case in which it was ruled that an employee who does not take the aid of Industrial Disputes Act, whereunder powers of the deciding authorities were more extensive and wide than those of the Civil Court, jurisdiction of the Civil Court was not barred for him. No basis has been suggested to us, and we find none ourselves, on the premises of which it could be ruled that the Authority had no jurisdiction to go into the matter. As said earlier there is no provision in the Act barring the jurisdiction of the Civil Court and conversely there is no provision under the Code of Civil Procedure barring the

jurisdiction of the Authority under the Act. This contention of the appellant too must fail.

13. It was then on merits contended that the second respondent had agreed to make good the loss of the appellant in a certain manner which means that he had admitted his guilt and on the basis of which the Authority could and should have maintained the order of dismissal. In the first place, if that were so, the dismissal at the instance of the appellant should have proceeded straightway, without resort to an enquiry into other embezzlements; as was done by the appellant. In complicating and coiling the matter the appellant wove for itself the web. The appellant could not have expected the Authority to extricate this part of the case to maintain the order of dismissal. In any event, this matter was neither projected in a proper manner before the Authorty and none at all before the High Court. This aspect of the case is not fit for our deep consideration at this stage.

14. Lastly it was contended that this Court in Union of India v. Parma Nand, AIR 1989 SC 1185, had spelled out the scope of the jurisdiction of Administrative Tribunal in interfering with a punishment on the ground that it was not commensurate with the delinquency of the employee. Here the second respondent has not been found guilty by the Authority; so the question of its imposing a proper punishment did not arise. The supposition of the occasion is misconceived.

15. No point survives on the basis of which the appellant can seek upsetting of the impugned order of the High Court and that of the Authority. The appeal, therefore, fails and is hereby dismissed with costs. Appeal dismissed.