

Sri Ganganagar Urban Cooperative Bank Ltd.

Vs

Prescribed Authority

(K.Ramaswamy, D. P. Wadhwa JJ)

02.05.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the Division Bench of the High Court of Rajasthan at Jodhpur, made on November 27, 1995 in D.B. Civil Special Appeal No. 863/95.

3. The admitted position is that the workmen, ten in number, were appointed in 1992. As a sample case services of Mr. Ashok Kumar, respondent No.2 in this case who was appointed on August 7, 1990, were dispensed with on June 5, 1992. They filed an application under Section 33 (C-2) of the Industrial Disputes Act (for short, the 'ID Act') before the Industrial Tribunal for direction of reinstatement with full back wages. No such power under Section 33(C-2) is available but the Tribunal has the power under Section 11-A of the ID Act to give such a direction as a consequence of the findings. Section 28-A of the Rajasthan Shops and Commercial Establishment Act, 1958 (for short, the 'Act') under Chapter VI-A deals with dismissal, discharge and termination of the service which reads as under:

"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 six 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."

4. The finding given by the Industrial Tribunal is that it is a commercial establishment. Rule 20(d) of the Rajasthan Cooperative Societies Rules, (for short, the 'Rules') made under the Rajasthan Cooperative Societies Act, 1965 provide thus:

" Rule 20(d) : Service of an employee whose appointment has been made or extended upto a specified period or date only shall automatically terminate on the expiry of that period or date and no notice for termination of services of such employee will be necessary."

5. A conjoint reading of the above provisions does indicate that Section 28-A of the Act and Rule 20 of the Rules mutually run in opposite streams. Section 28-A envisages that no employer shall

dismiss or discharge an employee from his employment who has been in such employment continuously for a period of not less than six months except for a reasonable cause and that too after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice. The proviso postulates that the employer also shall have the power to dispense with the services of the employee for misconduct and such misconduct shall be enquired into in accordance with the Rules made in that behalf and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.

6. Thus, two courses are open to the employer to put an end to the services of an employee - workman. One is to dispense with the services by issuance of one month's prior notice or on paying one month's wages in lieu of such notice. What is more, the services can be dispensed with for a reasonable cause. The other option is that the services of an employee can be dispensed with on proof of misconduct after due enquiry envisages abduction of evidence and recording of a finding based thereon, enquiry in the prescribed manner is conducted and the decision is taken in that behalf. In this case, no such course was adopted. Though Rule 20 of the Rules postulates automatic termination services of an employee after expiry of the specified period, the Act interposes and curtails that power of the employer to terminate the service of the employee except in the manner indicated in Section 28-A. Admittedly, no such action has been taken by the appellant. Consequently, the action of the appellant dispensing with the service without notice or without paying one month's wages in lieu thereof is clearly illegal. The direction of reinstatement is correct; however, no back wages need to be paid.

7. The appeal is accordingly disposed of. No costs.