

SUPREME COURT OF INDIA

Rajasthan Housing Board

Vs.

Roshan Lal Saini

C.A.No.5919-5920 of 2019

(Mohan M.Shantanagoudar and Sanjiv Khanna,JJ.,)

29.07.2019

JUDGMENT

Sanjiv Khanna,J.,

SLP(Civil)No.15954-55 of 2019

1. Leave granted.

2. Impugned order and judgment dated 18th May, 2015 passed by the High Court of Judicature for Rajasthan at Jaipur in D.B. Civil Special Appeal (Writ) No. 1265 of 2014 upholds the order and judgment of the learned Single Judge dated 23rd May, 2014 allowing the writ petition filed by the first respondent- Roshan Lal Saini, quashing the order dated 3rd January, 2003 passed by the appellant- Rajasthan Housing Board under Rule 86(3) of the Rajasthan Service Rules removing the first respondent from service on the ground of unauthorised absence for three months, which order of dismissal was upheld by the Labour Court. While quashing the dismissal and remanding the matter to the Labour Court, learned Single Judge had further directed:

“[T]he ... Housing Board shall be at liberty to adduce evidence before the labour Court as expeditiously as possible but not later than three months from the date now fixed by this court for the parties to appear before the Labour Court.”

Agreeing, the Division Bench in the impugned judgment has not interfered with the above directions.

3. The impugned judgment also upholds the finding of the learned Single Judge quashing the second order of dismissal dated 25th October, 2013 passed in the disciplinary inquiry proceedings initiated for embezzlement of funds, irregular payments, missing vouchers etc. vide the charge sheet served on the first respondent on 10th October, 2002.

4. The Special Leave Petition states that the first respondent has filed as many as 48 cases, which highlights the long and chequered history of (over) litigation that has

contributed to somewhat conflicting orders in different cases. To avoid prolixity, and as a fairly limited issue arises for consideration before us, we need not for the purpose of the present order refer to in detail the gamut of disputes and litigations, albeit we will be referring to the relevant facts in brief.

5. The first respondent, was suspended vide order dated 17th August, 2002 on the basis of a prima-facie investigation in the charges for embezzlement of funds, irregular payments, missing vouchers etc. to the extent of Rs.1,49,00,000/- (rupees one crore forty-nine lakhs), during the period when the first respondent was working as Junior Accountant with the petitioner Housing Board. Consequently, three First Information Reports were registered in the year 2002 for the periods between 1995-1998, 1998-2001 and 2000-2002, in which the first respondent was arrested and had remained in custody. It is stated that the criminal prosecutions are still pending.

6. As noticed above, the first respondent was served with the first charge sheet on 10th October, 2002 initiating the disciplinary inquiry. Subsequently, on 23rd November, 2002, a second charge sheet was served on account of wilful absence from 31st August, 2002.

7. The first respondent had instituted a civil suit in which an interim order was passed restraining the appellant from proceeding in respect of the charges, except the charge for wilful absence. It is stated that a Division Bench of the High Court vide order dated 18th January, 2010 had upheld this order. Copy of these orders are not available on record but assertions to this effect are made in the pleadings on record before us.

8. By ex parte order dated 3rd January, 2003, the first respondent was removed from service under Rule 86(3) of the Rajasthan Service Rules on the ground of wilful absence. Departmental appeals preferred by the first respondent were dismissed.

9. The first respondent had then preferred a writ petition before the High Court of Rajasthan at Jaipur, which was not entertained on the ground of alternative remedy before the Labour Court. This order attained finality as the review petition, intra-court appeals and Special Leave Petition were dismissed.

10. The first respondent thereupon approached the Labour Court vide LCR No. 38 of 2011 with an interim application for stay of the dismissal order, which application was rejected by the Labour Court vide order dated 29th May, 2013.

11. The first respondent had preferred Writ Petition No. 9480 of 2013 before the High Court of Rajasthan at Jaipur challenging the interim order of the Labour Court dated 29th May, 2013. The present Special Leave Petition arises from this writ petition.

12. In the meanwhile, the first respondent for some unfathomable reason filed Writ Petition (Civil) No. 8611 of 2007, wherein vide order dated 9th September, 2009 a Single Judge of the Rajasthan High Court had issued directions that the remaining part of the inquiry should be completed within four months. This order was upheld by a Division Bench vide order dated 9th May, 2011. These orders were passed notwithstanding the fact that the first

respondent was already removed from service on the ground of wilful absence vide order dated 3rd January, 2003.

13. In view of the aforesaid directions, the disciplinary proceedings on the first charge sheet recommenced and the inquiry report dated 28th May, 2012 held that all charges stood proved. Consequently, order dated 25th October, 2013 dismissing the first respondent was passed.

14. The first Respondent did not prefer a statutory appeal to challenge the order of dismissal dated 25th October, 2013. Neither did he make it a subject matter of challenge before the Labour Court. He invoked writ jurisdiction vide Civil Writ Petition No. 19668 of 2013 filed before the Rajasthan High Court.

15. In the meanwhile, the Labour Court by its order dated 5th November, 2015 upheld the first order of dismissal dated 3rd January, 2003 on the ground of wilful absence. This order was passed pursuant to the directions of the learned Single Judge in the order dated 23rd May, 2014 in Writ Petition No. 9480 of 2013 and of the Division Bench in the impugned order and judgment dated 18th May, 2015 in D.B. Civil Special Appeal (Writ) No. 1265 of 2014.

16. The first respondent has preferred Writ Petition No. 5205 of 2016 against the order of the Labour Court dated 5th November, 2015 which is stated to be pending before a Single Judge of the Rajasthan High Court.

17. The second order of dismissal dated 25th October, 2013 was also made subject matter of challenge by the first respondent preferring an amendment application in Civil Writ Petition No. 9480 of 2013 in which the challenge was to the interim order dated 29th May, 2013 passed by the Labour Court rejecting the first respondent's application for stay of the first dismissal order dated 3rd January, 2003. By order dated 28th November, 2013, the first respondent was permitted to amend this writ petition to raise a challenge to the order of dismissal dated 25th October, 2013.

18. Writ Petition No. 9480 of 2013 was allowed by the learned Single Judge vide order dated 23rd May, 2014 by recording detailed findings on the first inquiry resulting in the order dated 3rd January, 2003, the fairness or propriety of the inquiry proceedings to prove the charge for wilful absence. This was notwithstanding the fact that order under challenge dated 29th May, 2013 passed by the Labour Court was only an interim order. At the same time, the learned Single Judge held that the appellant was set at liberty to adduce the evidence before the Labour Court. Issue and question of wilful absence on merits was, therefore, left open for the Labour Court to decide.

19. Thereafter, the learned Single Judge examined challenge to the dismissal order dated 25th October, 2013 and held that it was passed on the basis of the inquiry report which was wholly illegal, arbitrary and unconstitutional on the ground that sufficient opportunity was not granted to the first respondent to defend the charge sheet. Notwithstanding the direction(s) of the High Court referred in paragraph 12 above to

conclude the inquiry proceedings within four months, the disciplinary authority, it was observed, should have awaited outcome of the contempt petitions that had been preferred by the first respondent. Further, the appellant had failed to produce original vouchers, 544 in number, which it was held had been verified by different officers.

20. Impugned order and judgment dated 18th May, 2015 passed by the Division Bench of the High Court has referred to the reasons given by the Learned Single Judge specifically rejecting the contention of the first respondent that the Labour Court lacked jurisdiction for the first respondent was not a 'workman'.

21. Impugned judgment dated 18th May, 2015 also records that the Labour Court when seized of the matter had afforded opportunities to the first respondent to cross-examine the prosecution witnesses but on account of repeated adjournments sought by him, the Labour Court was unable to proceed with the matter. For the reasons elucidated in paragraph 18 above, we would observe and hold that the Division Bench has not made final and conclusive findings on the charge and allegation of wilful absence, which had resulted in the order of dismissal dated 3rd January, 2003. Findings as recorded in the impugned order would be treated as tentative and prima facie and not final or conclusive, for otherwise there was no reason and ground for the learned Division Bench to affirm the direction that the appellant was at liberty to adduce evidence before the Labour Court.

22. The Division Bench referring to the second order of dismissal dated 25th October, 2013 observed that the same could not have been passed and at best findings could be recorded on the charges that were not subject matter of the departmental inquiry in the first proceedings, as criminal cases were pending against the first respondent. Even if there were some additional charges on which the departmental inquiry was made, the second order of dismissal could not have been passed. This order of the Division Bench, however, does not specifically clarify the position as to the legal effect of the second order of dismissal dated 25th October, 2013, and the respective rights of the parties. Further, the findings on merits recorded by the learned Single Judge on the second order of dismissal dated 25th October, 2013 were not interfered with.

23. Notwithstanding the said position, with reference to the second order of dismissal dated 25th October, 2013, in para 8 and 9 of the impugned order, the Division Bench has commented on some other writ petitions including Writ Petition No.1511 of 2008 filed by the petitioner by which departmental enquiry proceedings against the charges of embezzlement of funds, etc. were separated and it was observed that as the first dismissal order dated 3rd January, 2003 had been challenged before the Labour Court, it was open to the first respondent to challenge the separation order before the Labour Court that was seized of the matter. Two writ petitions filed by the first respondent challenging special audit of the accounts were dismissed. D.B. Special Appeal No. 1636 of 2014 in which the first respondent had sought prayer for suspension allowance was dismissed observing that the issue was not required to be considered by the Single Judge and it was open to the first respondent to raise the issue before the Labour Court. Lastly, reference was made to Special Criminal Misc. Petition No. 525 of 2007, 539 of 2007 and 1127 of 2009 in which interim orders had been passed staying the criminal proceedings and arrest. Reference was

also made to Special Criminal Misc. Petition No. 8 of 2015 in which again arrest of the first respondent had been stayed in respect of a fourth criminal case filed against him. It was directed that the four petitions would be clubbed and listed before the appropriate bench for orders.

24. Impugned judgment also noticed that original records of investigation had been summoned by the High Court in the first three criminal miscellaneous matters and since 2007 stay orders had been in operation. These original records of investigation summed and retained by the High Court had gone missing. The Registrar General was directed to carry out enquiries through the Registrar (Vigilance) with regard to the missing records and submit a report to the Registrar General, that would be placed before the Chief Justice on administrative side.

25. From the aforesaid discussion, it is apparent that the Division Bench and the Single Judge had failed to notice and did not consider that Civil Writ Petition No. 9480 of 2013 was primarily directed against an interim order passed by the Labour Court refusing to stay the first order of dismissal dated 3rd January, 2003. They have dealt with the issue and commented on the order dated 3rd January, 2003 as if the order under challenge before the Writ Court and the Appeal Court was the final order passed by the Labour Court. As noticed earlier, the Labour Court by its final order dated 5th November, 2015 has upheld the first order of dismissal dated 3rd January, 2003. The order dated 5th November, 2015 has been challenged by the first respondent in Writ Petition No. 5205 of 2016 which is still pending before the Single Judge. As elucidated above, the findings and observations of the learned Division Bench and the Single Judge cannot be regarded as findings and observations on the merit or demerits of the charge of wilful absence as it was left to the appellant to lead evidence and prove the charge before the Labour Court.

26. Once the order of dismissal dated 3rd January, 2003 had been passed, the High Court should not have directed continuation and conclusion of the departmental proceedings pursuant to another charge-sheet relating to embezzlement of funds, irregular payments, missing vouchers, etc. On the said aspect, the learned Division Bench and the Single Judge in the orders under challenge have rightly observed that there cannot be two orders of dismissal, yet have erroneously commented upon the enquiry report and the second order of dismissal dated 25th October, 2013. This second order of dismissal should have been set aside on the limited ground and reason that there cannot be two orders of dismissal, leaving it open to the appellant to take steps and recommence proceedings in the charge-sheet relating to embezzlement of funds, irregular payments and missing vouchers etc., should the first order of dismissal dated 3rd January, 2003 be set aside. In other words, departmental proceedings vide the charge-sheet relating to embezzlement, irregular payments and missing vouchers, etc. should, for the present, be kept in abeyance. Reference in this regard can be made to the Judgement of this Court in *State of Maharashtra v. Vijay Kumar Aggarwal and Another*¹ wherein it has been held as under:

“11...The employee who has already been dismissed from service cannot be imposed any other penalty on the conclusion of inquiry pertaining to the charge-sheet dated 6-7-1988. Therefore, at this stage no purpose is going to be served to

continue with the inquiry into the said charge-sheet. At the same time, it is also to be borne in mind that Respondent 1 has challenged dismissal order and the matter is pending before the Tribunal. In case the said dismissal is set aside by the Tribunal and/or the High Court/this Court and Respondent 1 is reinstated in service as a result thereof, the relationship of employer-employee between the parties shall also stand restored. In that eventuality, it would be permissible for the appellant to proceed with the inquiry relating to charge-sheet dated 6-7-1988 as well...”

27. Accordingly, the present appeal is partly allowed whereby we agree that the second order of dismissal dated 25th October, 2013 could not have been passed, and accordingly we would set aside all observations and findings recorded by the Division Bench and Single Judge with regard to the enquiry report dated 28th May, 2012 with the direction that further proceedings pursuant to the said enquiry report would be kept in abeyance and can be recommenced in case the first dismissal order dated 3rd January, 2003 is set aside and quashed. In case of recommencement, it will be open to the first respondent to raise objections to the enquiry report before the disciplinary authority, who would consider the said objections. It would be equally open to the disciplinary authority to rectify and correct mistakes or lapses, if any, and proceed in accordance with law. Findings and observations in the impugned order(s) would not restrict the disciplinary authority from examining the charges and taking a decision nor the first respondent from exercising his right to defend. We have not made any observation on the merits of the enquiry report or the procedure which has to be followed.

28. On the first aspect we would only make an important and relevant clarification in view of the final order of the Labour Court dated 5th November, 2015. The impugned judgment of the Division Bench, upholding the order of the Single Judge setting aside and quashing the order of the Labour Court dated 29th May, 2013 refusing to stay the first order of dismissal dated 3rd January, 2003 had not directed reinstatement of the first respondent. The Labour Court was to proceed in the matter and record findings on merits. As noticed above, the Labour Court has already by its final order dated 5th November, 2015 upheld the first order of dismissal dated 3rd January, 2003 and against this order the first respondent has preferred Writ Petition No. 5205 of 2016 stated to be pending before the Single Judge. This writ petition would be decided by the learned Single Judge on merits without being influenced by the impugned order(s) under challenge in the present appeal. We also clarify that we have not interfered with the directions given in the impugned judgment in paragraphs 10 to 19. The same would be good and valid and will continue as directions and findings, in spite of the present order.

29. Accordingly, the instant appeals are allowed in the above terms and disposed of. In the facts of the case, there would be no order as to costs.

B. SPECIAL LEAVE PETITION (CIVIL) NO. 6342 OF 2017

30. We do not find any good ground and reason to interfere with the impugned order which only reduced the quantum of costs. The Special Leave Petition is dismissed. We clarify we have not made any comments on merits of the dispute between the parties.

Judgment Referred.

¹(2014) 13 SCC 0198