The Regional Manager, Rajasthan State ... vs Sohan Lal on 27 September, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4828, 2004 (8) SCC 218, 2004 AIR SCW 5530, 2004 LAB. I. C. 4049, (2004) 8 JT 113 (SC), 2005 (1) SERVLJ 232 SC, 2004 LAB LR 1138, (2005) 1 SERVLJ 232, 2004 (8) SCALE 325, (2004) 4 ALLMR 1148 (SC), (2005) 25 ALLINDCAS 316 (SC), 2005 (25) ALLINDCAS 316, 2004 (6) SLT 46, 2004 (10) SRJ 191, 2004 (8) JT 113, 2005 (1) ALL CJ 416, 2005 ALL CJ 1 416, (2004) 107 FJR 535, (2004) 103 FACLR 425, (2004) 4 LAB LN 763, (2004) 4 SCT 441, (2004) 6 SERVLR 96, (2004) 7 SUPREME 429, (2004) 8 SCALE 325, (2004) 4 ESC 590, (2004) 3 CURLR 778, (2004) 24 INDLD 124, (2004) 4 ALL WC 3387, 2004 SCC (L&S) 1078

Bench: N. Santosh Hegde, S.B. Sinha

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           CASE NO.:
Appeal (civil)  1763 of 2002

PETITIONER:
The Regional Manager, Rajasthan State Road Transport Corporation

RESPONDENT:
Sohan Lal

DATE OF JUDGMENT: 27/09/2004

BENCH:
N. Santosh Hegde  & S.B. Sinha

JUDGMENT:
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J U D G M E N T (With Civil Appeal No.1764/2002) SANTOSH HEGDE, J.

These appeals are preferred against the order of the Division Bench of the Rajasthan High Court, Jaipur Bench dated 10th of August, 2001 whereby the said Bench allowed the special appeal filed before it setting aside the judgment of the learned Single Judge of the said High Court which had confirmed the award made by the Industrial Tribunal, Jaipur. Brief facts necessary for the disposal of these appeals are as follows;-

The respondent herein was appointed as a Conductor on daily wages in the appellant-Corporation on 20th of June, 1986. His services were terminated on 1st of December, 1986 on the ground that the same was not required by the appellant- Corporation.

Challenging the said termination, the respondent moved an application under Section 33(2-A) of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Jaipur alleging that his termination was contrary to Section 25F of the Industrial Disputes Act, as he has already completed more than 240 days of continuous service in a year in the appellant- Corporation, therefore, without following the provisions of Section 25 F of the I.D. Act his services could not have been terminated. He also alleged in the said application that his termination was a colourable exercise of power because during his service in the Corporation an inspection was carried out by the checking staff on 20th of November, 1986 when he was on duty in Bus No. 7108. During the course of investigation, a false case of non-issuance of ticket to six passengers was made against him and since the Management was not in a position to prove the said charge it took recourse to his discharge from service without holding a proper enquiry which amounts to a colourable exercise of power. The appellant-Corporation opposed the said application stating that his appointment was purely temporary on daily wages basis and since his services were not required, the same was terminated which was permissible as per the terms of the letter of appointment. It is also stated that the respondent had not completed 240 days of continuous service in any year in the Corporation and therefore there was no need to comply with Section 25 F of I.D. Act. However, it was admitted that when the respondent was working as a Conductor and there was an inspection on 29.11.1986 wherein it was found that he had not issued tickets to six passengers but that was not the ground on which the termination was based.

In view of the allegation of the respondent-workman that his termination was for the above said alleged misconduct, the appellant-Corporation sought permission from the Industrial Tribunal to lead evidence to justify the charge of misconduct which permission was granted and parties were permitted to adduce evidence before the tribunal. Based on the evidence that came on record the tribunal came to the conclusion that the Corporation has proved the misconduct as well as the unruly behaviour of the Conductor during the inspection, therefore, it came to the conclusion that even on the ground of misconduct termination of the respondent was justified, hence, rejected the application of the respondent. Being aggrieved with the said award of dismissal of his complaint, the respondent filed a writ petition before a Single Judge of the Rajasthan High Court, Jaipur Bench. The learned Single Judge who heard the petition came to the conclusion that the finding of fact recorded against the petitioner regarding his misconduct does not suffer from any perversity so as to give a cause of action for the High Court to interfere in it, hence, it dismissed the writ petition. Against the said judgment of the learned Single Judge, the respondent preferred a special appeal before the Division Bench of the High Court. When the matter came up for consideration by the Division Bench, the court on 18.7.2001 made the following order :

> "The learned counsel for the petitioner- appellant makes a statement that the writ petitioner is prepared to forego the entire salary for the period and he would be satisfied, if at least, reinstatement is ordered.
>
> We direct the counsel for the respondent No. 2 to ascertain from his department, whether the petitioner- appellant can be taken now as a fresh employee".

The matter again came up for further orders on 10.8.2001 when the Division Bench passed the following order which is now impugned in this appeal:

> "The learned counsel for the appellant now states that he is willing to forego the salary from 1986 till the date of his reinstatement, with continuity of service and other attendant benefits attached to the said post. Since, the appellant has now opted for the above benefit, we accept his prayer and direct the respondent No. 2 accordingly. The respondent No. 2 is directed to reinstate the appellant in service in the above terms within four weeks from today".

A perusal of these two orders of the Appellate Bench of the High Court shows that it did not apply its mind to the facts and law involved in the case but proceeded to consider the offer made by the appellant in his prayer, i.e., in the event of his being re-instated in service he would forego the entire back wages. The order of 10th of August, 2002 shows that the appellant-Corporation had not agreed to such a proposal made by the respondent and the said order which is now impugned in this appeal was made without the consent of the appellant.

We notice from the finding of the Industrial Tribunal that the respondent-workman had indulged in misconduct which has not only led to monetary loss to the Corporation but the Corporation has also lost confidence in the said workman. Therefore, to continue such an employee in the employment of the Corporation by virtue of a judicial order, in our opinion, is an act of misplaced sympathy which can find no foundation in law or in equity. The finding that the workman has committed the misconduct in question of not issuing tickets to passengers is a finding of fact arrived at by the Tribunal after taking into consideration the evidence recorded therein. This finding was affirmed by the learned Single Judge and the High Court has not set aside the finding. Therefore, the question of moulding the relief on the facts of this case did not arise at all. The offer of the respondent to forego the back wages in lieu of his being re-instated is not an offer to be taken into consideration by the court unless and until the finding of the tribunal on misconduct was set aside and having perused the records including the order of the tribunal, we are satisfied that this is not one of those cases in which there was room for setting aside such a finding.

Assuming for argument sake that the High Court by the impugned order proceeded on the basis that though the misconduct is proved the punishment was disproportionate and it is on that basis that the impugned order is made, even then we are unable to agree with the order of the Appellate Bench of the High Court because it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless the said sentence is wholly disproportionate to the misconduct proved. No such finding has been recorded by the Appellate Bench in the impugned order. Since the misconduct proved is one of dishonesty, the quantum of loss is immaterial, it is the loss of confidence that matters. In such a situation if the Tribunal chooses to uphold the order of dismissal and refuse to interfere with such termination and the learned single Judge of the High Court agreed with the said order of the Tribunal, then Appellate Bench ought not to have interfered with the quantum of sentence. Having perused the facts of the case we are in agreement with the finding of the Tribunal as well as learned single Judge, hence, we are of the considered opinion that the Appellate Bench fell in error in interfering with the orders of the courts below merely on the basis of

offer made by the appellant before it.

For the reasons stated above, these appeals succeed. The order impugned is set aside and that of the tribunal as affirmed by the learned Single Judge of the High Court is restored.