

Kishna Ram Vs. State and Others

Kishna Ram Vs. State and Others

SooperKanoon Citation : sooperkanoon.com/760959

Court : Rajasthan

Decided On : Dec-05-2000

Reported in : (2001)IILLJ1615Raj; 2001(2)WLC671; 2001(2)WLN32

Judge : B.J. Shethna and; Sunil Kumar Garg, JJ.

Acts : Rajasthan Public Works Department (Building and Roads) including Gardens Irrigation, Water Works and Ayurvedic Departments Work-Charged Employees Rules, 1964- Rules 27, 28(6) and 29; [Industrial Disputes Act, 1947](#)

Appeal No. : D.B. Civil Special Appeal No. 1122 of 2000

Appellant : Kishna Ram

Respondent : State and Others

Advocate for Pet/Ap. : S.K.M. Vyas, Adv.

Judgement :

ORDER

Shethna, J.

(1). This special appeal is filed by the appellant workman against the judgment and order dated 16.8.2000 passed by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 5700/93, whereby, the writ petition filed by the State of Rajasthan and Assistant Engineer, P.H.E.D., Sub- Division, Raniwara, District

Jalore against the impugned award dated 22.1.1993' passed by the Labour Court, Jodhpur in favour of the workman ordering reinstatement of workman in service with full back wages from the date of termination dated 19.10.1987.

(2). The appellant workman claims that he was initially engaged as helper in village Karda-Diga, Water Supply Project in 1982. In 1985 he got the status of work charged employee and paid Rs. 548/- per month. Without following the provisions of Rule 29 of the Rajasthan Public Works Department (Building and Roads) including Gardens Irrigation, Water Works and Ayurvedic Departments Work-Charged Employees Rules, 1964 (for short 'the Rules') his services were terminated by an order dated 19.10.1987. The State Govt. made reference in 1990 to the Labour Court, Jodhpur. On behalf of the Department reply was filed before the Labour Court stating that he (workman) had not assumed the charge from March, 1982 and by and large he used to remain absent. His work on the Water Project was not found satisfactory, therefore, he was transferred on 14.5.1987 to other place, but he did not join at the place where he was transferred. For remaining absent from duty and that his services were not found satisfactorily, his explanation was called for, but he had not replied the same. He was semi permanent laborer, but he had never completed 240 days in one calendar year, therefore, provisions of Industrial Disputes Act will not be applicable. In their additional statement, it has been stated that prior to passing of the termination order, the workman remained absent from duty without any leave or prior information from 27.5.1987 to 6.6.87 and, thereafter, once again he remained absent from duty from 2.9.87 to 19.10.87. Thus, he had left the job on his own.

(3). Mr. Vya's for the appellant workman has produced the copy of the impugned termination order dated 19.10.1987, which is ordered to be taken on record. The same has not been referred to by the Labour Court in its award and it was also not produced before the learned Single Judge of this Court in writ petition. From the impugned order of termination dated 19.10.1987 it clearly appears that he was continuously absent from duty for which notices dated 20.5.1987, 26.5.1987, 6.6.1987 and 9.9.87 were issued. On 28.5.1987, his explanation was also called for for remaining absent from duty without prior leave or sanction, but no reply to any of these notices were given by the workman. By a letter dated 9.10.1987,

Assistant Engineer informed the office of Superintending Engineer that he was constantly remaining absent from duty from 3.9.87, therefore, in public interest his services were terminated from the date of order dated 19.10.1987.

(4). From the impugned award passed by the Labour Court, it appears that the Labour Court has held that prior to termination of his services no departmental enquiry was held nor the workman was charge sheeted for his mis-conduct of remaining absent from duty. Therefore, the termination order was not in accordance with law. While declaring the termination bad, the Labour Court was very much conscious of the fact that for remaining absent from duty the workman was served with notices from time to time and the workman failed to reply any of those notices, but according to the Labour Court the same cannot be the basis of his termination.

(5). Habitual absenteeism or absence without leave for more than ten days is misconduct u/R. 27(e) of the Rules, Before the learned Single Judge on behalf of the workman, reliance was placed upon the judgment of learned Single Judge of this Court in case of Hotel Man Singh Palace Ajmer vs. Judge, Labour Court & Anr. (!), and it was submitted that termination of the workman in the instant case without enquiry into the alleged mis-conduct for remaining absent was illegal. Having carefully considered the judgment of the learned Single Judge of this Court in Hotel Man Singh's case (supra), the learned Single Judge held that the said case had no application to the facts of the instant case. The learned Single Judge held that instant case is squarely covered against the workman by the decision of Hon'ble Supreme Court in case of State of Punjab vs. Jit Singh (2), While considering the provisions of Punjab Public Works Department Code, it was held by the Hon'ble Supreme Court that the employees governed by the said Code were not the public or civil servants, therefore, no enquiry prior to termination was necessary. Accordingly, the learned Single Judge has allowed the writ petition and set aside the impugned award passed by the Labour Court.

(6). Learned counsel Shri Vyas for the appellant workman vehemently submitted that the termination from service is a major penalty under Rule 28(6) of the Rules and such a major penalty cannot be imposed against the workman unless and

until the regular enquiry was held against the workman for the alleged mis-conduct of remaining absent from duty without leave as provided under Rule 29 of the Rules. He, therefore, submitted that learned Single Judge committed a serious error in allowing the writ petition filed by the State of Rajasthan and another and setting aside the impugned award passed by the Labour Court.

(7). While allowing the writ petition filed by the State of Rajasthan and another, the learned Single Judge in his judgment has clearly held that in the instant case the workman, who was workcharge employee, was not entitled to pension, leave, travelling allowances under the Rules. In an almost identical case of Jit Singh (supra), the Hon'ble Supreme Court while considering the provisions of Punjab Public Works Department Code held that the employees governed under the said Code were not the public or civil servants.

(8). In our considered opinion, the learned Single Judge has not committed any error in allowing the writ petition in view of the direct judgment of Hon'ble Supreme Court in Jit Singh's case (supra).

(9). However Mr. Vyas, learned counsel for the appellant workman vehemently submitted that Jit Singh's case (supra) has no application to the facts of the present case because there is a clear Rule 29 which provides that enquiry should be held in such type of cases and without enquiry one cannot be removed from service.

(10). On careful consideration of the impugned order of termination dated 19.10.1997, it clearly appears that before passing the impugned order of termination the workman was served with as many as four notices dated 20.5.87, 26.5.87, 6.6.87 and 9.9.87 for continuously remaining absent from duty without any leave or sanction, but none of them was replied. It also appears from the impugned order of termination that prior to passing of the termination order the workman was served with notice calling upon him to show cause for remaining absent from duty. But, the same was also not at all replied. It appears from the record that appellant workman right from the appointment in 1982 was casual in his work and in habit of remaining absent from duty quite often and when his work was not found satisfactorily he was transferred from that Water Project to other

place on 14.5.1987 and, thereafter, he never joined the transferred place and remained continuously absent from duty, indirectly, he had abandoned the services. In this type of cases what more enquiry can be held against such habitual absentee. Before passing the impugned order of termination the appellant workman was given due notice to show cause and explain as to why his service should not be terminated, but he did not prefer to file any reply to it.

(11). Under the circumstances, there was no other option but to terminate his services and in our considered opinion the services of the appellant workman was rightly terminated. In the instant case there is no breach of principle of natural justice. The workman remained continuously absent from duty of supplying water from the water pump. This state is time and again affected by scarcity and such a person, who has to discharge his duty on the water pump and if he remain so much casual and care-less in his duty then such a person cannot be continued in service even for a minute in the public interest. In our considered opinion natural justice is not meant for such a careless person. In case of Chairman Board of Mining Examination and Chief inspector of Mines & Anr. vs. Ramjee (3), the Hon'ble Supreme Court observed that, 'Natural justice is no unruly horse, no lurking land mine, nor a judicial care, if fairness is shown by the decision maker to the man proceeded against, the form, features and fundamentals of such essential procedural propriety being conditioned by the fact and circumstances of each situation, no breach of natural justice can be complained of.'

(12). Before parting, we must state that it is high time for the Courts to come down heavily in such type of cases where the workmen, who are employed in sensitive Departments like Police, Water Supply etc. remaining absent from duty for days together and sometime months together and when they are sacked from service, they come with the plea of natural justice. Natural justice is not meant for them because they never do justice to the public at large.

(13). In view of the above discussion, we do not find any substance or merit in this special appeal and accordingly, it fails and is hereby dismissed.