

**Jweller Association Vs. Presiding Officer Appointed Under Section 28-a of the Raj. Shops and Commercial Establishments Act, 1958**

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**Court :** Rajasthan

**Decided On :** Oct-07-1988

**Reported in :** 1988(2)WLN669

**Judge :** S.N. Bhargava and; P.C. Jain, JJ.

**Appeal No. :** D.B. Civil Write Petition No. 292 of 1988

**Appellant :** Jweller Association

**Respondent :** Presiding Officer Appointed Under Section 28-a of the Raj. Shops and Commercial Establishments Act,

**Disposition :** Petition dismissed

**Judgement :**

**P.C. Jain, J.**

1. In this writ petition, the petitioner has prayed for issuance of a writ, order or direction for quashing the order of respondent No. 1, dated 17th November, 1987, where by he reinstated respondent No. 2 and quashed the order of dismissal, dated 11th October, 1973 of respondent No. 2 Devi Singh from the services of Jewellers Association, Jaipur.

2. Briefly stated, the facts of the case are that the petitioner is association and was established for the welfare of the members dealing in genuine jewellery to guide them for import and export business of jewellery. The petitioner association is registered under the Rajasthan Non-trading Companies Act. Respondent No. 2 Devi Singh was employed in the petitioner association as Class IV employee on 27th June, 1975. A charge-sheet was given to him on 23rd July, 1982. After receiving the charge-sheet, Devi Singh respondent No. 2, filed his reply. As the reply was found to be not satisfactory, the management of the petitioner association decided to hold a domestic enquiry. The enquiry was commenced and it was concluded on 15th September, 1983. As per the report of the Enquiry Officer, Charge No. 5 was held to be not proved and the remaining charges were held to be proved and respondent No. 2 was found guilty. The management of the Association dismissed the services of respondent No. 2 vide letter dated 11th October, 1983. Petitioner's case is that, though it was not obliged to give one month's wages still looking to the provisions of Section 29A of the Rajasthan Shops & Commercial Establishments Act, 1958 (for short the Act), the Association paid one month's notice pay to respondent No. 2. The services of the employee, respondent No. 2, were dispensed with from the afternoon of October, 1983. Aggrieved by the order of dismissal, respondent No. 2 filed a complaint under Section 28A of the Act. The Association contested the case before respondent No. 1. On 17 September. 1984, an issue was framed to enquire as to whether the enquiry conducted by the petitioner association is fair and proper. Both the parties were allowed to lead evidence on this issue. On this issue, the Authority, respondent No. 1, gave its finding that the enquiry was not fair, though the Authority held the order of dismissal to be bad in law and. consequently vide its order dated 17th November, 1987, quashed the order of dismissal of respondent No. 2 and directed the Association to reinstate him.

3. The petitioner Association in this writ petition has assailed the order dated 17th November, 1987, passed by respondent No. 1 on various grounds inter alia that the Authority, respondent No. 1, did not afford an opportunity to the petitioner to prove the charges levelled against respondent No. 2 before the Authority, inspite of the fact that petitioner moved an application to adduce evidence before the authority to substantiate the charges. In case, the enquiry is found defective and

further that the order of dismissal was in accordance with the provisions of Section 28A of the Act.

4. Shri Ashok Parihar, learned Counsel appearing for respondent No. 2, contested the case without filing any reply, at the admission stage. The learned Counsel for the parties agreed that the case may be decided at the admission on stage.

5. Shri R.K. Kala, learned Counsel for the petitioner association, has submitted that the order dated 17th NOV.,1987, passed by respondent No. 1 is without jurisdiction and illegal. The submission of Shri Kala is that even if the domestic enquiry was not fair, the petitioner Association had the right to adduce evidence before the Authority and to substantiate the charges on the basis of which the dismissal order was passed against respondent No. 2 His submission is that as per Sub-section (1) of Section 28 A of the Act, an employer is entitled to terminate the services of his employee, on reasonable cause, who has served for more than six months by grieving one month's notice or paying the employee one month's wages in lieu of such notice. Shri Kala has further submitted that the scheme of Section 28A clearly envisages that the employer has a right to adduce evidence to substantiate the order of dismissal on the ground that there was a reasonable cause for dispensing with the services of the employee. His further submission is that proviso to Sub-section (1) of Section 28 A is attracted when the services of an employee are dispensed with for such misconducts as have been defined in the Rajasthan Shops & Commercial Establishments Rules, but so far as Sub-section (1) of Section 28A is concerned, if the services are terminated on any misconduct what so ever defined in the rules or not, the employer has a right to terminate the services by assigning reasonable cause and giving the employee one month's wages or serving upon him one month's notice. His further grievance is that inspite of the fact that the petitioner association desired to adduce evidence to substantiate the reasonable cause for dispensing with the services of respondent No. 2, still he was not afforded an opportunity to do so and, in this manner the Authority has acted beyond the jurisdiction as the Authority is empowered to allow the employer substantiate the charge in the case action is taken in accordance with subsection (1) of Section 28A of the Act.

6. Though, Shri Kala, learned Counsel for the petitioner, did not frankly concede, but on the basis of the finding recorded by respondent No. 1. and the material available on the record, we are of the opinion that the following facts cannot be disputed:

[1] That respondent No. 2 was served with charges which fell under the definition of misconducts prescribed under Rule 24A of the Rajasthan Shops & Commercial Establishments Rules;

[2] That the domestic enquiry conducted by the petitioner association was not fair.

[3] That the petitioner association made a request to the Authority for adducing evidence to substantiate the charges, but the Authority declined to grant such an opportunity to the petitioner association;

[4] That one month's wages were paid to respondent No. 2 at the time of serving upon him the order of dismissal.

7. Shri Ashok Parihar, learned Counsel for respondent No. 2, has submitted that this is fully covered by a Division Bench judgment of this Court in the case of I.T.D C. Ltd. v. Authority under Rajasthan Shops & Commercial Establishments Act 1987 (II) RLR 387. The submission of Shri Parihar is that in I.T.D.C's case (supra) similar circumstances were there in as much as the enquiry was found to be defective and as such the enquiry was held to be bad in law and invalid and it was held that the prescribed Authority had committed no error of law in not allowing the petitioner to lead evidence before it to prove the misconduct alleged against him. Shri Kala has placed reliance on I.T.D.C.'s case (supra). Since the learned Counsel for both the parties are placing reliance on the judgment given by a Division Bench of this Court in the I.T.D, C's case (supra), it would be better if we reproduce the observations made in that judgment. In that case, after discussing thoroughly the various authorities and the provisions of the Act and the Rules made therein, this Court laid down the following principles:

[1] Where the services of an employee who has been in the employment continuously for the period of not less than six months are dispensed with either by

way of dismissal or discharge. The employer may do so, by assigning reasonable cause and giving such employee at least one month's prior notice or paying him one month's wages in lieu of such notice;

[2] If the reasonable cause is substantiated in a domestic inquiry conducted in the matter of misconduct of any nature alleged against the employee and, if one month's notice or one month's wages are paid in lieu of notice, the employer can justify his action either on the basis of evidence adduced in the domestic enquiry or he may substantiate the charges by producing additional evidence before the prescribed authority. In case, the services are dispensed with not on the ground of misconduct, but by way of discharge simpliciter, the same procedure is to be followed viz. that the employee is required to be given one month's wages or notice of one month and the employer may prove the grounds of dispensing with the services by producing additional evidence before the prescribed authority;

[3] In cases where the employer dispenses with the services of an employee on the ground of defined misconduct, as provided under Rule 24-A, he is not required to give any notice, but he is required to conduct an inquiry in accordance with Sub-rule (2) of Rule 24-A i.e. he is required to conduct an inquiry into the charges by giving a reasonable opportunity to the employee i.e. by following the principles of natural justice and, in case, there is no such inquiry, it would mean no inquiry at all, as no inquiry or defective inquiry stands on the same footing. The consequence of defective inquiry or no inquiry would be that proviso to Section 28-A would not be attracted and the action of the management in dispensing with the service will be null and void.

Shri Kala drew our attention on the following observations made by this Court in the decision:

The scheme of Section 28-A thus, suggests that in case an employer wants to terminate the services of his employee by way of dismissal or discharge, he is required to assign reasonable cause for dispensing with the services of the employee and he is further required to give one month's notice or one month's wages in lieu thereof. This procedure would be applicable for all types of misconducts on which services could be terminated and the prescribed authority

may allow additional evidence to be produced even if a domestic inquiry was held or no inquiry at all was held by the employer.

8. Shri Kala has laid emphasis on the point that Sub-section (1) of Section 28-A is applicable to all types of misconducts, whether defined in the rules or not and, therefore, in his case Sub-section (1) of Section 28-A was attracted and the Tribunal committed an error in not allowing the petitioner to substantiate the charges in view of the principle No. 2 laid down by this Court in the judgment of ITDC, quoted above.

9. We are of the opinion that the contention of Shri Kala is not correct. While dealing with Section 28-A of the Act, it was observed by this court that the proviso to Section 28-A is in the nature of an exception providing that no such notice shall be necessary where the services of an employee are dispensed with for misconduct as has been defined in the rules made by the State Government. This Court further held that in case of defined misconduct the procedure laid down in Sub-rule (2) of Rule 24-A will have to be followed and, in case, the prescribed authority holds that the enquiry is defective in as much as it has failed to provide a reasonable opportunity to defined to the employee, it will be no enquiry in the eye of law. The court further held that in case where no enquiry is held in the matter of defined misconduct, it will be in violation of the procedure prescribed under Sub-rule (2) of Rule 24-A. This court further held that Section 28-A has provided a restriction on the right of employer to terminate the services of his employee and made it obligatory on the employer to hold an enquiry in the matter of defined misconducts and to prepare a record of evidence before terminating the services of the employee and, therefore, in case, the employer does not want to proceed in accordance with the main provision of Section 28-A and wants to terminate the services of the employee on the defined misconduct, it is obligatory on him to make an enquiry in accordance with the rules. A Cat Scanning of Section 28-A would disclose that as far as the misconducts laid down in Rule 24A are concerned, the services of an employee could be dispensed with if a misconduct as defined in the rules is proved in the domestic enquiry and for which the Authority is not empowered to examine whether the dispensation of services was reasonable and justified or not. It was with this object that the law required strict

compliance of the proviso and the rules made for that the law required strict compliance of the proviso and the rules made for that purpose. Therefore, in case, the services are terminated on the ground of defined misconduct, it is only the proviso that is applicable and not the main Sub-section (1) of Section 28A. Sub-section (1) of Section 28A is applicable when the services are terminated on the ground of reasonable' cause which may be a misconduct other than the misconducts defined under the Rules and the Authority is to examine whether such a misconduct would give a reasonable cause to the employer to terminate his services. In this view of the matter, we are of the opinion that the submissions made by Shri Kala are without any merit.

10. In the premises aforesaid, we do not find any merit in the writ petition and the same is dismissed with no order as to costs.

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