Radhakrishnan S. Vs. Tamil Nadu Agro Engineering and Service Co-operative Federation Ltd. and anr.

Radhakrishnan S. Vs. Tamil Nadu Agro Engineering and Service Co-operative Federation Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/825969

Court : Chennai

Decided On : Apr-09-2001

Reported in : (2001)IILLJ325Mad

Judge : V.S. Sirpurkar and ;A. Kulsekaran, JJ.

Acts : Tamil Nadu Shops and Establishments Act, 1948 - Sections 41 and 41(1)

Appeal No. : W.A. No. 882/2000

Appellant : Radhakrishnan S.

Respondent : Tamil Nadu Agro Engineering and Service Co-operative Federation Ltd. and anr.

Advocate for Def. : T. Kokilavani, Adv. for Respondent No. 2

Advocate for Pet/Ap. : A.R. Gokulnath, Adv.

Disposition : Appeal dismissed

Judgement :
ORDER

V.S. Sirpurkar, J.

1. The only question that arises forconsideration in this appeal, which is filed onbehalf of the employee appellant/petitioner, isas to whether the order passed by the appellateauthority upholding the termination of thepetitioner and the order passed by the learnedsingle Judge confirming the order of theappellate authority are correct in law?

2. The appellant was appointed in the post of Assistant Manager (Costing). At the time when he was appointed i.e. on August 20, 1990, the order suggests that his appointment was to be purely temporary and he was to be placed on probation for a period of two years from the date of his joining. The appellant, however, came to be terminated by an order dated April 11, 1991, in which the reason stated was that the post of Assistant Manager (Costing) was itself abolished due to administrative reasons. An appeal came to be filed against this order under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 hereinafter referred to as 'the Act' forshort). The Appellate Authority took the viewthat the termination was for good reason. Itfurther held that though the notice was notgiven under Section 41(1) of the Act, thereinstatement could not be ordered, as the postitself was abolished. However, since the noticewas not given, the Appellate Authority orderedpayment of salary upto the date of passing ofthe order i.e. on December 5, 1991.

3. Two petitions came to be filed, one, at the instance of the Tamil Nadu Agro Engineering Service Co-operative Federation, the Employer, against the direction to pay the wages upto December 5, 1991, and the other, at the instance of the present appellant challenging the finding that the termination was justified and good and that there was no right of reinstatement since the post itself was abolished. The learned single Judge has taken the view that the Employer-Federation was justified in terminating the service of the petitioner and that the termination order was for good reason. The learned Judge has also endorsed the finding that the said termination order was passed without giving the notice under Section 41(1) of the Act and, therefore, under Section 41 of the Act, the Appellate Authority was justified in ordering the payment of salary upto December 5, 1991.

4. It is this confirming order of the learned single Judge which is challenged in this appeal by the employee.

5. There is no appeal, atleast brought before us, filed by the Employer-Federation against the order of the learned single Judge confirming the appellate order in so far as the direction of the payment of salary upto December 5, 1991 is concerned.

6. Very significantly also, today when thematter is called out, there is nobody present onbehalf of the Federation-Employer nor is thereany Vakalatnama filed on their behalf.

7. The only question that will have to be considered today is as to whether the learned single Judge was right in confirming the appellate order under Section 41 of the Act holding that the termination was for good reason and that the appellant was not entitled to be reinstated, since the post itself stood abolished.

8. The learned counsel appearing on behalf of the appellant very vehemently argues that firstly the post itself could not be abolished, because that post was created by the Board and the decision to abolish was taken by the Managing Director and, as such, that decision was beyond the powers of the Managing Director. The second contention raised by the learned counsel is that in fact there was no abolition of the post and it was merely an eyewash to anyhow terminate the petitioner and, therefore, the termination of the petitioner suffered from the vice of colourable exercise of powers.

9. We are afraid that the learned counsel is not right in both his submissions. Firstly, it will have to be seen as to whether was there in fact an abolition of the post. There is material on record to suggest that the fact of abolition was in fact an established fact. In their counter before the appellate authority itself, the employer has very specifically raised a plea that this was not a manufacturing unit and, therefore, the appointment of a Cost Accountant, like the present appellant, was felt unnecessary and was proving to be a drain on the coffers of the Employer-Federation and, therefore, a decision was taken to abolish this post. There is nothing to suggest that factually I this was an incorrect plea. On the other hand, it is specifically found by both the Appellate Authority as well as the learned single

Judge that there was nothing brought on record at the instance of the appellant to suggest that this was a mala fide action on the part of the Managing Director. Therefore, one thing is certain that there was in fact an order of abolition of the post. Once that position is obtained, it cannot be argued by the appellant that the said abolition was bad in law or beyond the powers of the Managing Director. In fact, it would not be for the learned single Judge or the Appellate Authority to examine as to whether the decision to abolish the post was legally correct or not. We hasten to add that even if such a plea was available, nothing has been brought to our notice to suggest that the decision in this case was in any manner bad in law. In fact, the learned single Judge appears to have confirmed the decision by holding that under the bye-laws there was enough power vested in the Managing Director. The approach of the learned single Judge has been that in this case the appellant's Appointing Authority was the Managing Director and, therefore, the Managing Director alone could be the terminating authority also and since the termination order has been passed by the Managing Director himself, nothing would be wrong with the termination. The only other thing to be seen would be to see whether in fact there has been an abolition of the post giving a reason to the said Managing Director to act and terminate the service of the appellant. On facts, it has been found that in fact the post has actually been abolished. In our opinion, the learned single Judge was right in observing that it was not the task of the learned single Judge to see the legality or otherwise of the decision to abolish the post. We endorse that view. We also do not find any reason to hold that the decision is in any manner illegal, because there are no facts established to suggest that the Managing Director who abolished that post did not have the power to do so. That was the burden on the part of the appellant. He not having discharged the same, must fail and it was rightly held by the learned single Judge that his termination was correct and reasonable. We are also in total agreement with the view taken by the learned single Judge as also the Appellate Authority in holding that since there is no post available, there was no question of reinstatement of the appellant.

10. In short, we are of the clear opinion that the learned single Judge as well as the Appellate Authority were right in taking that view. We hold that the appeal has no merits and it is dismissed, but without any order as to costs.