

A RAJASTHAN STATE ROAD TRANSPORT CORPORATION

v.

BHARAT SINGH JHALA (DEAD) SON OF SHRI NATHU
SINGH, THROUGH LEGAL HEIRS & ANR.

B (Civil Appeal No. 6942 of 2022)

SEPTEMBER 30, 2022

[M. R. SHAH AND KRISHNA MURARI, JJ.]

C *Industrial Disputes Act, 1947 – ss.10, 33(2)(b) – Termination – Departmental Enquiry against workman-conductor (since deceased) for not issuing the tickets even after collecting the amount of tickets – Terminated in 2001 – Order of termination approved in 2015 by Industrial Tribunal – After a period of approximately 19 years from the date of passing the order of termination, the workman again raised the Industrial Dispute, Labour Court set aside*
D *the order of termination and passed order awarding 50% back wages from the date of termination till his death in 2018 – Confirmed by High Court – On appeal, held : Once the order of termination was approved by the Industrial Tribunal and the management was permitted to lead the evidence and prove the misconduct before the*
E *Court and on appreciation of evidence the order of termination was approved, thereafter fresh reference u/s.10 challenging the order of termination was not permissible – 2015 order passed by the Industrial Tribunal which as such is a higher forum than the Labour Court had attained finality – Though the aforesaid fact was pointed out before the High Court, it did not consider the same – Findings*
F *recorded by the Industrial Tribunal were binding between the parties – No contrary view could have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal – Award passed by the Labour Court confirmed by High Court set aside.*

Allowing the appeal, the Court

G **HELD: The workman was subjected to departmental enquiry and the charge against the deceased workman was not issuing the tickets to 10 passengers though he collected the fare. On conclusion of the departmental enquiry his services were terminated. The termination was the subject matter of the**
H **approval application before the Industrial Tribunal in an**

application under Section 337(2)(b) of the I.D. Act. In the said proceedings the management was permitted to lead the evidence and prove the charge/misconduct before the Tribunal. In the said application the parties led the evidence, both, oral as well as documentary. Thereafter on appreciation of evidence on record, the Industrial Tribunal by order dated 21.07.2015 approved the order of termination. That thereafter the workman raised the Industrial Dispute challenging the order of termination which as such was proved by the Industrial Tribunal by order dated 21.07.2015. Therefore, once the order of termination was approved by the Industrial Tribunal and the management was permitted to lead the evidence and prove the misconduct before the Court and thereafter on appreciation of evidence the order of termination was approved, thereafter the fresh reference under Section 10 of the I.D. Act challenging the order of termination was not permissible. It is required to be noted that the order dated 21.07.2015 passed by the Industrial Tribunal which as such is a higher forum than the Labour Court had attained the finality. Though the aforesaid fact was pointed out before the High Court, the High Court has not at all considered and/or appreciated the same and has confirmed the judgment and award passed by the Labour Court for setting aside the order of termination which as such was approved by the Industrial Tribunal. In the present case by specific order the Industrial Tribunal permitted the management to lead the evidence and prove the misconduct before the Court which as such was permissible. That thereafter the Industrial Tribunal approved the order of termination. Once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, thereafter the findings recorded by the Industrial Tribunal were binding between the parties. No contrary view could have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal. The judgment and award passed by the Labour Court confirmed by the High Court is unsustainable. The High Court has committed a very serious error in dismissing the writ petition/ writ appeal confirming the judgment and award passed by the Labour Court setting aside the order of termination. The impugned judgment and order passed by the High Court confirming the judgment and award passed by the Labour Court

- A **setting aside the order of termination and the judgment and award passed by the Labour Court setting aside the order of termination are hereby quashed and set aside [Paras 5.1, 5.2, 6 and 7][280-F-H; 281-A-H; 282-A]**

- B *John D'Souza v. Karnataka State Road Transport Corporation* (2019) 14 Scale 57 – held inapplicable

Case Law Reference

(2019) 14 Scale 57 held inapplicable Para 4.1

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6942 of 2022.

- C From the Judgment and Order dated 12.08.2021 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal Writ No. 645 of 2020.

Dr. Ritu Bhardwaj, Sachin Mittal, Advs. for the Appellant.

- D H. D. Thanvi, Achal Singh Bule, Nikhil Kumar Singh, Rishi Matoliya, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- E 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.08.2021 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jaipur passed in D.B. Civil Special Appeal (Writ) No.645 of 2020 by which the Division Bench of the High Court has dismissed the said appeal challenging the order passed by the learned Single Judge dismissing the writ petition filed by the appellant
- F confirming the order passed by the Labour Court setting aside the order of termination passed against the workman, the Rajasthan State Road Transport Corporation has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

- G 2.1 The workman was serving on the post of Conductor. A departmental enquiry was initiated against him alleging not issuing the tickets to 10 passengers though he collected the amount of tickets. In the department inquiry he was found guilty for the misconduct alleged. The employer – Rajasthan State Road Transport Corporation terminated his services vide Order dated 31.07.2001.

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2.2 An application for approval of punishment order under Section 33(2)(b) of Industrial Dispute Act, 1947 (hereafter referred to as “the I.D. Act”) was submitted before the Industrial Tribunal on 31.07.2001. The Industrial Tribunal held the enquiry bad. However, the Industrial Tribunal vide Order dated 12.12.2012 allowed the appellant – Corporation to prove the charges before the Tribunal. Both the parties led the evidence before the Tribunal on the charges alleged. The appellants led, both, oral as well as documentary evidences. That on appreciation of entire evidence on record and considering the submissions made on behalf of both the parties, the Industrial Tribunal vide order dated 21.07.2015 allowed the application under Section 33(2)(b) of the I.D. Act and granted the approval of the order of termination. That thereafter and after a period of approximately 19 years from the date of passing the order of termination, the workman again raised the Industrial Dispute challenging the order of termination of 2001. By Judgment and Award dated 19.11.2019 the Labour Court, Jaipur allowed the said reference and set aside the order of termination. As in the meantime the workman died and the dispute was raised after a period of 19 years, the Labour Court passed an order awarding 50% back wages from the date of termination till his death i.e. 10.12.2018. The Judgment and Award passed by the Labour Court was challenged before the learned Single Judge of the High Court. The learned Single Judge dismissed the writ petition. Against the award passed by the learned Single Judge dismissing the writ petition the appellant preferred the appeal before the Division Bench. By impugned judgment and order the High Court has dismissed the said appeal which has given rise to the present appeal.

3. Learned Counsel for the appellant has vehemently submitted that in the facts and circumstances of the case the Hon’ble High Court has committed a serious error in dismissing the writ appeal/writ petition confirming the judgment and order passed by the learned Labour Court.

3.1 It is submitted that once in an application under Section 33(2)(b) of the I.D. Act and pursuant to the earlier order passed by the Industrial Tribunal, the appellant was permitted to lead the evidence and prove the charge/misconduct and thereafter when the order of termination was approved by the Industrial Tribunal, thereafter it was not open for the workman to again raise the Industrial Dispute that too after a period of 19 years. It is submitted that the Hon’ble High Court has materially erred in confirming the judgment and award passed by the learned Labour

- A Court quashing and setting aside the order of termination which as such was approved by the Industrial Tribunal by order dated 21.07.2015.

3.2 Making above submissions, it is prayed to allow the present appeal.

- B 4. Present appeal is vehemently opposed by Shri H.D. Thanvi, learned counsel appearing on behalf of the respondents.

- C 4.1 Relying upon the decision of this Court in the case of **John D'Souza vs. Karnataka State Road Transport Corporation**, (2019) 14 Scale 57, it is vehemently submitted that as observed and held by this Hon'ble Court the proceedings under Section 33(2)(b) and Section 10 of the I.D. Act are distinct and different. It is submitted that as observed and held by this Hon'ble Court in the aforesaid decision the proceedings under Section 33(2)(b) of the I.D. Act are summary in nature and findings recorded while deciding the application under Section 33(2)(b) of the Act shall not affect the substantive right in a reference under Section 10 of the I.D. Act.

D 4.2 It is submitted that therefore, the Labour Court did not commit any error in considering the validity of the order of termination and thereafter quashing and setting aside the same and ordering 50% back wages.

- E 4.3 It is submitted that considering the fact that the workman has died and his heir - widow is awarded 50% back wages only, the same may not be interfered by this Court in exercise of powers under Article 136 of the Constitution of India.

- F 5. We have heard the learned counsel for the respective parties at length.

- G 5.1. At the outset, it is required to be noted that the workman was subjected to departmental enquiry and the charge against the deceased workman was not issuing the tickets to 10 passengers though he collected the fare. On conclusion of the departmental enquiry his services were terminated. The termination was the subject matter of the approval application before the Industrial Tribunal in an application under Section 33(2)(b) of the I.D. Act. In the said proceedings the management was permitted to lead the evidence and prove the charge/misconduct before the Tribunal. In the said application the parties led the evidence, both, oral as well as documentary. Thereafter on appreciation of evidence on
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record, the Industrial Tribunal by order dated 21.07.2015 approved the order of termination. That thereafter the workman raised the Industrial Dispute challenging the order of termination which as such was proved by the Industrial Tribunal by order dated 21.07.2015. Therefore, once the order of termination was approved by the Industrial Tribunal and the management was permitted to lead the evidence and prove the misconduct before the Court and thereafter on appreciation of evidence the order of termination was approved, thereafter the fresh reference under Section 10 of the I.D. Act challenging the order of termination was not permissible. It is required to be noted that the order dated 21.07.2015 passed by the Industrial Tribunal which as such is a higher forum than the Labour Court had attained the finality. Though the aforesaid fact was pointed out before the High Court, the High Court has not at all considered and/or appreciated the same and has confirmed the judgment and award passed by the Labour Court for setting aside the order of termination which as such was approved by the Industrial Tribunal.

5.2 Now so far as the reliance placed upon the decision of this Court in the case of **John D'Souza** (supra) by the learned counsel appearing on behalf of the respondent is concerned, on facts the said decision shall not be applicable to the facts of the case on hand. In the present case by specific order the Industrial Tribunal permitted the management to lead the evidence and prove the misconduct before the Court which as such was permissible. That thereafter the Industrial Tribunal approved the order of termination. Once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, thereafter the findings recorded by the Industrial Tribunal were binding between the parties. No contrary view could have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal.

6. In view of the above, the judgment and award passed by the Labour Court confirmed by the High Court is unsustainable. The High Court has committed a very serious error in dismissing the writ petition/ writ appeal confirming the judgment and award passed by the Labour Court setting aside the order of termination.

7. In view of the above and for the reason stated above the present appeal succeeds. The impugned judgment and order passed by the High Court confirming the judgment and award passed by the Labour Court

A setting aside the order of termination and the judgment and award passed by the Labour Court setting aside the order of termination are hereby quashed and set aside.

The Present Appeal is Allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to

B costs.

Divya Pandey
(Assisted by: Roopanshi Virang, LCRA)

Appeal allowed.