

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3428 OF 2003

RAJASTHAN STATE ROAD TRPT. CORPN. & ORS.

Appellant (s)

VERSUS

KHADARMAL

Respondent(s)

(With prayer for interim relief and office report)

WITH Civil Appeal NO. 3429 of 2003

(With appln(s) for accepting English translation)

(With prayer for interim relief)

with

Civil Appeal NO. 3430 of 2003

(With office report)

with

Civil Appeal NO. 3431 of 2003

Civil Appeal NO. 6584 of 2003

Date: 06/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. Sushil Kumar Jain, Adv.

Mr. A.P. Dhamija, Adv.

Mr. Sarad Singhania, Adv.

Mr. H.D. Thanvi, Adv.

Mr. Punit Jain, Adv.

For Respondent(s)

Mr. Parmanand Gaur, Adv.

Mr. Jitendra Sharma, Sr. Adv.

Mr. B.K. Pal, Adv.

Mr. P.N. Jha, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals stand disposed of in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)

Court Master

(Jasbir Singh)

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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O R D E R

In all these cases one of the questions for consideration is whether a Civil

Court would have jurisdiction or whether the termination of service of a Probationer was required to be challenged by raising a dispute under the Industrial Disputes Act.

This question is now squarely covered by the decisions of this Court in the

case of Rajasthan State Road Transport Corporation And Anr. v. Krishna Kant And

Ors. reported in (1995) 5 SCC 75 as well as in the case of Rajasthan State Road

Transport Corpn. & Ors. v. Zakir Hussain reported in 2005 (6) SCALE 641. It has

been held that the Civil Court would have no jurisdiction. As these Judgments are

binding on us, we also hold that in all these matters the Civil Court had no

jurisdiction to adjudicate.

It is however submitted, based on the following observations in the first

Rajasthan State Road Transport Corporation's case (supra):-,

"Applying the above principles, we must hold that the suits filed by the respondents in these appeals were not maintainable in law. Even so, the question is whether we should set aside the decrees passed in their favour by the civil courts. So far as Civil Appeal No.3100 of 1991 is concerned, this Court had, while granting leave [in SLP (C) No.194 of 1991] ordered on 29-1-1991 that "insofar as respondent is concerned, he (appellants' counsel) states that he will abide by the decree. Application for stay is rejected". Therefore, there is no question of setting aside the decree concerned in this appeal. However, so far as the other appeals are concerned, the position is slightly different. In Civil Appeal No.4948 of 1991 and in Civil Appeals Nos.5386, 5387 of 1995 arising out of SLPs (C) Nos.10902 of 1992, 13152 of 1993 and 10263 of 1993, not only there is no such condition but this Court had granted stay as prayed for by the appellant-Corporation. In two other matters, viz., in Civil Appeal No.9314 of 1994 and Civil Appeal No.5389 of 1995 arising out of SLP(C) No.14169 of 1993 the only order is to issue notice. Having regard to the facts and circumstances of these matters, we modify the decrees in these matters (except the decree concerned in Civil Appeal No.3100 of 1991) by reducing the back wages to half. The decrees in all other respects are left undisturbed. These orders are made in view of the fact that the position of law was not clear until now and it cannot be said that the respondents had not acted bona fide in instituting the suits. Appeals disposed of accordingly."

It is submitted that all the suits in these matters were filed at a time when

the position of law was not clear. It is submitted that therefore even in these cases the

Court should not interfere with the decrees but may direct that there shall be no

payment of back-wages.

On behalf of the Appellants reliance is placed on the second Rajasthan

State Road Transport Corpn.'s case (supra) and it is pointed out that the Court has,

after considering the earlier Judgments, concluded that the reinstatement cannot now

be maintained and directed that the Respondent shall not be allowed to continue in

service any further. The Court has however held that the back-wages which may have

been paid are not to be recovered back but clarified that the Respondents will not be

entitled to any further emoluments or service benefits except the amount paid to them

as back-wages.

In our view, as the Civil Court had no jurisdiction, the decrees which were

passed have no force of law. They are accordingly set aside. In our view, there can be

no direction to reinstate or to continue reinstatement. However, on the facts of these

cases we also direct that if any back-wages have been paid, they shall not be recovered

but clarify that the Respondents will not be entitled to any further emoluments or

service benefits.

The Appeals stand disposed of accordingly. There will be no order as to

costs.

Before we part, we clarify that in the event of Respondents or any of them deeming it fit and proper to raise a dispute, the period actually spent in litigation, i.e., from the date of the filing of the suit till the date of this Judgment, will be excluded for the purposes of considering delay in filing the dispute.

.....J.

(S.N. Variava)

.....J.

(P.K. Balasubramanyan)

.....J.

(P.P. Naolekar)

New Delhi;

October 06, 2005.